State of Minnesota	District Court
Brown County	Judicial District: Fifth Court File Number: JV-09-68 Case Type: Juvenile

In the Matter of the Welfare of the Child(ren) of:
Colleen Hauser and Anthony Hauser

X Parent Legal Custodian

Parent Legal Custodian

Notice of Filing of Order

PLEASE TAKE NOTICE THAT on May 14, 2009 the attached Order was filed in the above-entitled matter.

1. **Effective Date.** The Order shall remain in full force and effect until the first occurrence of one of the following: issuance of an inconsistent order; the order ends pursuant to the terms of the order; or jurisdiction of the juvenile court is terminated. Unless otherwise ordered, an order stated on the record is effective immediately.
2. **Relief from Order.**
   a. **Clerical Mistakes.** Pursuant to Juvenile Protection Rule 46.01, clerical mistakes in an order arising from oversight or omission may be corrected by the court at anytime upon its own initiative or upon motion of any party.
   b. **Mistakes, Inadvertence, Excusable Neglect, Newly Discovered Evidence, Fraud.** Pursuant to Juvenile Protection Rule 46.02, upon motion made within ninety (90) days of the filing of a final order of the court, the court may relieve a party or the party's legal representative from a final order or proceeding and may order a new trial or grant such other relief as may be just for any of the following reasons:
      - Mistake, inadvertence, surprise, or excusable neglect;
      - Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial;
      - Fraud (whether denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
      - The judgment is void; or
      - Any other reason justifying relief from the operation of the order

3. **Petition to Invalidate Under ICWA.** Pursuant to Juvenile Protection Rule 46.03, any Indian child who is the subject of any action for foster care placement or termination of parental rights under state law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may file with the court and serve upon the parties a Petition to Invalidate such action upon a showing that such action violates the Indian Child Welfare Act, 25 U.S.C. § 1911–1914 1978. The form and content of the petition shall be in writing and shall be governed by Rule 33.

4. **Appeal.** Pursuant to Juvenile Protection Rule 47, an appeal may be taken by an aggrieved person from a final order of the juvenile court affecting a substantial right of the aggrieved person, including but not limited to an order adjudicating a child to be in need of protection or services or neglected and in foster care. **Any appeal shall be taken within thirty (30) days of the filing of the order.** The procedures for filing and serving an appeal are set forth in Juvenile Protection Rule 47. Pursuant to Rule 47.03, the service and filing of a Notice of Appeal does not stay the order of the trial court. The appellate court may in its discretion, and upon application, stay the trial court order.

Dated: May 15, 2009

Carol Melick
Court Administrator

By: Carol M Wuellner
Deputy Clerk

FILED 5/15/09
NO. JV-09-68
Carol Melick, Court Administrator
Brown County, Minnesota

C: James Olson
Calvin Johnson
Philip Elbert
Tom Sinas, B. Vaughn, Mark Fiddler
S. Helget, R. Swenson, T. Sandberg, BCFS
S. Oliver, GAL office

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF BROWN | FIFTH JUDICIAL DISTRICT

In the Matter of the Child of:

Colleen Hauser and,
Anthony Hauser,
Parents.

FINDINGS OF FACT, CONLUSIONS OF LAW, and ORDER

Court File No. JV-09-068

The above-entitled matter came on for trial before the undersigned Judge of District Court on May 8-9, 2009 at the Brown County Courthouse in New Ulm, Minnesota. Appearances were:

Daniel Hauser	Juvenile
Colleen Hauser	Mother
Anthony Hauser	Father
James R. Olson	Brown County Attorney
Tricia Niebuhr	Assistant Brown County Attorney
Calvin Johnson	Attorney for Parents
James Turner	Consulting Attorney for Parents
Philip Elbert	Attorney for Daniel
Shiree Oliver	Guardian ad Litem
Mark Fiddler	Attorney for Guardian ad Litem
Tom Sinas	Attorney for Guardian ad Litem
Brandon Vaughn	Attorney for Guardian ad Litem
Rachel Swenson	Brown County Family Services
Stacy Helget	Brown County Family Services
Tom Sandberg	Brown County Family Services

The following people testified: Dr. Bruce Bostrom, M.D.; Colleen Hauser; Dr. Jeffrey Kotulski, D.O.; Dr. Vilmarie Rodriguez, M.D.; Dr. James Joyce, M.D.; Dr. Clyde

Shealy, M.D., Ph.D.; Robert Irons, Ph.D.; Helen Healy, N.D.; Shiree Oliver, Guardian ad Litem; and Daniel Hauser.[1]

Various exhibits were offered and received as more fully set forth in the minutes of the Court Administrator.

The Court established a briefing schedule for submission of written argument. The Court has since received and reviewed the submissions of all of counsel.

Based upon the evidence received at trial, the submissions of counsel, and the contents of the file, the Court makes the following:

SUMMARY MEMORANDUM

The Court is today determining that the Petition alleging Daniel Hauser to be a child in need of protection or services has been proven by clear and convincing evidence. The Court is also concluding that the State of Minnesota, through Brown County Family Services ("BCFS"), has demonstrated a compelling state interest in the life and welfare of Daniel sufficient to override the fundamental constitutional rights of both the parents and Daniel to the free exercise of religion and the due process

[1] Daniel, at his request, testified *in camera*. A transcript of his testimony is being filed contemporaneous with the filing of these Findings of Fact, Conclusions of Law, and Order.

right of the parents to direct the religious and other upbringing of their child.

This much is certain and the Court so finds: All of the actions of the parties which bring this matter before the Court have been done in good faith. The parents, Daniel, the treating doctors, the child welfare agency, the Brown County Attorney and the Guardian ad Litem have at all times acted in good faith herein.

Resolution of the issues presented in this case depends upon the application of constitutional, statutory and case law. The Court is required to make findings of fact based upon the evidence presented and to apply the law to the facts so found.

Daniel Hauser is currently 13 years of age. He has been diagnosed as suffering from nodular sclerosing Hodgkin's disease, stage IIB. The Hauser family's local family practice doctor, Dr. Joyce, correctly identified on January 21, 2009 that "lymphoma certainly seems likely" when Daniel presented with a persistent cough, fatigue, swollen lymph nodes and other symptoms. Dr. Joyce made a referral to oncology specialists at Children's Hospitals. The diagnosis was made there and it was determined that the cancer was readily treatable by therapies including chemotherapy.

Daniel's mother consented to the administration of the recommended chemotherapy beginning on February 5, 2009. The gravity and imminence of Daniel's situation limited the available options. Mrs. Hauser effectively consented to the initiation of chemotherapy after being adequately informed of her rights as Daniel's parent.

Daniel's lymphoma responded well to the initial round of chemotherapy.

Unfortunately Daniel also had adverse side effects to the administration of chemotherapy. While this was not unusual, both Daniel and his parents were justifiably quite concerned. The parents, acting in absolute parental good faith, chose to seek out a second opinion and consulted with Mayo Clinic. Mayo Clinic doctors concurred with the earlier medical advice. The parents, again in complete good faith, sought a third medical opinion, this time from the University of Minnesota Hospitals. Again, the recommendation was that the additional course of chemotherapy should be undertaken.

The doctors at these facilities, which are among the finest available in this part of the country, agree that Daniel has a very good chance of a complete recovery with additional chemotherapy and possibly radiation. Estimates of complete 5-year remission with this course range from

80% to 95%. These doctors are also in agreement that Daniel has very little chance of surviving 5 years without the prescribed course of treatment. If the mediastinal tumor were to increase in size and become resistant to chemotherapy, as all of these doctors opine that it will without the prescribed treatment, the long-term prospects for Daniel decrease significantly, even if the chemotherapy is resumed in the future.

The family has also consulted with Dr. Kotulski, an osteopathic physician practicing in Mankato, Minnesota. Dr. Kotulski agrees with the recommended chemotherapy. The Hauser family's local doctor, Dr. Joyce, also agrees with the recommendations of the oncologists.

