

BUFFALO Law Journal

VOL. 85 _ NO. 39 _ JULY 29 2013 _ EST. 1929

Vaccines create legal challenges

Somehow I drew the short straw that found me sitting in the pediatrician's waiting room with my son Oliver, contemplating what happened to the goldfish that were swimming around a big, slightly murky tank during our last visit.

Meanwhile, across town, my wife was enjoying coffee and a pastry with our daughter Zoey. This hardly seemed fair. She got to go for dessert while I went for the dreaded shots? But these were no ordinary shots. At age 5, Ollie is mere weeks away from starting his academic career as a kindergarten student, meaning it was government-mandated, vaccination time.

Thanks to Jenny McCarthy and Don Imus, chief among others, vaccinations have spent a fair amount of time in the news over the last decade, with both "celebrities" feverishly shouting from a soapbox, suggesting that vaccinations may be linked to autism, among other childhood illnesses.

Since I don't take my childrearing advice from a man most famous for being fired for making sexist, racist comments on-air or

from a woman whose claim to fame began with getting naked for Playboy magazine, I've never given any credence to the vaccine/autism talk. Add to that studies that have largely debunked the idea, coupled with federally mandated changes to vaccinations, and — at least in the mind of this parent — they don't seem any more dangerous than anything else we are doing these days.

But with millions of parents around the country spending July and August making sure their little ones are fully vaccinated, as required by law (Public Health Law 2164, to be specific) to attend public school, it got me thinking: What if I did believe in the autism link? Would I be forbidden from giving my child a public education? Would I be forced to homeschool? Are there alternatives?

I decided to ring up Andrew Freedman, a partner at Hodgson Russ LLP and a veteran education attorney, to see what he had to say. The good news for you anti-

vaccinators (is that even a word?): There are exceptions to the rules mandating vaccinations prior to enrolling in a public school. The bad news: You probably won't qualify to get one.



Freedman

"There are two exemptions available," Freedman told me. "The first is a medical exemption where the physician provides a certificate to the school stating that the vaccination will harm the child. Getting the shot could put the child at risk. The second is a religious exemption, basically that you have strong religious beliefs that prohibit getting

your child vaccinated."

In my experience, doctors are more than willing to hand out a prescription for the latest as-seen-on-TV wonder drug, or a referral for six months of massage to cure a sore back, so I figured getting the family doc to fax over a medical exception would be no sweat. Freedman said not so fast.

"You'd be surprised how difficult it is to get a doctor to

If you are a drive-by religious convert hopping on the bandwagon just in time to avoid having your child go under the needle, you may be out of luck.

write a medical exemption," he told me. "Unless there is a real serious medical reason, they aren't going to get one. I'd say more than 99 percent of the time, if you asked your doctor, they would say no."

This got me thinking about Jenny McCarthy's doctor, which got me thinking about Jenny McCarthy, which cost me 20 minutes surfing Google. But eventually I found my focus again and got to thinking — even if I struck out on the doctor's note, in our overly PC world, nobody is going to challenge a claim of religious beliefs. Yet again, I was wrong. Freedman said it happens regularly — he has received as many as 50 exemptions in a single school year from districts he represents, many of them claiming

religious beliefs.

"Those are some of the most challenging cases to litigate that I handle," he said. "The school official is put in the role of deciding whether or not your religious beliefs meet the legal requirements ... That leaves a lot of parents saying to us, 'Who are you to tell me what my beliefs are or are not?' It can be incredibly challenging to litigate."

The truth is, Freedman and his fellow education attorneys can build a case through careful questioning to make an argument in opposition to the religious exemption.

If your child attends services every morning before school, reads his Bible daily and can quote the scripture better than the last episode of "The Big Bang Theory," you might have a shot. But if you are a drive-by religious convert, hopping on the bandwagon just in time to avoid having your child go under the needle, you may be out of luck.

Freedman said creative types have also made arguments that are more outside the box.

"We get a lot of people arguing that they live an organic lifestyle. 'We only put grass-fed meat into our bodies. We don't put any sugar in our body' — that kind of stuff," he said. "But again, they aren't making a medical or religious argument; that is more of a lifestyle choice."

I asked Freedman if he has seen a spike in the number of exemption requests, given the efforts of McCarthy et al to disparage vaccinations.

"Absolutely," he said. "My practice in this area grows year after year. Where I used to get maybe one or two exemption requests in a school year from my districts, now I could get two or three in any given week."

After getting Ollie the last of what by my count were a dozen mandatory vaccination shots (including one in each arm, administered simultaneously a few weeks back), I'm sort of glad I stood no chance of getting an exemption. Not that I even wanted one, but I tend to be the jealous type — if my neighbor gets a brand-new vaccine exemption, I want one, too. But medically, Ollie is quite healthy, and religiously, I've got nothing espousing the evils of the polio vaccine. But, hey, at least Jenny McCarthy got me thinking — a thought far more scary than a little mercury in my next vaccine.

MCHANDLER@BIZJOURNALS.COM
@LawJournalMatt



EDITOR'S
NOTEBOOK

MATT
CHANDLER