

An Introduction to
THE LAW ON VACCINE RELIGIOUS EXEMPTIONS

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A growing number of parents and health-care professionals around the world have questioned mass immunization policies in recent years, spawning a growing interest in legal exemptions. Vaccines are mandated in all U.S. states and territories, but each also offers one or more exemptions. Probably the most commonly exercised, and the most legally complex, are religious exemptions, currently offered in 48 states.

There's a lot of information on the Internet and other sources about vaccine exemptions. Unfortunately, much of it is misleading or outright incorrect, often appearing to reflect more what the writer feels the law *should* be rather than a clear understanding of what the law actually is. The truth is, many people have unnecessarily lost their vaccine exemption rights due to their lack of understanding of their legal rights and how to effectively assert them. Others have failed to pursue an exemption under the mistaken as-

sumption that they don't qualify for one, or have needlessly given in to pressure from local authorities to vaccinate against their wishes despite actually qualifying for, and truly desiring, a vaccine exemption. Knowing your rights and how to deal with local authorities can make the difference.

A complete explanation of the law on vaccine religious exemptions is beyond the scope of a single article, but an introduction to some of the more important and commonly misunderstood aspects follows.

First, in the U.S., vaccine requirements and exemptions¹ are addressed at the state level, as Congress lacks authority under the Constitution to legislate vaccine requirements for state resi-

¹ Exemptions are also called 'exceptions' or 'waivers'.

dents.^{2,3} However, one's right to refuse immunizations in the exercise of one's religious beliefs is a right afforded by both state and federal law,⁴ primarily by way of state statutory and regulatory code and the U.S. Constitution's First and Fourteenth Amendments. State constitutions may play a role as well.

Rights are seldom if ever absolute. One person's right to exercise their religion is limited by opposing rights—in the case of vaccine religious exemptions, the state's right to require immunizations for the presumed benefit of society. Therefore, determining your rights is not simply a matter of reading the relevant state codes and constitution sections. While those may be necessary starting places, they will tell you little about the precise boundaries of exemption rights with regard to the specific facts and circumstances of *your* life. Make no mistake—the application of those laws can vary, sometimes radically, with the widely varying situations of individual people and families.

² Federal laws do address vaccine requirements and exemptions for immigrants and the military. They also provide a possible means of avoiding vaccines in the workplace on religious grounds.

³ However, federal agencies exert powerful influence over state immunization laws and policies.

⁴ Mississippi and West Virginia do not currently offer a religious exemption to immunizations.

How, then, do we determine how the law applies to any given situation? We must look beyond the language of codes and constitutions to legal precedent. Legislatures may enact statutes, but the courts interpret them—on a case-by-case basis, one legal dispute at a time. The U.S. Constitution is interpreted in the same way—by the courts, one legal dispute at a time. When a case in a lower (or trial) court is appealed to a higher (or appellate) court, the higher court may issue a written opinion of their ruling that then serves as guiding legal precedent in future disputes.⁵ So, to assess how state and constitutional laws apply to your specific situation, you must first determine whether or not there is any applicable legal precedent.

Needless to say, the totality of court opinions constituting the body of legal precedent for any given area of law at any given time can never fully address the potentially infinite variety of hypothetical scenarios that may arise under that area of law. So, when a new situation arises to which no current legal precedent applies, it may be difficult to say with any certainty how the law applies to that new situation. This is often the

⁵ The “lower” federal district courts and some state trial courts may also issue written opinions.

case with vaccine religious exemptions. Furthermore, when the facts in a precedent case do resemble those of a current situation but are distinguishable from it, there may be opposing arguments about how—or even if—the precedent applies, with corresponding uncertainty as to what the law is or should be for the current situation.

Unfortunately, the complexity doesn't end there. When legal precedent does apply to a current situation, a determination must be made as to whether it is “binding precedent”—precedent that determines what the law is presently—or “persuasive precedent” that provides only guidance for what the law arguably could or should be, but not what the law is presently. The distinction is pretty straightforward. Higher court opinions are binding on lower courts in the same jurisdiction as the higher court, but they serve only as persuasive precedent for other jurisdictions.⁶ This distinction can be critical. A court can rule contrary to persuasive precedent—against you—if it believes that doing so is the more just outcome in your particular case, but courts have no discretion to rule inconsistently with binding

⁶ Here, ‘jurisdiction’ refers to a geographic location, and may include a single state or group of states, depending on which specific court issued the opinion.

precedent.⁷ As you might well imagine, arguments favoring immunizations often have the upper hand, so it can be helpful for those claiming a religious exemption to have binding precedent supporting their rights.