In short, five (5) different medical doctors, three (3) of whom specialize in pediatric oncology, have all agreed upon the necessary medical care for Daniel.

There were several experts testifying at trial who believe in alternatives to chemotherapy for treatment of some cancers in some instances. However, there was absolutely no evidence presented at trial from any health care practitioner who has examined Daniel and who recommends any course of treatment different than that prescribed by the oncologists and medical doctors. The evidence is uncontroverted that Hodgkin's lymphoma, stage

IIB, is best treated by chemotherapy and possible later radiation.

The family has a genuine and strong belief in the benefits of holistic medicine and, specifically, in Nemenhah. Nemenhah is based upon Native American healing practices. Daniel is deemed to be a "medicine man" by Nemenhah and does not wish to receive any additional chemotherapy.

Daniel Hauser is an extremely polite and pleasant young man. While he is 13 years of age, Daniel is unable to read. He does not know what the term "elder" means, although he claims to be one. He knows he is a medicine man under Nemenhah teachings, but is unable to identify how he became a medicine man or what teachings he has had to master to become one. He believes in the principle of "do no harm" and attributes his belief to Nemenhah teachings. He lacks the ability to give informed consent to medical procedures.

The doctors who have filed reports with Brown County concerning Daniel and who testified in this case have acted in conformity with their duties under well-established Minnesota statutory law. Brown County has properly brought this matter before the Court for determination and has filed a Petition with the Court as it is authorized to do

by statute. The parents and Daniel have properly asserted their positions in the matter in a very orderly and respectful fashion, with the capable assistance of counsel. The Guardian ad Litem, whose role it is to advocate for the best interests of a child claimed to be in need of protection or services, has carefully considered the matter and has expressed her opinions as to the child's best interests consistent with her obligation to the Court.

There are sharp differences in the positions of the parties.

The Hauser family members have a constitutional right to freedom of belief. The parents also have a right to parent their child that is based in the Due Process Clause of the United States Constitution. These constitutional freedoms can be overcome only upon a showing of a compelling state interest.

Correspondingly, there can scarcely be imagined a governmental interest more compelling than protecting the life of a child.

Minnesota has a long-standing statutory requirement that parents must provide "necessary medical care" for a child and providing that "complementary and alternative

health care" is not sufficient. Multiple Minnesota statutes so provide.[2]

As applied to this case, Minnesota's statutory provisions have an effect upon the religious practices of the Hauser family. The mother asserts that a core tenet of Nemenhah is "first do no harm." The mother asserts that God intends that the body should be healed the natural way and that chemotherapy and radiation are poisons. Daniel also professes to the primacy of the "do no harm" tenet.

Under the relevant authorities and as applied to the facts in this case, Brown County has demonstrated a compelling state interest in seeing to it that Daniel's prospects for life are maximized by his being found in need of protection or services. The parents are free to provide Daniel with complementary or alternative therapies, but under Minnesota law, as applied here consistent with both federal and state constitutions, the parents must provide "necessary medical care" to Daniel.

As set forth below, the Court is intending to leave Daniel in the custody of his parents and to allow the parents the maximum legally-permissible range of choices

[2] See Minn. Stat. §§145A.025, 609.378 and 626.556. The legislature has also mandated by statute that both medical providers and "complementary and alternative practitioners" must report to child welfare authorities any situation in which a child is not being provided with "necessary medical care."

for treatment of Daniel. Daniel loves his parents and they love him. He should remain with them as long as he receives treatment complying with the minimum standards of parental care provided by Minnesota law.

The issue in this case is not whether the State of Minnesota should have enacted the law as it did. The Court is obligated to apply the law as it is written unless to do so would violate a constitutional right. Settled state and federal case law establish that the State of Minnesota may constitutionally intervene in the present matter.

Surely many will think that the law should be different. With issues as sensitive as these, there are bound to be strong feelings both ways about what the law should be. To the extent that the parties involved in this case and members of the public in general believe that Minn. Stat. §146A.025 or any other statute should be revisited, those arguments are properly made to the Minnesota Legislature. The Court is resolving this matter solely with reference to the relevant legal authorities, and not based upon the Court's personal opinion with regard to what Minnesota substantive law should be. The only personal observation the Court makes is this: If the Minnesota Legislature ever reconsiders the relevant statutes, I am confident that I join all of the others

involved in this matter in hoping, and indeed in praying, that Daniel Hauser lives to testify at that hearing.

Based upon the foregoing, the Court makes the following:

FINDINGS OF FACT

1. The Juvenile is Daniel Hauser, born on March 26, 1996 and is presently 13 years of age.

2. The mother is Colleen Hauser, born on April 20, 1969. The father is Anthony Hauser, born on October 23, 1964. Daniel, his parents, and his siblings reside on a farm in rural Sleepy Eye, Brown County, Minnesota.

3. A Petition was filed with the Court on April 14, 2009, alleging Daniel to be in need of protection or services under the following portions of Minn. Stat. §260C.007, Subd. 6: (3) that Daniel is without necessary food, clothing, shelter, education, or other required care for the child's physical or mental health or morals because the child's parent, guardian, or custodian is unable or unwilling to provide that care; (5) that Daniel is medically neglected, which includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition; and (9) that Daniel is a child whose behavior, condition, or

environment is such as to be injurious or dangerous to the child or others.

4. While professing religious beliefs that are grounded in certain Native American traditions and beliefs, neither of the parents nor Daniel are of Native American ancestry. It is agreed that the Indian Child Welfare Act ("ICWA") does not apply to this matter.

5. Neither Brown County nor the Guardian ad Litem dispute the sincerity of the parents' religious beliefs.

6. Daniel suffers from nodular sclerosing Hodgkin's disease. The disease was in Stage IIB earlier this year. From the available evidence, the disease is not in remission. Its present staging is unknown.

7. Daniel Hauser is a very polite and pleasant young man, and the Court had a very pleasant conversation with him in chambers on May 9th. However, the very eloquent affidavits signed by the child and submitted to the Court were clearly not of Daniel's creation. Daniel's reading and writing skills are extremely limited. According to the testimony of the Guardian ad Litem, Daniel is not able to recognize by sight the word "the." Although thirteen years of age, Daniel is currently enrolled in the fifth grade. It is clear that his reading and writing skills are significantly below even that grade level. It is as

obvious as can be that somebody else provided Daniel with the information that appears in his affidavits. He likely agreed with that information and signed the affidavits. Daniel does indeed have a strongly-held position regarding medical treatment, but that position is limited to "do no harm." He is not able to express any broader or deeper understanding of Nemenhah principles than that one point. He is unable to define in any way what it means to be an "elder," although he knows that he is considered an "elder." He cannot identify any training or spiritual practices of Nemenhah.

8. Daniel lacks the ability to give informed consent to medical procedures or treatments or to refuse the same. This is partly due to his age, just thirteen years and two months, but even beyond that this particular child has a very limited current capacity to understand his illness and the treatment recommended for it.[3]

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[3] It is disturbing that the affidavits and other filings purportedly made by Daniel herein are very obviously not of his own creation. The very eloquent and theologically quite complex filings attributed to Daniel contrast sharply with his very easygoing, comfortable, and simple statements to the Court in chambers (e.g., "I claim this, as my right, that no one: No government, No Big Brother, No Tribe, No other human being may interfere with my Spiritual Path and my consciousness." *Spiritual Path Declaration*, dated May 6, 2009). This aspect of the matter is not the Court's immediate concern except insofar as it bears upon Daniel's lack of capacity at present. Having heard and carefully considered the testimony of both Daniel and his mother, it is as clear as can be that these statements of the principles of Nemenhah are not being generated by either of these witnesses themselves.

