STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF BROWN	FIFTH JUDICIAL DISTRICT

In the matter of the Child of: Colleen Hauser and Anthony Hauser, Parents.	Court File No.: JV-09-068 Judge: Honorable John R. Rodenberg **The Guardian ad Litem's Final Argument and Memorandum of Law on Adjudication and Disposition of the CHIPS Petition**

Pursuant to the Court's request and as provided by Rule 39.03, subdivision 2 of the Minnesota Rules of Juvenile Protection Procedure, Guardian ad Litem Shiree Oliver submits the following written final argument and memorandum of law on adjudication and disposition of the CHIPS Petition:

Daniel Hauser is a child in need of protection and services. This was proven at trial by clear and convincing evidence. His parents' constitutional objections to the Petition are unavailing. Daniel Hauser's constitutional objections are likewise unavailing. Daniel has an urgent need for medical treatment, and the Court should order that treatment as soon as possible.

I. Clear and convincing evidence shows that Daniel Hauser is a child in need of protection or services under Minnesota Statute Section 260C.007.

This Court's task in determining if a child is in need of protection or services is "to determine whether the statutory grounds set forth in the petition are or are not proved." Minn. R. Juv. Prot. P. 39.01. Section 260C.007, subdivision 6, of Minnesota Statutes establishes fifteen separate grounds for finding that a child is in need of protection or services. The existence of any one of these fifteen grounds is sufficient to

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NO. JV-09-68
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Brown County, Minnesota

support a determination that a child is in need of protection or services, if the petitioner has proven the ground by clear and convincing evidence. Minn. R. Juv. Prot. P. 39.04. In all proceedings concerning a child alleged or found to be in need of protection or services, "[t]he paramount consideration . . . is the health, safety, and best interests of the child," and the Legislature has provided that the courts must "liberally construe[]" the laws to "carry out these purposes." Minn. Stat. § 260C.001, subds. 2 & 4.

Here, the Petition alleges that Daniel Hauser is in need of protection or services because of three of the fifteen statutory grounds—namely, (1) 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," (2) that Daniel is "medically neglected," and (3) that Daniel's "behavior, condition, or environment is such as to be injurious or dangerous to the child." Petition at pp. 2-3 (citing and quoting Minn. Stat. § 260C.007, subd. 6(3), (5), & (9)). All three of these statutory grounds have been proven by clear and convincing evidence.

Under Section 260C.007, subdivision 6(5), "medically neglected" includes the withholding of medically-indicated treatment from a child with a life-threatening condition. "The term 'withholding of medically indicated treatment' means the failure to respond to the infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all conditions." Minn. Stat. § 260C.007, subd. 6(5). At trial, the

Court heard clear and convincing evidence that the medically-indicated treatment effective in ameliorating and correcting Daniel Hauser's medical condition is being withheld by his parents.

Daniel Hauser has Stage IIB Hodgkin's lymphoma, a life-threatening but highly-curable disease. (*See* Trial Ex. 1 at 30.) Drs. Bruce Bostrom, Vilmarie Rodriguez, Jeff Kotulski, and James Joyce all testified and documented in their medical records that chemotherapy and radiation will most likely cure Daniel Hauser's Hodgkin's lymphoma. *See id.* at 6, 19, 23, 33-34. The cure rate for Daniel's disease using chemotherapy/radiation is 90%. *See id.* at 31. Even the witnesses presented by Mr. and Mrs. Hauser at trial agreed. Robert Irons, for example, stated that "combination chemotherapy, as recommended by Daniel's doctor, Dr. Bostrom, may be the best course of action for Daniel. . . . Research over the last 20 years has shown that progression-free survival (i.e., remission) has increased, such that currently over 90% of children and adolescents with Hodgkin's disease can become survivors of this disease." The evidence, in short, established without dispute that chemotherapy/radiation is the essential medical treatment required to cure Daniel's disease.

Drs. Bostrom and Rodriguez also testified that if Daniel's cancer goes untreated, his prognosis goes from a 90% chance of cure to a 95% chance of death. Daniel's parents' decision to place him at a 95% chance of death, when the medically-indicated treatment provides him with a 90% chance of cure, is clear medical neglect. All of Daniel's treating physicians have testified that, in their reasonable medical judgment, chemotherapy/radiation is the only effective treatment in ameliorating or correcting

Daniel's Hodgkin's lymphoma. Moreover, Dr. Bostrom testified that Daniel's x-ray from April 23, 2009 (*see* Trial Ex. 2), as compared to his x-ray from April 2, 2009 (*see* Trial Ex. 1 at 26), shows an increase in the size of his tumor. The most recent x-ray is evidence that the tumor is growing and placing Daniel in a life-threatening condition that requires immediate medical treatment. Failure to provide immediate medical treatment is medical neglect.