As it turns out, though, for the majority of U.S. residents, most of the precedent for vaccine religious exemptions is persuasive precedent from New York federal courts and a handful of state appellate courts. Don't be too quick to discount the value of persuasive precedent, though. In many instances, it carries weight sufficient to clarify your rights under state law and the Constitution that can help get the exemption. However, where persuasive precedent directly contradicts state law rather than serving merely to clarify it, its application may be more tenuous. For example, some state laws require membership in an organized religion with tenets opposed to immunizations in order to qualify for a vaccine religious exemption. Local officials are bound by such laws despite the fact that opinions from courts in other jurisdictions (which are only persuasive precedent for the local state) have ruled that similar laws were unconstitutional in those

⁷ The practical point being that having a legal position likely to win in court makes it much more likely that you'll get your way without having to go to court in the first place.

other jurisdictions. This can be frustrating for people with personal religious beliefs opposed to immunizations who do not meet their state's church membership requirements.⁸ Curiously, rights under the U.S. Constitution pertaining to the exercise of a vaccine religious exemption can vary from state to state, despite all states being subject to the same U.S. Constitution.

The ease or difficulty of exercising an exemption can also vary with differences in the specific wording of laws from state to state. For example, some states' laws allow the state to question whether or not a claimed religious belief in opposition to the immunization requirements is truly religious or sincerely held. Where this is the case, attempts to exercise a religious exemption may be scrutinized, and exemption claims allowed or denied accordingly. Of course, lack of legal authority to question religious beliefs in states that don't permit such an inquiry doesn't necessarily prevent local officials from making such an inquiry anyway. In those instances, rights may ultimately be honored or denied according to a person's knowledge of their rights and willingness to stand their ground.

⁸ Exercising a religious exemption may still be possible for people in this situation, but it may require the support of a local attorney.

It is noteworthy for those with unorthodox religious beliefs that the U.S. Supreme Court has defined 'religion' for legal purposes broadly, and that lower federal courts have applied that definition to vaccine religious exemptions specifically. So, don't be too quick to assume you don't qualify for a religious exemption—it just may be that the beliefs you assumed wouldn't qualify for an exemption do. For example, both personal religious beliefs and one's unique, personal interpretation of an established religion that does not have tenets opposed to immunization may qualify for a religious exemption in many states.

Other exemption concerns involve more practical matters. For example, even if you know your rights under state and federal law and understand the legal strengths and weaknesses of your particular circumstances, you still have to deal with local authorities who may or may not know your legal rights, and who, respectfully, may or may not cooperate with you even if they do. Sometimes, exercising a religious exemption is very straightforward and proceeds without incident. Other times, local officials resist even valid legal exemption claims. Sadly, reports of rude, uncooperative, and even coercive and confrontational behavior from local officials are not uncommon. Most of the time local officials are

probably acting out of a genuine concern for the health and safety of the community (they do, after all, have a contrary agenda), but sometimes, they overstep professional boundaries in deliberate attempts to discourage people from exercising a valid legal exemption right. It is most unfortunate that this should ever occur. Anyone who disagrees with current laws should seek redress from the state legislature via the appropriate political process.

Finally, even those who successfully exercise a religious exemption may unwittingly leave themselves vulnerable to a future challenge. This occurs when a person's inadvertent non-compliance with state requirements results in an exemption claim that is initially accepted, despite some flaws, but which flaws nevertheless leave it vulnerable to future scrutiny. Even authorities can contribute to the confusion. For example, one state's Immunization department website lists requirements for exercising a vaccine religious exemption that appear to be inconsistent with statutory law posted on the same web page.⁹ State residents whose exemption letters contain only the department's stated require-

⁹ The author has twice e-mailed this department about this, but the department has not responded.

ments may be vulnerable to a future challenge even if their letters are accepted initially, as the religious exemption statute requires more.¹⁰

Given the legal complexities of vaccine religious exemptions, many people concerned with them wisely choose to consult a knowledgeable attorney. It's a small investment for the resulting insight, protection and peace of mind.

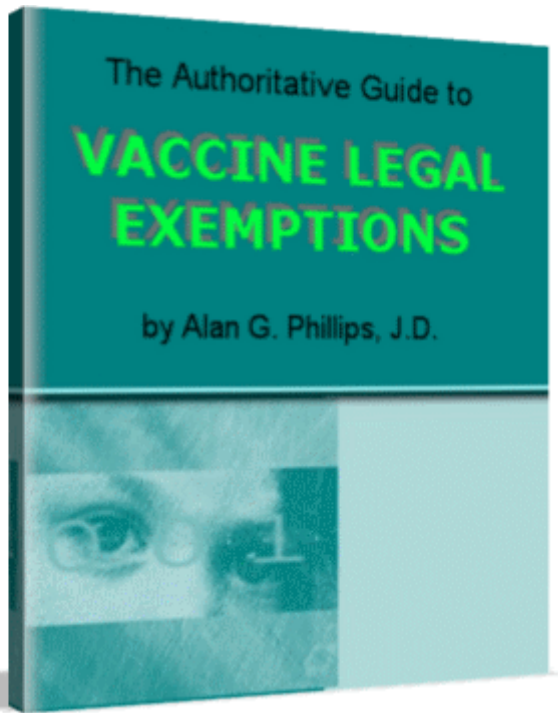
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See next page for information about

[THE AUTHORITATIVE GUIDE TO VACCINE LEGAL EXEMPTIONS!](#)

¹⁰ When a state agency's policy conflicts with state statutory law, the statute is the higher authority.

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