9. Dr. James Joyce is a family physician practicing in Sleepy Eye, Minnesota. Dr. Joyce first saw Daniel on January 21, 2009. At that time, Daniel had a "crackle" in his lungs. Testing on Daniel indicated a high white blood cell count. A chest X-ray indicated a mediastinal mass in Daniel's chest. Dr. Joyce suspected lymphoma and made an immediate referral to Midwest Children's Hospital.

10. Dr. Bruce Bostrom, M.D., is a pediatric hematologist/oncologist at the Midwest Children's Hospital. He has practiced there since 1988. Dr. Bostrom is board certified in pediatrics and pediatric hematology/oncology.

11. Dr. Bostrom first saw Daniel in the emergency room on January 21, 2009, where Daniel had been brought by his mother after a referral from Dr. Joyce in Sleepy Eye. Dr. Bostrom ordered tests and a biopsy of a lymph node. After the tests and biopsy, Dr. Bostrom made the diagnosis of Hodgkin's disease, a cancer that involves the cells of the immune system. Daniel's disease was at Stage IIB.

12. According to Dr. Bostrom, the Children's Oncology Group has conducted clinical trials on cancer treatments since the 1950s. Dr. Bostrom testified that the CCG5942 protocol, which is what he prescribes for Daniel, is an outpatient treatment that consists of six (6) cycles of chemotherapy followed by radiation treatments. Dr. Bostrom

testified that this protocol has a 90% cure rate. By "cure rate" it appears that Dr. Bostrom means at least a five (5) year survival after the treatment.

13. Dr. Bostrom explained the proposed course of treatment to Daniel and his mother, including a review of possible side effects. The possible side effects from the treatment protocol include: decreased blood counts, a need for transfusions, infections, hair loss, mouth sores, reduced fertility, and an increase in the chance of having certain other cancers in the future. In addition, there is a possibility that radiation treatment could degrade the thryroid gland and cause hypothyroidism, in which case Daniel would have to take a pill, Synthroid, for the rest of his life. There is also a slightly elevated risk of heart trouble from one of the chemotherapy drugs, doxyrubacin.

14. The mother consented to a first round of chemotherapy, which was administered to Daniel beginning on February 5, 2009. The mother signed a form consenting to the administration of the chemotherapy. The mother presently contends that she felt as if she had limited choices at that point in time and that the administration of chemotherapy was not truly a result of the exercise of her free will. The emergent nature of Daniel's diagnosis

made swift intervention not just appropriate, but necessary. It certainly limited the choices available to the family. Although the mother currently and eloquently contends that to take away the traditional methods would be "stripping the soul right out of his [Daniel's] body," the fact is that the mother did consent to the administration of chemotherapy at Midwest Children's Hospital, with a course commencing on February 5, 2009. She did not make any reference to the doctors at Midwest Children's Hospital of any religious objection to chemotherapy at that time. The records at Midwest Children's Hospital reflect that Daniel and his mother were "fearful," but no mention appears of any religious objection initially. The mother has also indicated both to Brown County Family Services and in her testimony at trial that she would be willing to consider chemotherapy again in the future if, in her judgment, Daniel's condition were to become significantly worse. Her specific testimony on this point at trial was that she would consent to additional chemotherapy "if it was life or death."

15. Following the first cycle of chemotherapy, Daniel did not feel well. He described to the Court in chambers that he was sick to his stomach, weak, and unable to walk. Dr. Bostrom testified that Daniel's symptoms were "mostly

from the disease," but also included some side-effects of chemotherapy. Dr. Bostrom testified that children do not suffer from chemotherapy side-effects as much as do adults. Dr. Bostrom testified that the side effects of the chemotherapy are far outweighed by the risk of death without treatment.

16. The Hauser family became genuinely concerned about the severity of Daniel's reaction to chemotherapy. As is their unquestioned right to do, they requested a second opinion regarding Daniel's condition and the prescribed therapy. Dr. Bostrom referred the family to the Mayo Clinic in Rochester, Minnesota. Both Daniel's medical records and the slides from the biopsy were sent to Mayo by Dr. Bostrom and his staff.

17. Daniel has not had any chemotherapy treatments since the cycle which began on February 5th. Dr. Bostrom wrote a letter dated April 6, 2009 to Brown County Family Services ("BCFS") regarding Daniel's case. Exhibit 1, p. 30. Dr. Bostrom informed BCFS that Daniel had a 90% chance of being cured with standard chemotherapy and radiation but that the percentage would decrease to 50% or less if the tumor were allowed to regrow and develop resistance to chemotherapy.

18. Under Minnesota law, Dr. Bostrom's report to Brown County Family Services was required. As mandated reporters under Minn. Stat. Section 626.556, Daniel's doctors are obligated by law to report what they in good faith believe to be child maltreatment in the form of deprivation of necessary medical care.

19. Upon receipt of the report, Brown County Family Services intervened. Brown County Family Services handled the matter appropriately in all respects, by first conferring with the parents in an effort to avoid court intervention and then, having not been able to resolve the situation, by filing a Petition with the Court alleging Daniel to be a child in need of protection or services.

20. Dr. Bostrom reiterated at trial that Daniel's chance of survival decreases to 50% if the tumor has become chemo-resistant. Dr. Bostrom testified that if Daniel's tumor comes back and is left untreated, then Daniel has only a 5% chance of survival, defined as living for five (5) years. Dr. Bostrom testified that if the Hodgkin's lymphoma metastasizes and travels to the bone marrow, then death is the result.

21. Dr. Bostrom uses complimentary therapies in his own practice. He believes that they ameliorate the side effects of chemotherapy. Dr. Bostrom testified that such

alternative therapies are not to be used in lieu of chemotherapy.[4] Dr. Bostrom testified that there is no scientific literature indicating that alternative therapies by themselves are able to cure Hodgkin's Disease. Dr. Bostrom testified that there is no systemic alternative treatment for cancer that is shown to be curative and consistent with the standards of practice of the oncology community.

22. According to Dr. Bostrom, if and when Daniel returns to Midwest Children's Hospital, it will be necessary to "re-stage" Daniel due to the amount of time that has passed since Daniel's earlier cycle of treatment. The re-staging is necessary to determine what the tumor is doing now and to determine what the proper course of treatment is. It is important to determine if the tumor is still chemo-sensitive or if it has become chemo-resistant. If the latter, according to Dr. Bostrom, Daniel would likely need in-patient aggressive treatment with possibly a stem-cell transplant and radiation.

[4] The Court will use "conventional" to refer to the course of treatment recommended by Dr. Bostrom and advocated by the County. The Court will use "alternative" to refer to the treatments used and advocated by the parents. The term "traditional" can have different meanings depending on the context and viewpoint of the person using the term. The Court is therefore not using that term.

23. Dr. Bostrom agrees that good nutrition is important for chemotherapy patients because it helps the human body to cope with side effects.

24. Dr. Bostrom testified that, in a clinical study conducted on 800 people, only one person died from complications due to the method of treatment prescribed for Daniel. By contrast, and if the oncologists who have diagnosed Daniel are correct with the stated probabilities for survival, a similar group of 800 patients not treated with this course would result in approximately 760 deaths.

25. Dr. Bostrom agreed that it would be difficult to force chemotherapy on a patient who was adamantly opposed to it. Dr. Bostrom testified that he would attempt to reason with a patient regarding chemotherapy. He has been successful in other cases in getting resistant individuals to consent to and cooperate with chemotherapy.

26. Dr. Bostrom testified that Daniel appeared to be quiet and thoughtful when he discussed the treatment with Daniel. Dr. Bostrom stated that he does not believe that Daniel understands the severity of his illness or that it is the Hodgkin's disease that is making him sick, rather than the chemotherapy.

27. Daniel testified in chambers that he did not directly discuss chemotherapy with Dr. Bostrom. Having

observed and talked to Daniel in the presence of his mother, the Court finds that it is almost surely the case that most of the conversation was between the mother and Dr. Bostrom.