The record is also clear that Daniel's parents have withheld the medically-indicated treatment for their son. Daniel Hauser's first cycle of chemotherapy was on February 5, 2009, and his doctors requested that he return for the second cycle on March 6, 2009. (*See* Trial Ex. 1 at 30.) Daniel's parents are now two months late in providing him with the medically-indicated treatment, and they offered no evidence that they intend to provide such treatment in the near future. Their past neglect will no doubt continue into the future.

Mr. and Mrs. Hauser's argument that they are not neglecting Daniel because they are providing him with vitamins, herbs, ionized water, and other dietary supplements fails as a matter of law. Under Minnesota law, "[a] parent who obtains complementary and alternative health care for the parent's minor child is not relieved of the duty to seek necessary medical care consistent with the requirement of sections 609.378 and 626.556." Minn. Stat. § 146A.025. "Complementary and alternative health care practices means the broad domain of complementary and alternative healing methods and treatments, including: . . . (11) healing practices utilizing food, food supplements, nutrients, and the physical forces of heat, cold water, touch, and light; (12) Gerson

therapy and colostrum therapy; . . . [and] (20) naturopathy." Minn. Stat. § 146A.01, subd. 4. Therefore, even if Mr. and Mrs. Hauser are providing Daniel with complementary and alternative care, they are still medically neglecting Daniel because the Legislature has not recognized complementary and alternative health care as a substitute for medically-indicated treatment. Minnesota law is also consistent with the current state of medical understanding about complementary and alternative medicine ("CAM") therapies. As Drs. Bostrom and Rodriguez explained, "the bottom line is that CAM therapies offer no systematic cure for any type of cancer and there is little scientific evidence available as to whether these therapies result in survival advantage, life extension, or improved quality of life."

The Petitioner has also proven by clear and convincing evidence that Daniel Hauser is in need of protection or services under Section 260C.007, subdivisions 6(3) & (9), of Minnesota Statutes. Because Daniel has been medically neglected, he must also be adjudicated as a child in need of protection or services because he is without the necessary required care for his physical health due to his parents' unwillingness to provide that care. In addition, his behavior in failing to receive necessary medical care is injurious and dangerous to Daniel. Applying the same facts and analysis as to why Daniel is medically neglected, the Petitioner, by clear and convincing evidence, has proven that Daniel must be adjudicated a child in need of protection or services under Minnesota Statute Section 260C.007, subdivisions 6(3) and (9).

II. Colleen and Anthony Hauser's constitutional defense must be rejected: the compelling state interest can be met only by granting the Petition.

Colleen and Anthony Hauser's assertion that this proceeding violates their constitutional right to the free exercise of their religion must be rejected.[1] The constitutional arguments advanced by Mr. and Mrs. Hauser are presented as defenses to the CHIPS proceeding and therefore amount to an affirmative defense. The burden of proving an affirmative defense rests on the party asserting that defense. *See National Weeklies v. Jensen*, 235 N.W. 905, 908 (Minn. 1931); *State v. Cannady*, 727 N.W.2d 403, 407 (Minn. 2007). Under the facts presented, Colleen and Anthony Hauser have failed to meet their burden, and their defense must therefore be rejected.

Respondents' free-exercise defense fails under the framework set forth by the Minnesota Supreme Court. *See Hill-Murray Fed'n of Teachers v. Hill-Murray High School*, 487 N.W.2d 857, 865 (Minn. 1992). That framework requires a consideration of four separate prongs: "whether the objector's belief is sincerely held; whether the state regulation burdens the exercise of religious beliefs; whether the state interest in the

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[1] Mr. and Mrs. Hauser's free-exercise defense is presented, at least in their written submission, in terms of federal constitutional arguments (*see* Respondents' Pretrial Mem. of Law) instead of the free-exercise protections afforded by the Minnesota Constitution. *See* Minn. Const. art. 1, § 16. Their defense can properly be analyzed under state law, which is what this Court suggested in its Pretrial Order on May 1, 2009. The Minnesota Supreme Court has explained that the Minnesota Constitution provides greater protections than the federal constitution for the free exercise of religion. *See Hill-Murray Fed'n of Teachers v. Hill-Murray High School*, 487 N.W.2d 857, 864-65 (Minn. 1992) ("We have construed this provision of our constitution to afford greater protection for religious liberties against governmental action than the first amendment of the federal constitution."). Thus, if Mr. and Mrs. Hauser's constitutional defense fails under the greater protections afforded by the Minnesota Constitution, their defense also fails under federal constitutional analysis.

regulation is overriding or compelling; and whether the state regulation uses the least restrictive means." *Id.* The facts presented at trial, considered against that framework, require that Colleen and Anthony Hauser's free-exercise defense be rejected.

