

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 93-F-01

Date issued: January 27, 1993

Requested by: Wayne J. Anderson, Acting Executive
Director

North Dakota Department of Human Services

- QUESTION PRESENTED -

Whether the procedures and standards for reporting, investigating, and treating all cases of medical neglect, including those in which parents refuse to provide medical care for religious reasons, are the same for all children, regardless of the religious beliefs or practices of their parents or guardians.

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It is my opinion that the procedures and standards for reporting, investigating, and treating all cases of medical neglect, including those in which parents refuse to provide medical care for religious reasons, are the same for all children, regardless of the religious beliefs or practices of their parents or guardians.

- ANALYSIS -

N.D.C.C. ch. 50-25.1 governs the reporting and investigation of child abuse or neglect. The determination of probable cause is made "[u]pon completion of the investigation of the initial report of child abuse or neglect." N.D.C.C. ? 50-25.1-05.1. Subsection 2 of that section provides:

Probable cause to believe that child abuse or neglect is indicated may not be determined where the suspected child abuse or neglect arises solely out of conduct involving the legitimate practice of religious beliefs by a parent or guardian. This exception does not preclude a court from ordering

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that medical services be provided to the child where the child's life or safety requires it.

N.D.C.C. ch. 50-25.1 does not contain any exceptions to the duty to report abuse or neglect because the abuse or neglect may arise out of the practice of religious beliefs by the parent or guardian. In addition, subsection 2 of N.D.C.C. ? 50-25.1-05.1 does not alter the duty of officials to investigate such a report. Under subsection 2, the responsible officials may only be precluded from determining that probable cause exists to believe that child abuse or neglect is indicated. The absence of a probable cause finding does not preclude any judicial intervention, however.

Judicial action taken to protect children is not undertaken pursuant to N.D.C.C. ch. 50-25.1. Rather, it is undertaken pursuant to N.D.C.C. ch. 27-20, the Uniform Juvenile Court Act. The Juvenile Court Act does not contain any requirement that a probable cause finding be made prior to action pursuant to the Act.

The juvenile court has jurisdiction over "proceedings in which a child is alleged to be . . . deprived." (Emphasis added.) N.D.C.C. ? 27-20-03(1)(a).

N.D.C.C. ? 27-20-02(5) provides the following definition:

5. 'Deprived child' means a child who:
 - a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;
 - b. Has been placed for care or adoption in violation of law;
 - c. Has been abandoned by the child's parents, guardian, or other custodian; or

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- d. Is without proper parental care, control, or education as required by law, or other care and control necessary for the child's wellbeing because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and that such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is requested by a parent.

N.D.C.C. ? 50-25.1-02 (6) defines "neglected child" to mean a deprived child as that term is defined in chapter 27-20. Therefore, neither the definition of a "neglected child" nor the definition of a "deprived child" contains any exception that excludes circumstances where a child's neglect results from conduct involving the legitimate practice of religious beliefs by a parent or guardian. A finding that probable cause exists to believe that child abuse or neglect is indicated is not a prerequisite to the court's exercise of jurisdiction. Neither is it a prerequisite to the court's determination that a child has been shown to be "deprived." Consequently, the fact that a parent has refused, for religious reasons, to provide the child with medical care is irrelevant to either the court's exercise of jurisdiction or the court's determination that a child is "deprived."

- EFFECT -

This opinion is issued pursuant to N.D.C.C. ? 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

Heidi Heitkamp
Attorney General

Assisted by: Blaine L. Nordwall

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Assistant Attorney General

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