28. Exhibit 2 is a report from the Department of Radiology Diagnostic Imaging at Immanuel St. Joseph's Hospital in Mankato, Minnesota. The report is about an X-ray of Daniel's chest taken on April 23, 2009. The report includes this observation: **"the right anterior mediastinal mass appears to have slightly worsened/increased in size."** (bolding added).

29. Dr. Bostrom testified that Exhibit 2 indicates a "probable regrowth of the tumor." Dr. Bostrom opined that this was likely due to cessation of the chemotherapy. Dr. Bostrom testified that the growth would likely worsen and lead to respiratory problems. According to Dr. Bostrom, the risk of death to Daniel is 95% if the tumor resumes growing and Daniel receives no chemotherapy treatment.

30. Dr. Vilmarie Rodriguez, M.D., is a pediatric hematologist/oncologist at the Mayo Clinic in Rochester, Minnesota. Dr. Rodriguez has worked at the Mayo Clinic since 2000. She is board certified in her specialty. Dr. Rodriguez testified to treating four (4) other children with Hodgkin's lymphoma in the month prior to this trial.

Dr. Rodriguez testified that the Mayo Clinic has a group of psychologists, social workers and other helping professionals who assist patients, including minors, who are having anxiety or other difficulties regarding chemotherapy. Although Dr. Rodriguez was unable to state precisely how she would do it, she did not believe that she would ultimately have to "force" Daniel to take chemotherapy or be "inhumane" in any way with proper use of helping professionals.

31. Daniel was referred to Dr. Rodriguez by Dr. Bostrom after the Hauser family requested a second opinion. Dr. Rodriguez agreed that the course of treatment ordered by Dr. Bostrom is the standard in the medical community for treatment of Daniel's disease. Dr. Rodriguez agreed with Dr. Bostrom that the cancer could have some resistance after the first chemotherapy cycle and that a stem-cell transplant and more aggressive chemotherapy might be needed.

32. Dr. Rodriguez testified that Hodgkin's lymphoma Stage IIB is a localized disease. If the disease makes its way to Daniel's bones, then a successful treatment is much less likely, according to the doctor. Dr. Rodriguez testified that taking the prescribed doses of chemotherapy at the correct intervals is critical to treatment. Dr.

Rodriguez testified that Daniel's prognosis is "dismal" and that he will die if he is not treated with chemotherapy. Dr. Rodriguez testified that there is "no other way" to treat the disease. Dr. Rodriguez testified that a series of blood tests is not adequate to monitor the progression of Hodgkin's Disease.

33. Exhibit 1, pp. 16-18 demonstrate that the Hauser family and Daniel saw Dr. Ashish Kumar at the University of Minnesota on April 16, 2009. Dr. Kumar is also an oncologist. Dr. Kumar agrees in all respects with the opinions of Dr. Bostrom and Dr. Rodriguez. He also agreed at that time with the estimated 90% prospect for long-term survival of Daniel with the appropriate chemotherapy. Dr. Kumar believes that the disease is life-threatening without treatment and that Court intervention is appropriate because the child will die if not treated as recommended by him and by the other oncologists.

34. Dr. Jeffrey Kotulski is a doctor of osteopathic medicine who practices in Mankato, Minnesota. Dr. Kotulski testified that osteopaths place more emphasis on the "inherent healing power" of the body than do conventional medical doctors. Dr. Kotulski testified that his is a general practice that focuses primarily on keeping people healthy.

35. Dr. Kotulski offered Daniel and his mother nutritional advice, including a sensible diet. Dr. Kotulski stated that he made clear to the Hausers that he would not be treating the cancer, but would treat "Daniel the patient." Dr. Kotulski testified that he encouraged the Hausers to get a second oncology opinion, in hopes that they would follow the recommended treatment, which Dr. Kotulski characterized as chemotherapy with radiation. Dr. Kotulski does not disagree in any way with the oncologists who have seen Daniel.

36. Dr. Kotulski on April 29, 2009 received the results of the chest X-ray taken on April 23rd. Dr. Kotulski testified that he told the Hausers that a prompt follow-up with an oncologist was warranted and explained the consequences of non-treatment to the Hausers.

37. Dr. Kotulski testified that cancer is linked with poor nutrition and that an enhanced immune system assists with quicker healing. Dr. Kotulski testified to observing successful results in cancer patients who rejected chemotherapy and instead worked on their immune system. Dr. Kotulski testified that if Daniel strengthens his immunity, he will have "better body potential."

38. Dr. Kotulski testified that the "mind, body, and spirit are a triune." Dr. Kotulski asserted that stress

inhibits healing. According to Dr. Kotulski, the message to Daniel that his aunt died from chemotherapy, from the time that he was five (5) years of age, could inhibit Daniel's response to chemotherapy. Dr. Kotulski opined that Daniel's resistance to the chemotherapy appears to be based on fear, not on evidence.

39. Dr. Kotulski testified that he has no concerns about the care Daniel was receiving at Midwest Children's Hospital but is concerned about Daniel's level of fear.

40. Dr. Kotulski agreed that there are no randomized control studies that show that a nutritional treatment alone can cure cancer. Dr. Kotulski testified that he would not recommend that a person with cancer go only to a naturopath for care.

41. Dr. Joyce again saw Daniel on May 7, 2009, the day prior to commencement of trial. Dr. Joyce asked Daniel how he was feeling, and Daniel said that he had no breathing problems. There was some discomfort around the "port," which Dr. Joyce examined. Dr. Joyce did some blood tests that revealed some abnormalities. Dr. Joyce testified that blood tests alone are not an adequate measure of the progress of Daniel's disease.

42. Dr. Joyce recommended at the May 7th visit that Daniel have another chest X-ray, because Daniel had an

elevated temperature and other symptoms that could be indicative of the lymphoma progressing.

43. The mother, who was present with Daniel at the May 7th appointment with Dr. Joyce, did not follow Dr. Joyce's recommendation for Daniel to receive the chest X-ray. She instead made a phone call to someone whom she identified to Dr. Joyce as her "attorney" and said she would not allow the X-ray.

44. During these last two appointments with Drs. Kotulski and Joyce, "medical neglect" as defined by Minnesota law most definitely occurred. Up to this point in time, the parents (primarily the mother) were concerned about the side-effects of chemotherapy and were looking for alternatives for Daniel. They wanted to have second and third opinions from oncologists and got those opinions as they were entitled to do. There is some merit to the contention of Brown County that not continuing with the chemotherapy in March of 2009 was a failure to provide medically necessary treatment for Daniel. However, the family was going to see Dr. Kotulski. His view of things is slightly different than that of medical doctors because he is an osteopath. He was hoping and attempting to get the family to comply with the recommended chemotherapy. Until the late April chest X-ray, the family's actions were

not clearly and convincingly non-compliant with the requirements of Minnesota law. Dr. Kotulski noted some concerning findings on the X-ray in late April and then directly recommended to the parents that an additional oncology appointment was necessary. The parents declined. When directly requested by Dr. Joyce for authorization to X-ray the mass on May 7, 2009, for the purpose of ascertaining whether the mass was continuing to become larger, the mother declined to allow that X-ray. It is at this point where medical neglect as defined by statute had doubtless occurred. At that point, three different oncologists at three different and very reputable facilities had recommended the identical course of chemotherapy and radiation. Both the family doctor in Sleepy Eye and Dr. Kotulski, the osteopath, agreed with those opinions. Dr. Kotulski's X-ray had indicated the possibility of an increase in the mediastinal mass. The mother's refusal on May 7, 2009 to allow another X-ray constituted a clear failure to provide what was medically necessary to Daniel.

45. Dr. Joyce testified that he would recommend the pediatric oncology protocols in Daniel's case because that course of treatment has the best chance of obtaining a successful remission of the disease.

46. Dr. Joyce opined that if a person does not believe that a course of treatment is good, that will negatively affect the person's recovery from disease.