A. Colleen and Anthony Hauser have failed to establish that granting the Petition will burden their religion.

The Guardian ad Litem agreed not to question the genuineness of Colleen and Anthony Hauser's religious beliefs. But a genuine religious belief does not, by definition, mean that the proposed action burdens that belief. Colleen and Anthony Hauser failed to demonstrate how granting the CHIPS petition would burden their religious beliefs, and their free-exercise defense must therefore be rejected.

Colleen and Anthony Hauser presented conflicting evidence at trial about their religious beliefs. On one hand, Colleen Hauser testified that she and her husband are Catholic. The medical records also indicate Mrs. Hauser identifies herself as Christian. (*See* Trial Ex. 1 at 69.) But Mr. and Mrs. Hauser presented no evidence as to how granting the Petition would in any way burden their Catholic faith. Colleen Hauser also testified about their membership in the Nemenhah Band. At times, this was referred to simply as a "spiritual path." It remains unclear whether the Hausers' Nemenhah beliefs amount to a religion or simply a set of beliefs adjunctive to their Catholic religion.

Assuming, *arguendo*, that Nemenhah is also a religion of Colleen and Anthony Hauser (and that a person can have two constitutionally-recognized religions), Mr. and Mrs. Hauser failed to show how that religion would be burdened by requiring their son to undergo chemotherapy/radiation. Mrs. Hauser testified that she was a member of

Nemenhah before her son was diagnosed with cancer. Yet she allowed her son to undergo chemotherapy. (*See* Trial Ex. 3.) Although Mrs. Hauser would have this Court believe she was somehow "coerced" by doctors at Children's Hospital, her testimony was uncorroborated and overwhelmingly contradicted by testimony from doctors and the medical records. Indeed, the medical records (*see* Trial Ex. 1) do not indicate that Colleen Hauser ever expressly indicated to health-care providers that the administration of chemotherapy would violate her and her husband's religion, specifically their Nemenhah belief. In addition, Colleen Hauser also testified she would be willing to have her son undergo additional chemotherapy if his condition became visibly worse (to her). Yet Respondents offered no testimony as to how waiting to use chemotherapy until that time was *consistent* with their Nemenhah beliefs but refusing chemotherapy in the interim was *inconsistent* with their beliefs. As such, Mr. and Mrs. Hauser have failed to demonstrate how granting the Petition would burden their religion, and their free-exercise defense must be rejected.

B. There is a compelling state interest in protecting the health and welfare of Daniel Hauser.

Even assuming that Colleen and Anthony Hauser's religion would be burdened by granting the Petition, the state's interest in protecting the health and welfare of a child like Daniel Hauser is unquestioned. Minnesota courts have specifically stated that "Minnesota has a compelling interest in protecting the welfare of children, and case law supports that conclusion." *Lundman v. McKown*, 530 N.W.2d 807, 818 (Minn. Ct. App. 1995) (*review denied*, May 31, 1995). In fact, Minnesota courts have recognized that the

state's compelling interest includes requiring children with life-threatening but curable cancers to undergo chemotherapy despite their parents' religious objections. *Id.* In *Lundman*, the Minnesota Court of Appeals cited to *In Re Hamilton*, 657 S.W.2d 425 (Tenn. Ct. App. 1983), a case nearly identical to the present case, as an example of the state's interest in cases involving children with cancer.

Hamilton concerned a child, Pamela Hamilton, who was diagnosed with Ewing's Sarcoma and whose parents refused necessary medical care due to their religious beliefs. *Id.* at 427. The trial court found there was undisputed and uncontradicted medical testimony that the child would die without treatment but that there was a 25%-50% chance of the treatment curing the child's disease before it metastasized. *Id.* The court of appeals affirmed the trial court's decision that the child was neglected and ordered the child to undergo the necessary treatment. *Id.* at 429. As the court stated, "Our Constitution guarantees Americans more personal freedom than enjoyed by any other civilized society, but there are times when the freedom of the individual must yield." *Id.* Specifically, "[w]here a child is dying with cancer and experiencing pain which will surely become more excruciating as the disease progresses, as in Pamela's circumstance, we believe, is one of those times when humane considerations and life-saving attempts outweigh unlimited practices of religious beliefs." *Id.* This holding follows well-established precedents of the United States Supreme Court: "The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death." *Prince v. Massachusetts*, 321 U.S. 158, 166-67 (U.S. 1944).