47. Dr. Joyce expressed belief in "guided autonomy," whereby a patient makes his or her own decisions regarding treatment but receives guidance in making the decisions. Dr. Joyce defined "informed consent" as being consent by a patient who knows the risks and benefits of various options and makes a choice. "Force is not a part of medicine," according to Dr. Joyce.

48. Dr. Joyce is a compassionate physician and very concerned for the welfare of Daniel. Dr. Joyce appears to have absolute loyalty to the welfare of his patient. He subscribes to a "do no harm" belief system consistent with the expressed beliefs of the family. Dr. Joyce returned from a camping trip to set the record straight with regard to the misunderstanding of the mother with respect to what had happened on May 7, 2009. Mrs. Hauser took away from the May 7th appointment that it was significant that Daniel's "blood work was good." According to Dr. Joyce, the blood analysis showed several areas of concern and, along with other clinical findings, led him to believe that a chest X-ray was necessary. The Court is thoroughly impressed with Dr. Joyce in all respects and believes him

to be an extremely credible witness with respect to the welfare of this youngster.

49. The mother testified that Dr. Bostrom recommended chemotherapy and made it clear from the outset that six (6) sessions would be required. The mother signed the form to consent to Daniel receiving chemotherapy and, by her own testimony, understood at that time that the plan was for Daniel to receive six (6) cycles of chemotherapy. The mother contends that Dr. Bostrom was of the opinion that the mediastinal mass would not decrease in size for six (6) months. She clearly misunderstood what was told to her. The disease did respond to some extent to the first cycle of chemotherapy, as Dr. Bostrom expected.

50. The mother testified that she is currently attempting to "starve" Daniel's cancer. Methods of "starving" cancer, according to the mother, include using high pH water to make the body more alkaline, because cancer does not thrive in an alkaline environment. The mother is also treating Daniel with supplements and an organic diet of greens, some protein, and no sugars. The mother testified that she learned about many of these remedies through searching for information on the internet.

51. The mother testified that Daniel has the final say in his treatment because it is his body that is at issue.

The mother testified that Daniel has made clear that he is opposed to receiving chemotherapy and told her at Midwest Children's Hospital that "Mom, I'm not going to do it."

52. The mother testified that the Hauser family are "traditional Catholics" who also subscribe to alternative medicine as part of their beliefs. The mother testified that God intends for the body to be healed in a natural way. The mother testified that she would adhere to her current course of treating Daniel, even after hearing the testimony that Daniel might have only a 5% chance of survival if the tumor returns and is not treated with conventional medicine.

53. The mother testified that Nemenhah is part of traditional beliefs based in Native American culture, but that a person need not be ethnically Native American to belong to the group. The mother joined Nemenhah in March of 2008, which predates Daniel's cancer. According to the mother, she believed in alternative medicine prior to getting married. The mother testified that a core belief of Nemenhah is "do no harm." The mother testified that chemotherapy is a form of poison. She believes the same of treatment by radiation. As noted above, she has stated several times during this ordeal, including in her testimony at trial, that she would consider additional

chemotherapy for Daniel if she becomes convinced that it is necessary.

54. The mother testified that her position is not "no chemotherapy and do nothing," but is "no chemotherapy and do something else." The mother professed a willingness to "add treatments" if warranted.

55. Colleen Hauser loves her son very much. She has created a loving home environment for all of her children.

56. The genuineness of the family's beliefs in Nemenhah was originally stipulated. Counsel for the guardian attempted at trial to raise questions on that issue with respect to Daniel's beliefs. The Court finds that there really isn't any question. The family's beliefs are genuine. Daniel's beliefs are genuine. The question is not whether those beliefs are ones that the Court or anyone else would have. They are the family's beliefs, and the family is constitutionally entitled to them.

57. The father did not testify at trial. From the presentation of this case, the Court presumes that the father shares his wife's positions and agrees with her testimony.

58. Dr. Clyde Shealy, M.D., is trained as a neurological surgeon. According to Dr. Shealy, he has treated some 30,260 people for pain whom "conventional

medicine has failed." Dr. Shealy does have a medical degree. Dr. Shealy is, however, not an oncologist. Dr. Shealy has never met Daniel or his parents and has never provided any treatment to Daniel. Dr. Shealy's knowledge of Daniel's case is limited to reading a summary of medical records provided to him by the parents' attorney.

59. Dr. Shealy testified that the attitude and mood of a patient are critical in healing and that the strength of the immune system is very important. Dr. Shealy agreed that cancer treatment generally starts with conventional medicine and that, "in acute illness, conventional medicine may save your life." Dr. Shealy agreed that chemotherapy with radiation is the standard course of treatment for Hodgkin's lymphoma. Dr. Shealy testified that he would not advise a child patient of his to reject that standard treatment, but would let the child decide.

60. Dr. Shealy expressed as his personal opinion that he would not undergo chemotherapy at any time. He, of course, is an adult. All parties agree that a competent adult has the right to make treatment decisions including decisions that are unwise. Dr. Shealy correctly points out, as have other experts who testified in this trial, that the attitude of the patient is very important in the outcome of whatever treatment is undertaken. That

testimony, coupled with the testimony of the medical doctors, convinces the Court that Daniel will need supportive services of hospital-based counselors to attempt to overcome his fears with respect to what is going to happen during chemotherapy should he undergo such therapy. Any patient undergoing chemotherapy is going to feel very uncomfortable during treatment. Unfortunately, everyone agrees that there are significant side effects from chemotherapy. Having the patient understand those side effects and understand that they are to be expected is going to be helpful to the patient.

61. Dr. Shealy seems rather obviously not to understand the Minnesota statutory scheme with regard to the parental duties imposed by statute to provide children with "necessary medical care." Dr. Shealy opined that it would be "criminal behavior" to require a child to undergo treatment the child opposes. There is no such crime under Minnesota law. Perhaps the doctor was intending to make his testimony more colorful by the use of this terminology, but in the final analysis, his testimony suggests a fundamental lack of understanding of Minnesota law. Minnesota has a long-standing statutory provision requiring parents to provide necessary medical care. Indeed, failure to provide such care can constitute a crime by parents.

See *Minn. Stat. §609.378.* There is no authority in Minnesota law for the notion that a parent is relieved of the duty to provide necessary medical care if the child objects to it. By the enactment of multiple interdependent statutes requiring parents to provide "necessary medical care," Minnesota has evidenced a clear legislative preference for medical care to be provided for the safety and well-being of children. This is a compelling state interest.

62. Dr. Shealy's testimony was noteworthy with regard to his observation that the absence of scientific studies on a particular therapy does not mean that the therapy doesn't work. There are certainly methods of treating disease which are effective and which have not been subjected to formal scientific studies. Acupuncture was used for centuries before Western medicine did any scientific studies on it. Acupuncture obviously has legitimate merit, and it had merit long before any such studies were done. However, the Minnesota legislature has, by statute, legislatively determined that "medical care" is necessary for the protection of children. It is in the nature of medical practice that most forms of treatment, or at least those which become the standard of care such as is the case here, are subjected to the scientific method.

Treatments not subjected to the scientific method are largely not approved or at least are not the standard of care.

63. The parents themselves recognize, as set forth in their written argument to the Court, that Minnesota law does not allow for parents to provide children alternative care exclusively in most instances. What Dr. Shealy's testimony would propose, and what the parents advocate, is that this Court disregard Minnesota substantive law with respect to the duties of parents and essentially act as a one-person legislature to rewrite Minn. Stat. §§146A.025, 609.378, 626.556, and other statutes. That is not the proper role of the Court. If those statutes are constitutional as written and as applied, it is not for this Court to substitute its judgment for that of the legislature.

64. Dr. Robert Irons has a Ph.D. in nutritional immunology. Dr. Irons was formerly a researcher at the National Cancer Institute. According to Dr. Irons, chemotherapy works via the highly metabolically active cancer cells taking up the cytotoxic chemicals much more quickly than the normal somatic cells and being destroyed by the chemicals. However, there are long-term toxicity effects from chemotherapy, according to Dr. Irons,

particularly to metabolically active cells of the body, such as the hair, intestines, and gonads.

65. Dr. Irons does not diagnose or treat patients. Dr. Irons analyzes peer-reviewed literature. Dr. Irons agreed that chemotherapy has shown itself to be effective for Hodgkin's lymphoma and may be the best treatment.

66. Helen Healy, N.D., is a naturopathic doctor who practices in St. Paul, Minnesota. She advises people about natural medicines. Naturopaths, according to Dr. Healy, engage in preventative medicine and natural medicine and eschew chemotherapy and radiation. Dr. Healy testified that a strong and healthy immune system is extremely important. Dr. Healy uses natural agents to stimulate the immune system.

67. Dr. Healy agreed that chemotherapy and radiation are the standard protocol for treating Hodgkin's lymphoma. Dr. Healy has never met Daniel. Dr. Healy agreed that medical care is patient-specific. Dr. Healy agreed that treatment should be based on science. Dr. Healy does not suggest her remedies as a substitute for chemotherapy. Dr. Healy testified that she would not tell a person to stop chemotherapy. She would assist a competent adult who chose to stop chemotherapy.

68. Interestingly, Mrs. Hauser identified Dr. Healy as Daniel's current health care provider. Dr. Healy has not examined or even met Daniel Hauser.

69. In considering the testimony of Drs. Shealy, Irons, and Healy, it must be kept in mind that the issue before the Court is not whether or not there is some other form of treatment for Hodgkin's lymphoma which would be as effective or perhaps even more effective than the chemotherapy/radiation regiment prescribed for Daniel Hauser. The issue before the Court is whether Daniel Hauser is in need of protection or services as that term is defined by statute and whether the application of the Minnesota statutory scheme is unconstitutional. The Court doubts that the current standard treatment for Hodgkin's lymphoma will never be improved upon. "Complementary and alternative health care" is already considered a valuable part of cancer treatment. From the testimony in this trial, it seems probable that advances in such alternative care in the future can be expected. The fact is, however, that Minnesota does not permit exclusive reliance on "complementary and alternative health care" for minor children.

70. Shiree Oliver is the Guardian ad Litem. Ms. Oliver, upon being appointed, read Daniel's medical records and spoke to Drs. Bostrom, Joyce, and Kotulski.

71. Ms. Oliver visited the Hauser family at home. At the home, she spoke to Daniel in the kitchen. The mother was present during the entire time, and Daniel's siblings would pass through the kitchen. Ms. Oliver got the impression that Daniel was shy. According to Ms. Oliver, Daniel often looked to his mother before answering Ms. Oliver's questions. Ms. Oliver testified that Daniel's answers were no more than two sentences in length. Ms. Oliver's description of Daniel, his manner and his appearance is entirely consistent with the Court's own observations of Daniel.

72. Ms. Oliver testified that, in her opinion, Daniel does not understand what chemotherapy is other than that it is something that made him feel sick. Ms. Oliver opined that Daniel does not understand his illness because he does not presently feel sick. Ms. Oliver expressed the belief that Daniel is afraid of chemotherapy because he has been told that his aunt, a sister of Daniel's mother, died from chemotherapy. Ms. Oliver stated that counseling for Daniel and the family regarding chemotherapy would be helpful in this regard.

73. Ms. Oliver opined that Daniel is not fully aware of what his religious beliefs are. Ms. Oliver testified that Daniel does not fully understand Nemenhah. Ms. Oliver expressed concern over Daniel's state of mind and observed that a patient can change his mind regarding treatment if things are presented in a proper way.

74. Ms. Oliver testified that it would be in Daniel's best interests for the Petition to be adjudicated and for the Hauser family to cooperate with the recommendations of the five (5) physicians who have examined the child.

75. The proof as to whether the care being provided for Daniel is sufficient under Minnesota law is well beyond clear and convincing. Five different medical/osteopathic providers have seen Daniel with regard to his current condition. All five have diagnosed Hodgkin's lymphoma. All five have recommended a course of chemotherapy and possible future radiation as being medically necessary. There is no medical doctor, nor any other healthcare practitioner, who has seen Daniel and who has recommended any other course. The Court is bound by the evidence of record. The evidence of record is that Children's Hospital, the Mayo Clinic, the University of Minnesota, and Drs. Joyce and Kotulski all recommend a further course of chemotherapy.

76. The conclusion that the course of treatment recommended by Drs. Bostrom and Rodriguez is necessary to comply with Minnesota law is enhanced and confirmed by significant portions of the testimony of Drs. Shealy, Irons and Healy.

77. Although Dr. Shealy has some general opinions about nutrition and use of supplements as they might bear on cancer, the fact is that he has never examined Daniel Hauser and didn't and couldn't have expressed any opinion as to what course of treatment would be specifically appropriate for Daniel. He agrees that the standard of treatment in the medical profession for Hodgkin's lymphoma is a combination of chemotherapy and radiation. Although Dr. Shealy indicated that it was his opinion that it would be "criminal behavior" to provide medical treatment to a child who objected to the treatment, Dr. Shealy has it exactly wrong under Minnesota law. The Minnesota Legislature has provided in some instances for criminal liability for parents who do not provide "necessary medical care" for their children.

78. With respect to Dr. Irons, the situation is even clearer. He specifically testified:[5] "First, let me state

[5] By stipulation, a large portion of the testimony of Dr. Irons was provided to the Court in writing.

that combination chemotherapy, as recommended by Daniel's doctor, Dr. Bostrom, may be the best course of action for Daniel." Dr. Irons thoroughly, and undoubtedly correctly, sets forth the unfavorable side effects of what he recognizes as the standard of care for Hodgkin's lymphoma. Dr. Irons recognizes that "currently over 90 percent of children and adolescence with Hodgkin's disease can become survivors of this disease," with the administration of the standard chemotherapy/radiation course.

79. Finally, Dr. Healy also supports the position that the requirements of Minnesota statute have not been complied with by the parents in this case. Like Dr. Shealy, she has not seen or examined Daniel. Although she has some opinions about other possible methods of providing complementary care, she agrees that Minnesota law distinguishes between children and adults with respect to the legal standard of care - adults are legally entitled to decline any medical care, while state law requires that parents provide necessary medical care for their children. Likewise, Dr. Healy agreed on cross-examination by the County Attorney that she was not suggesting any method for treating Daniel contrary to or in substitution for the recommended chemotherapy. Dr. Healy correctly understands that Minnesota substantive law requires "necessary medical

care" for a child, even though the child may also receive complementary or alternative care.

80. Accordingly, and analyzing things from the standpoint of the Minnesota statute, there are five medical/osteopathic doctors who make recommendations for necessary (and indeed very probably life-saving) medical care which have not been followed by the parents. In addition, there are three consulting doctors called at trial by the parents who all acknowledge that the five (5) medical/osteopathic doctors who have seen Daniel are correctly expressing the treatment which is the standard of practice for children with this disease.

81. Daniel's parents obviously had a legitimate right to seek a "second opinion." Nobody really contends that they were incorrect in seeking a third opinion. At this point, the parents have three opinions from three independent oncology specialists and two family practice doctors as to what is "medically necessary" for Daniel as required by the statute. The parents have announced an intention not to administer chemotherapy as recommended by the five (5) doctors. There are signs that the mediastinal mass may have increased in size since the parents and Daniel decided to discontinue chemotherapy, but the parents have refused to return to any of the oncologists as

recommended by Dr. Kotulski and the mother refused to allow the chest X-ray recommended by Dr. Joyce on May 7th.

82. As to the question of whether the recommendations of the oncologists are "medically necessary," it is hard to conceive of a stronger case for medical necessity than this one. All of the medical testimony is that Daniel has a very good chance of surviving with continued chemotherapy. All of the medical evidence is that Daniel's prospects for long-term survival are very bleak without the additional chemotherapy. The State has successfully shown by clear and convincing evidence that continued chemotherapy is medically necessary.