The facts presented at trial from multiple qualified medical doctors regarding Daniel Hauser's Hodgkin's lymphoma were undisputed. Daniel Hauser has a life-threatening but highly curable form of cancer. As pediatric oncologists Drs. Bruce Bostrom and Vilmarie Rodriguez both testified, the medical community has made significant advances in treating Hodgkin's lymphoma. Dr. Bostrom noted that "I and Dr. Rodrigez [sic] have told the family that [Daniel] has a 90% chance of being cured with standard chemotherapy and radiation. . . ." (Trial Ex. 1 at 31.) Daniel's doctor of osteopathy similarly agreed: "I did also state Daniel's cancer is a very treatable cancer with a high cure rate with chemotherapy and radiation." *Id.* at 23. In fact, even Mr. and Mrs. Hauser's witnesses agreed about the efficacy of chemotherapy/radiation for treatment of Hodgkin's lymphoma. As Richard Irons stated in writing, "Research over the last 20 years has shown that progression-free survival (i.e., remission) has increased, such that currently over 90% of children and adolescents with Hodgkin's disease can become survivors of this disease." (*See* Trial Ex. 8.)

In addition, there was undisputed testimony about Daniel Hauser's future if his disease is not treated with chemotherapy/radiation. As Dr. Bostrom testified, left untreated, Daniel has a 95% chance of dying as a result of his cancer. Furthermore, the medical facts establish the urgency of this situation. In interpreting Daniel's chest x-ray from April 23, 2009, (Trial Ex. 2), Dr. Bostrom testified that the radiological evidence shows that his tumor is growing. The County and the Guardian have therefore clearly established with undisputed medical testimony that Daniel's life can be saved with treatment and that he will die without it. Proof of a compelling state interest in the

health and welfare of Daniel Hauser has thus been established by clear and convincing evidence.

C. Granting the Petition is the only way to protect the health and welfare of Daniel Hauser.

Colleen and Anthony Hauser's free-exercise-of-religion defense must also fail under the final analytical prong—that is, whether there are any less restrictive means other than the proposed state action. *See Hill-Murray*, 487 N.W.2d at 865. The testimony at trial from qualified medical doctors was undisputed: the only way to save Daniel Hauser's life is through the use of chemotherapy/radiation treatment. Daniel's parents' belief that they can treat their son's cancer through "natural" means was entirely unsubstantiated by qualified testimony. This Court heard ample testimony that the gold standard for determining the efficacy of a proposed medical treatment is a randomized clinical trial. Colleen and Anthony Hauser offered no evidence that the natural therapies they are currently giving to Daniel have ever been shown by any randomized clinical trial to be effective in curing cancer. Furthermore, both Drs. Bostrom and Rodriguez testified that the following statement from the pediatric oncology medical literature represents the consensus opinion within the medical community regarding the efficacy of complementary and alternative medicine therapies: "However, it bears repeating that the bottom line is that CAM therapies offer no systematic cure for any type of cancer and there is little scientific evidence available as to whether these therapies result in survival advantage, life extension, or improved quality of life."

Mr. and Mrs. Hauser put forth no qualified or credible evidence to refute this statement. Mrs. Hauser's testimony about the effects of her "natural" treatment on Daniel's disease was discredited by her own lack of qualifications and the reality of Daniel's current condition. Mrs. Hauser admitted to having no medical training whatsoever, and she acknowledged that she was receiving her information about alternative treatments from the Internet. In addition, treating physician Dr. James Joyce, who saw Daniel on May 7, 2009, directly refuted Mrs. Hauser's testimony that Daniel was "doing great." Mrs. Hauser's testimony was further refuted by the most recent radiological study (*see* Trial Ex. 2) that shows Daniel's condition is, in fact, getting worse.

Mr. and Mrs. Hauser's "expert" witnesses provide no more compelling testimony than Mrs. Hauser's. Dr. Robert Shealy offered only anecdotal testimony about "a dozen" people he knew who had survived cancer without chemotherapy. Yet Dr. Shealy offered no testimony that the alternative therapies those patients received were similar to those Daniel is receiving or that those patients' medical conditions were in any way similar to Daniel's. Dr. Shealy could not offer such testimony because he knew little to nothing about Daniel Hauser, having never met him, examined him, nor treated him.

In that respect, this case is entirely different from the *Matter of Hofbauer*, 393 N.E.2d 1009 (N.Y. 1979), upon which Mr. and Mrs. Hauser so heavily rely. As stated in oral argument, *Hofbauer* involved a child with cancer who was cared for by multiple licensed treating physicians who had differing opinions about the efficacy of their

prescribed treatments. *Id.* at 1012. As such, the court of appeals allowed the parents to choose between various treating physicians' regimens. *Id.* at 1014. But the court specifically noted that "in this regard, it is important to stress that a parent, in making the sensitive decision as to how the child should be treated, may rely upon the *recommendations and competency of the attending physician if he or she is duly licensed to practice medicine in this State*. . . ." *Id.* (emphasis added). None of Mr. and Mrs. Hauser's witnesses except Dr. Shealy are physicians licensed to practice medicine in any state. Further, none of them, including Dr. Shealy, had ever met, examined, or treated Daniel Hauser. As such, none of those witnesses could be considered Daniel Hauser's treating or attending physicians. Moreover, all of Mr. and Mrs. Hauser's witnesses agreed that the standard of care and the most likely means of curing Daniel's cancer was through chemotherapy/radiation.

The testimony thus remains undisputed: the only way to cure Daniel Hauser's Hodgkin's lymphoma is through chemotherapy/radiation. Any "alternative" therapy, used by itself, will mean certain death for this child.

D. Parents' due-process rights do not include the right to let their children die from a curable disease.

In addition to their free-exercise claim, Respondents' argument that this proceeding violates their due-proces rights under the Fourteenth Amendment (*see* Respondents' Pretrial Mem. of Law) must also be rejected. The Fourteenth Amendment's protection allowing parents to choose how to raise their children does not, as matter of law or logic, extend to a parent's right to let their child die in the name

of "parental autonomy." As the Supreme Court has explained, parents can make martyrs of themselves but not of their children: "Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves." *Prince*, 321 U.S. at 170.

The Supreme Court's admonition has been observed in recent cases similar to this matter. *In the Matter of Eli H*, 871 N.Y.S.2d 846 (N.Y. Fam. Ct. 2008), involved a young boy born with a heart defect who needed surgical repair to save his life. The boy's parents refused to let their child undergo the surgery because of their religious beliefs and their claim that it should be a "family decision." *Id.* at 849. The court found medical neglect and ordered the child to undergo the surgery. *Id.* at 852. The court stated that "[e]very parent has the fundamental right to raise his/her child. That right, however, is 'not absolute inasmuch as the State, as *parens patriae*, may intervene to ensure that a child's health or welfare is not being seriously jeopardized by a parent's fault or omission.'" *Id.* at 850 (quoting *Hofbauer*). Accordingly, Colleen and Anthony Hauser have a right to raise their children. But they do not have any recognized constitutional right to let their son die from a curable disease.

III. Daniel Hauser's constitutional defense is not recognized as a matter of law and the compelling state interest requires granting the Petition nonetheless.

Daniel Hauser's counsel suggested through his questions at trial that Daniel, separate and apart from his parents, might be claiming a constitutional defense against the Petition. As noted above, the burden of proving an affirmative defense rests on the

party asserting that defense. *See National Weeklies*, 235 N.W. at 908; *Cannady*, 727 N.W.2d at 407. Thus, it is Daniel Hauser's burden to put forth evidence in support of his affirmative defense. But he offered no evidence at trial: he did not call a single witness, and he did not offer any documentary evidence. In addition, Daniel's counsel, Mr. Elbert, did not submit any written questions to the Court for the examination of his client Daniel Hauser, who was called as a witness by Brown County. Mr. Elbert also failed to submit any written arguments in support of constitutional claims by his client. Indeed, the only written memorandum regarding constitutional issues submitted before trial was by counsel for Colleen and Anthony Hauser, and it was not joined by Daniel's counsel. Lastly, even in his final argument, Mr. Elbert does not raise a constitutional defense on behalf of his client Daniel Hauser. (*See* Final Argument, May 12, 2009). Thus, to the extent Daniel Hauser is asserting a constitutional defense, that defense has been waived.

A. The law does not permit a child to claim an infringement of the free exercise of religion as a basis to refuse necessary medical care.