83. Any residual doubt as to whether the parents failed to provide care that is "medically necessary" was removed during the last visit to Dr. Joyce on May 7, 2009. The mother at least misunderstands what happened during that visit and took actions that are clearly contrary to what is contemplated by Minn. Stat. § 146A.025. Dr. Joyce had enough information available to him in terms of the history, prior diagnosis, blood test results and symptoms described by Daniel and his mother that he recommended a chest x-ray. It is hard to imagine a doctor more compassionate and concerned for the patient than Dr. Joyce. As noted, he cut short a family camping trip to appear

personally in court to testify on Saturday, May 9th in order to ensure that the Court had the correct information about Daniel Hauser. Dr. Joyce thought Daniel should have the chest x-ray to determine the progression or lack of progression of the mediastinal tumor and the mother declined based upon a conversation that she had with someone she described as her "attorney." The mother's own expressed position is that if Daniel's condition worsens, she would again consider chemotherapy. Without the chest x-ray that was recommended by Dr. Joyce, it is hard to understand how she would have any idea whether the mediastinal tumor is or is not increasing in size.

84. There has been a breach by the parents of the duties imposed upon them by Minnesota Statutes §146A.025. The breach by the parents of these parental duties results in clear and convincing evidence that Daniel is in need of protection or services under all three of the grounds alleged in the Petition.

85. Brown County has demonstrated by clear and convincing evidence that Daniel Hauser is a child in need of protection or services within the meaning of Minn. Stat. §260C.007, subd. 6(5) in that he has been medically neglected.

86. Brown County has demonstrated by clear and convincing evidence that Daniel Hauser is a child in need of protection or services within the meaning of Minn. Stat. §260C.007, subd. 6(3) in that Daniel is without required medical care necessary for his physical health due to the parents being unwilling to allow that care.

87. Brown County has demonstrated by clear and convincing evidence that Daniel Hauser is a child in need of protection or services within the meaning of Minn. Stat. §260C.007, subd. 6(9) in that Daniel is a child whose condition is such as to be injurious to him. Daniel has cancer that is very likely to kill him unless he receives necessary medical treatment, and his parents have refused to timely provide it.

88. Brown County has demonstrated a compelling state interest, embodied in multiple legislative enactments providing for the welfare of the children of this state, sufficient to override the constitutional claims of the parents and Daniel.

89. Disposition is made difficult by the fact that there was a doctor visit on May 7th, just a day before the trial commenced, at which Dr. Joyce wanted to do a chest x-ray to determine the status of the mediastinal mass. It seems that Dr. Joyce wanted to do that for good and

sufficient reasons. The child had a temperature. There were some abnormalities shown by the blood testing and the doctor thought that a chest x-ray would be appropriate at that point. Although the mother expressed concerns about exposing the child to multiple x-rays, the fever and minimal blood abnormalities were overlaid on the prior findings of Dr. Kotulski on April 23, 2009, at which time chest x-rays indicated an increased size of the mass in the mediastinal area which Dr. Kotulski characterized in his testimony as a "significant concern." The first order of business here for the protection of Daniel has to be to get an updated chest x-ray. That is what Dr. Joyce thought was appropriate. It is something that Dr. Kotulski had previously expressed needed to be followed carefully. Against the history, and consistent with the requirements of Minn. Stat. Section 146A.025, an immediate chest x-ray is necessary to determine the status of the mediastinal mass.

90. If the mass has not increased substantially in size and if the prospects for successful resolution of the Hodgkin's lymphoma continue to be as optimistic as the doctors testified at trial, then chemotherapy and possible future radiation as recommended by all three of the oncologists who have seen the child appears to the Court to

be the warranted course of treatment in the best interests of Daniel. If the mediastinal mass has increased in size and/or the prospects for successful resolution by conventional chemotherapy and radiation are already significantly less than they would have been had the chemotherapy course been continued as initially recommended by the doctors, then the Court will revisit the issue of whether chemotherapy will be ordered. In other words, and sadly, it is possible that may already be "too late." The Court will not order chemotherapy if Daniel's previously favorable prognosis no longer pertains.

91. It is appropriate to allow the family to select whether they want Dr. Joyce or Dr. Kotulski to perform the updated chest x-ray. The family has demonstrated a level of comfort with both of those doctors and both seem very qualified to do the necessary film study. The film study recommended by Dr. Joyce must be completed and interpreted prior to the next hearing on May 19, 2009.

92. It is not the Court's preference to remove custody of the child from the parents. The parents love Daniel very much. The description by Daniel of things out at the Hauser farm are of a very happy and loving family environment. Provided that the parents get the chest x-ray with one of those doctors and authorize immediate release

of the results to Brown County Family Services, the attorneys, Guardian ad Litem, and the Court, the child should remain in their care and custody. Thereafter, if the Court orders that chemotherapy proceed, the first choice of which of the three oncologists should treat the child should be left to the parents. All of the oncologists are very qualified. If the family has a higher degree of comfort with one or the other of the providers, the Court will certainly honor the family's wishes. However, if the family either indicates continued refusal to abide by the Court's Order(s) or refuses to identify one provider which the family prefers over the others, then the Court will have no choice but to transfer custody of the child to Brown County for purposes of temporary care while the treatment proceeds. That is far from the best option.

93. At this point, it is desirable to leave as much control as possible with the parents, consistent with an application of the law. Earlier on in these proceedings, the parents indicated that they would comply with a Court Order compelling chemotherapy. The mother previously authorized the initial round of chemotherapy. The Court wishes to leave as much control with the parents as can be, provided that they adhere to Court Orders and comply with the requirements of Minnesota law. At the point where the

parents indicate continued refusal after the issuance of this Order to comply with the law, only then will the Court be left with no choice but to transfer custody of Daniel to effectuate the Court's Order.

94. The Court is expecting that the doctors and other health care professionals who administer any chemotherapy to Daniel will do so in a fashion consistent with their ethical obligations. At least two oncologists, at Children's Hospital and Mayo Clinic, indicated that they have resources available at those facilities to ensure that the child need not be ultimately "strapped down" and forced to undergo chemotherapy. Those doctors also must use all resources available to ensure that the ordered treatment is given to the child with as little discomfort as possible and with the maximum amount of supportive services so as to ensure Daniel's physical and psychological comfort.

95. As noted by Daniel's attorney, the current situation appears "unfair" from multiple perspectives. Daniel is suffering from a disease from which he will almost certainly die if he does not receive the treatments that his family members oppose. Even if Daniel receives those treatments, there remains some chance of death. The chances for Daniel's survival are greatly enhanced by his undergoing the recommended chemotherapy, from near zero to

somewhere in the range of 90%. If an adult made the choice to forego treatment for nearly certain death, that choice would be entitled to constitutional protection. The same simply is not true of a 13-year old who lacks the capacity to give informed consent.

96. It is in the best interests of Daniel Hauser that his opportunity for surviving his disease be maximized.

Based upon the foregoing, the Court makes the following:

CONCLUSIONS OF LAW

1. Daniel Hauser is a child in need of protection or services within the meaning of Minn. Stat. §260C.007, subd. 6(3).

2. Daniel Hauser is a child in need of protection or services within the meaning of Minn. Stat. §260C.007, subd. 6(5).

3. Daniel Hauser is a child in need of protection or services within the meaning of Minn. Stat. §260C.007, subd. 6(9).

4. The parents and Daniel have made their arguments with respect to the free exercise clause of the First Amendment to the United States Constitution. "Congress shall make no law respecting an establishment of religion,

or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." *U.S. Const., Amend I.* The Minnesota Constitution also contains a provision relating to religious liberty. "The right of every man to worship God according to the dictates of his own conscience shall never be infringed...nor shall any control of or interference with the rights of conscience be permitted...." *Minn. Const. Art. I, Sec. 16.* This provision of the Minnesota Constitution affords greater protection for religious liberties against governmental action than the first amendment of the federal constitution. Hill-Murray Fed'n of Teachers v. Hill-Murray High School, 487 N.W.2d 857, 864 (Minn. 1992). The Court is analyzing the free exercise claim under both provisions. In that that state constitution affords greater protection to the free exercise of religion and imposes a higher standard in order to justify any state action that impinges upon the free exercise of religion and conscience, it follows that if Brown County is able to satisfy the requirements of the Minnesota Constitution in this matter, then it will also have satisfied the requirements of the federal constitution.