Assuming, *arguendo*, that Daniel Hauser has asserted a free-exercise defense to this proceeding, his defense should be rejected because courts do not permit minors, particularly children like Daniel Hauser, to assert the free exercise of religion as a defense to refusing medically-necessary care. Federal courts have held that there is no authority for the proposition that a child has a constitutional right to refuse medical treatment by invoking the First or Fourteenth Amendments. *See Novak v. Cobb County-Kennestone Hosp. Auth.*, 849 F. Supp. 1559, 1574 (N.D. Ga. 1994). In *Novak*, a sixteen-

year-old Jehovah's Witness claimed that he had a free-exercise right under the First Amendment to refuse a blood transfusion. *Id.* The court rejected the minor's claim, holding that no such right existed. *Id.* ("However, plaintiffs have cited no authority for the proposition that a sixteen year old 'mature minor' has a constitutional right to refuse a blood transfusion pursuant to either the minor's First or Fourteenth Amendment rights; nor could they.") This holding is consistent with the United States Supreme Court's view of a minor's ability to make decisions regarding their medical care. As the Court stated, *"most children in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment."* *Parham v. J.R.*, 442 U.S. 584, 605 (1979) (emphasis added).

Such a proposition could not be more true for Daniel Hauser. As Dr. Kotulski testified, Daniel is not an independent individual capable of making decisions. Moreover, even though he is thirteen, Daniel, tragically, cannot read. He was not able to read the affidavit he supposedly affirmed, and his teacher stated that he cannot recognize the sight word "the." As such, whatever information Daniel has about his disease comes from what people tell him. And the evidence shows that Daniel has had little to no meaningful communication with his doctors about his disease. Daniel himself testified that he never asked Dr. Bostrom any questions about the chemotherapy. Further, the medical records and testimony show that Daniel's mother talks for him while in the presence of doctors. (*See* Trial Ex. 1 at 21 and 72.) Consequently, Daniel's only source of information about his disease is his parents. Naturally, the testimony established that Daniel holds the same unfounded beliefs

about his disease as those held by his parents. For example, Colleen Hauser testified that her son has a "100% chance" of survival using natural remedies. Similarly, Daniel testified that it is a "sure thing" that he will be fine if he continues on his mother's Internet-based natural regimen. Yet this Court heard no qualified testimony—from the Petitioner, Guardian, or Respondents—to corroborate those beliefs.

Unsurprisingly, Drs. Bostrom and Joyce both testified that Daniel does not understand the severity of his illness. In the words of Dr. Kotulski, Daniel's beliefs are based on fear not objective medicine. Certainly, fear is to be expected in a child undergoing difficult treatment for a deadly disease. But an entanglement of fear, misinformation, and diminished mental capacity does not form the foundation for a child's ability to make life-and-death decisions about his medical care. And it does not provide an adequate basis upon which a child can elect to assert a constitutional right. The evidence has shown that Daniel Hauser understands little about his disease or the beliefs that supposedly preclude him from treating that disease (*see infra*, at 15-17). To allow Daniel to make a relative determination between those two factors defies reason.

B. The evidence fails to establish that Daniel Hauser has sincerely-held religious beliefs that would be burdened by granting the Petition.

Even assuming that Daniel Hauser had some constitutional right to assert in this context, that defense must be rejected because it fails under the relevant legal analysis. The legal analysis for Daniel Hauser's free-exercise defense would be the same as that for the defense asserted by his parents. And under the four-pronged analysis set forth in *Lundman*, 530 N.W.2d 807, Daniel's defense, to the extent it is legally recognized,

must be rejected. As noted above, one asserting a free-exercise defense has the burden of showing that one's religious beliefs are sincerely held and that the proposed state action burdens those beliefs. *See Hill-Murray*, 487 N.W.2d at 865. But the evidence failed to establish either of those requirements with respect to Daniel Hauser, and his constitutional defense should therefore be rejected.

Determining the sincerity of one's religious beliefs does not require that the court examine the reason for a religious belief or resolve religious disputes. *Id.* "It is, however, proper to inquire as to whether a belief is held in good faith." *Id.* (citing *In re Jenison*, 125 N.W.2d 588 (Minn. 1963)). Daniel Hauser's testimony did establish a good faith and thus sincere belief in his Catholic religion. He testified that he and his family attend a Catholic church in Mankato every other week and that they pray using the rosary on the Sundays they do not travel to church and every evening.