5. The parents also assert a due process right to be free from excessive interference with the upbringing of their child. In Meyer v. Nebraska, 262 U.S. 390 (1923), the U.S. Supreme Court concluded that the liberty protected by the due process clause of the 14th Amendment includes bringing up children.

6. Statutes are presumed to be constitutional. *Minn. Stat. §645.17(3);* In Re Haggerty, 448 N.W.2d 363 (Minn. 1989). On its face, Minn. Stat. §146A.025 is constitutional. No party hereto contends otherwise.

7. The State of Minnesota has legislatively determined that ensuring that children receive necessary medical care is a very important state interest. This state interest is also reflected in the requirement imposed upon both medical doctors and practitioners of complimentary or alternative therapies to report to child welfare agencies any failure to provide "necessary medical care."

8. The law does not condone the injury of children, nor will it accommodate danger for children. Johnson v. Smith, 374 N.W.2d 317 (Minn. App. 1985). The welfare of children is a matter of paramount concern. Koch v. First Nat'l Bank, 215 N.W.2d 59 (Minn. 1974). The power of the courts to protect children is now exercised by the state as

an attribute of its sovereignty. Atwood v. Atwood, 39 N.W.2d 103 (Minn. 1949). The state as *parens patriae* has authority to assume parental authority over a child who because of misfortune or helplessness is unable to properly care for himself. Id.

9. Wisconsin v. Yoder, 406 U.S. 205 (1972) involved Amish parents who refused to send their children to school past the 8th grade. The Amish claimed that the compulsory attendance statute encroached on their rights and the rights of their children to the free exercise of the religious beliefs they and their forbears had adhered to for almost three centuries. The U.S. Supreme Court wrote that: "In evaluating those claims we must be careful to determine whether the Amish religious faith and their mode of life are, as they claim, inseparable and interdependent. A way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation of education if it is based on purely secular considerations; to have the protection of the Religion Clauses, the claims must be rooted in religious belief." Yoder, 406 U.S. 215. Wisconsin argued that its interest in its system of compulsory education was compelling, such that even the established religious practices of the Amish needed to give way. Wisconsin argued that its system of compulsory

education prepared children to participate in our political system so as to preserve freedom and independence and also that education prepares individuals to be self-reliant and self-sufficient participants in society. The U.S. Supreme Court accepted those propositions but determined that the State had not made a sufficient showing to justify the severe interference with religious freedom entailed by compulsory education, in light of evidence that the Amish were a successful, though nonconventional, society in America. Wisconsin also asserted a *parens patriae* interest in the well-being and educational opportunities of Amish children. The Supreme Court wrote that: "if the State is empowered, as *parens patriae* to 'save' a child from himself or his Amish parents by requiring an additional two years of compulsory formal high school education, the State will in large measure influence, if not determine, the religious future of the child." Id. at 232. "When the interests of parenthood are combined with a free exercise claim of the nature revealed by this record, more than merely a 'reasonable relation to some purpose within the competency of the State' is required to sustain the validity of the State's requirement under the First Amendment. **To be sure, the power of the parent, even when linked to a free exercise claim, may be subject to limitation...if it appears**

that parental decisions will jeopardize the health or safety of the children, or have a potential for significant social burdens." Id. at 233-234. (bolding added). The Supreme Court determined that "the record strongly indicated that accommodating the religious objections of the Amish by forgoing one, or at most two, additional years of compulsory education will not impair the physical or mental health of the child…." Id. at 234.

10. Minnesota courts have enunciated and applied a balancing test, balancing the state's interest in cases such as this against the actor's free-exercise interest in religious-based conduct. Lundman v. McKown, 530 N.W.2d 807 (Minn. App. 1995). Where it is undisputed that the religious belief is sincerely held and that the religious belief would be burdened by the proposed regulation, the balancing test requires proof of a compelling state interest. Id.; Hill-Murray Fed'n of Teachers v. Hill-Murray High School, 487 N.W.2d 857 (Minn. 1992). Minnesota has a compelling interest in protecting the welfare of children. Lundman, *supra*. A parent may exercise genuinely held religious beliefs; but the resulting conduct, though motivated by religious belief, must yield when - judged by accepted medical practice - it jeopardizes the life of a child. Id. Religious practices must bend to the state's

interest in protecting the welfare of a child whenever the child might die without the intervention of conventional medicine. Id. This is settled Minnesota law.

11. In Hofbauer v. Saratoga County Department of Social Services, 393 N.E.2d 1009 (N.Y. App. 1979), a case similar to this matter, a county filed a petition to have an eight-year-old child, who was suffering from Hodgkin's Disease, adjudged to be a child neglected by his parents. The parents were not following the treating physician's recommendations for radiation and chemotherapy, but instead entrusted the child to the care of a duly licensed physician advocating nutritional or metabolic therapies, including laetrile injections. The New York appellate court held that the decision as to whether the parents were providing adequate medical care must be "whether the parents, once having sought accredited medical assistance and having been made aware of the seriousness of their child's affliction and the possibility of cure if a certain mode of treatment is undertaken, have provided for their child a treatment which is recommended by their physician and which has not been totally rejected by all responsible medical authority." Hoffbauer, 393 N.E.2d at 1014.

12. The present situation is *unlike* that in the Hoffbauer case. There, a medical authority was monitoring

the treatment. If there were to be a medically approved way to treat Daniel's Hodgkin's lymphoma different than what the five different medical/osteopathic doctors have thus far opined, then the parents here would be free to pursue such an option under the statute. Where there is unanimity of medical opinion and where the matter is an important one of life and death, the State has a compelling State interest sufficient to overcome the parents' Free Exercise and Due Process rights.

13. The Court's resolution of the issue presented is limited to the specific factual situation present. What is not before the Court in this matter is the issue of whether there would ever be the case of an older or particularly mature minor who expresses a position opposed to medical treatment and who might therefore have a constitutional right to direct his or her own treatment contrary to what is "medically necessary." This matter, as more fully described above, involves a 13-year-old child who has only a rudimentary understanding at best of the risks and benefits of chemotherapy. He genuinely opposes the imposition of chemotherapy. However, he does not believe he is ill currently. The fact is that he is very ill currently. He has Hodgkin's lymphoma which is apparently not in remission from the available evidence. In this

case, the state has a compelling state interest sufficient to override the minor's genuine opposition.

Based upon the foregoing, the Court makes the following:

ORDER

1. Daniel Hauser is adjudicated a child in need of protection or services.

2. The foregoing Summary Memorandum, Findings of Fact, and Conclusions of Law are incorporated herein by this reference.

3. This matter shall come on for review on May 19, 2009, at 12:30 p.m. at the Third Floor District Courtroom, Brown County Courthouse, New Ulm, Minnesota for further proceedings as contemplated by this Order. Prior to that time, the parents shall have complied with the foregoing with respect to the updated chest x-ray for Daniel as recommended by Dr. Joyce, and shall respond to the Court's directive for selection of an oncologist to next see Daniel.

Dated: May 14, 2009

John R. Rodenberg
Judge of District Court

Original: Brown County Court Administration
Copies: Brown County Attorney
BCFS
Mark Fiddler
Phil Elbert
Calvin Johnson
Shiree Oliver