But as for his participation in the Nemenhah Band, Daniel Hauser's testimony was altogether different. He testified that he first heard of Nemenhah one-and-a-half years ago through his mother's friends. Daniel could not explain any other kind of education or indoctrination he underwent as part of his membership in the Nemenhah Band. When asked about his affidavit dated May 1, 2009, the record reflected that Daniel could not read the affidavit nor could he explain its substance or how it was put together. As for being a "medicine man," Daniel testified that his mother told him he became a medicine man *after* Daniel initially treated with Dr. Bostrom. Daniel could not explain what it meant to be a medicine man or a "church elder." Rather, the only tenet of Nemenhah teaching that Daniel could articulate was the concept of "do no harm"

and the importance of eating fruits and vegetables.

It bears analyzing whether or not Daniel's beliefs with regard to the Nemenhah spiritual path constitute "religion" for purposes of a free-exercise defense. The Supreme Court has indicated that distinctions should be made between personal beliefs and "religion." The Court addressed this issue in *Wisconsin v. Yoder*, 406 U.S. 205, 212 (U.S. 1972), a case that involved whether the state could compel the Amish to send their children to school after eighth grade. Although the Court found the Amish belief to be a religion, it noted a distinction between a way of life based on secular consideration and a religion:

> 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. Although a determination of what is a 'religious' belief or practice entitled to constitutional protection may present a most delicate question, the very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests. Thus, if the Amish asserted their claims because of their subjective evaluation and rejection of the contemporary secular values accepted by the majority, much as Thoreau rejected the social values of his time and isolated himself at Walden Pond, their claims would not rest on a religious basis. Thoreau's choice was philosophical and personal rather than religious, and such belief does not rise to the demands of the Religion Clauses.

Id. at 215-16.

Even if Daniel Hauser's expressed beliefs are deemed by this Court to constitute "religion," the evidence received nonetheless fails to show how granting the Petition would burden Daniel's religion. Again, no evidence presented suggested that undergoing chemotherapy/radiation in any way burdens Daniel Hauser's Catholic

faith. Furthermore, to the extent Daniel's Nemenhah religion constitutes a belief in the tenet "do no harm," the evidence fails to establish how the treatment recommended by Daniel's doctors does him harm. In fact, Daniel's primary care physician, Dr. Joyce, who testified that Daniel should undergo chemotherapy, explained that the principal teaching of medicine is also "do no harm." Finally, the evidence failed to explain why Daniel's belief in "do no harm" precluded undergoing chemotherapy, a decision that would bring about the ultimate harm—his death from cancer. Daniel's testimony regarding chemotherapy simply reflected his justifiable concerns that it would make him sick as well as his misguided belief, clearly derived from others around him (i.e., his mother), that chemotherapy would kill him.

C. The compelling state interest in protecting the health and welfare of Daniel Hauser can be met only by granting the Petition.

Even if this Court were to conclude that (1) Daniel Hauser has a free-exercise right to refuse medical care, (2) his right was not waived, (3) Daniel's religious beliefs are sincerely held, and (4) the proposed action burdens Daniel's religion, his constitutional defense would still fail. Specifically, it should fail because the state has a compelling interest in protecting the health and welfare of a child like Daniel Hauser, and the evidence shows no less restrictive means of achieving that interest. As such, the Guardian ad Litem expressly incorporates by reference the arguments in Sections II.A and II.B above.

IV. There is an urgent need for relief under the Petition.

If the Court finds that the statutory grounds for the Petition have been proven, then Rule 41.02 of the Minnesota Rules of Juvenile Protection Procedure requires that the Court, to the extent "practicable," conduct a disposition hearing and enter a disposition order the same day that it makes a finding that the statutory grounds have been proven. At the conclusion of trial, the parties agreed to submit arguments regarding the appropriate disposition.

As part of the Guardian ad Litem's efforts for Daniel, the Guardian has contacted Children's Hospital and the Mayo Clinic and obtained for each of them available dates and times for further medical treatment of Daniel at each of those locations. Those dates and times are reflected in paragraph "b" below.

Given the urgency of the Daniel Hauser's medical needs, the Guardian ad Litem requests that the Court issue an Order as follows:

a. Daniel Hauser must follow the course of medical treatment as recommended by Dr. Bruce Bostrom or Dr. Vilmarie Rodriguez. Colleen and Anthony Hauser must choose one of these providers.

b. Based on the choice of provider, Colleen and Anthony Hauser must present Daniel for medical treatment at Children's Hospital of Minneapolis with Dr. Bostrom on May 22, 2009, at 10:00 a.m. (check in at 9:30 a.m.) or the Mayo Clinic with Dr. Rodriguez on May 19, 2009, at 10:00 a.m. (check in by 9:30 a.m.).

c. Colleen and Anthony Hauser must follow all recommendations of Dr. Bostrom or Dr. Rodriguez for the medical course of treatment for Daniel, including but not limited to, the number and scheduling of additional chemotherapy or radiation sessions (or both).

d. Within 24 hours of issuance of this Order, Colleen and Anthony Hauser must choose which medical provider will provide treatment for Daniel,

schedule the medical treatment on the date and time as set forth above, and report back to the Court by hand-delivered or facsimile-delivered letter (with simultaneous facsimile service on all other parties) with the information about which medical provider they have chosen and assuring this Court that they will comply with ALL of the requirements of this Order.

e. If Colleen and Anthony Hauser do not report to the Court as required above or if they do not otherwise comply with this Order, including by refusing to schedule Daniel for any medical treatment by Drs. Bostrom or Rodriguez, Brown County Social Services is directed to promptly notify the Court of the noncompliance by filing with the Court an ex-parte affidavit stating the noncompliance and requesting the Court to order that Daniel be taken into the immediate custody by law enforcement for placement in foster care under the responsibility of Brown County Social Services.

f. If Brown County Social Services makes application for an Order for immediate custody of Daniel, the Brown County Attorney is directed to simultaneously file an Order to Show Cause why Colleen and Anthony Hauser should not be held in contempt of this Court.

g. A hearing will be held within one day of the filing and service of any ex-parte Order for immediate custody requested by Brown County Social Services and service of any Order to Show Cause. The hearing will address why the parents should not be held in contempt of this Court, whether the Brown County Social Services should be authorized to consent to medically necessary treatment and care for Daniel Hauser, and whether Children's Hospital and Clinics, Minneapolis, and Dr. Bostrom or the Mayo Clinic and Dr. Rodriguez should be authorized to administer chemotherapy to Daniel Hauser, including any necessary accompanying physical or chemical restraint of Daniel.

h. Daniel and his mother and father must promptly participate in family therapy with a licensed family therapist of Colleen and Anthony Hauser's choice. If the family therapist recommends individual therapy for Daniel, Colleen and Anthony Hauser must ensure that Daniel obtains individual therapy promptly. Within 72 hours of the issuance of this Order, Colleen and Anthony Hauser must report back to the Court by hand-delivered or facsimile-delivered letter (with simultaneous facsimile service on all other parties) explaining in detail, by dates and times, the therapy session(s) that have been scheduled and the name(s) and address(es) of the individual(s) who will be providing the therapy.

The Guardian ad Litem believes that Daniel needs the support of his parents as he undergoes medical treatment for his cancer. To the extent that the parents voluntarily consent to and support Daniel's medical treatment and follow the treating physicians' recommendations, that support will be in Daniel's best interests. But if Colleen and Anthony Hauser refuse to provide consent, the Court would have little recourse but to set in place a process whereby Brown County can authorize treatment. This disposition achieves that result.

Dated: May 12, 2009

Robins, Kaplan, Miller & Ciresi L.L.P.

By: Thomas G. Sinas

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Attorneys for the Guardian ad Litem

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF BROWN FIFTH JUDICIAL DISTRICT

In the Matter of the Child of:

Colleen Hauser and Anthony Hauser,

Parents.

Court File No. JV-09-068
Judge John R. Rodenberg

AFFIDAVIT OF SERVICE BY FAX AND MAIL

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Julia Petersen, being duly sworn upon oath, states that she is a Legal Administrative Assistant in the office of Robins, Kaplan, Miller & Ciresi L.L.P., 2800 LaSalle Plaza, 800 LaSalle Avenue, Minneapolis, Minnesota 55402-2015. That on the 12th day of May, 2009, she made service of the attached GUARDIAN AD LITEM'S FINAL ARGUMENT AND MEMORANDUM OF LAW ON ADJUDICATION AND DISPOSITION OF THE CHIPS PETITION on the following individuals:

Calvin P. Johnson, Esq.
P.O. Box 3665
Mankato, MN 56002-3665
Fax: 507-387-1005

Philip J. Elbert, Esq.
P.O. Box 26
St. Peter, MN 56082
Fax: 507-934-2123

James R. Olson, Esq.
Brown County Attorney
P.O. Box 428
New Ulm, MN 56073
Fax: 507-354-7297

by faxing copies thereof to their last known fax number, and by mailing copies of the same, enclosed in an envelope, postage prepaid, and by depositing the same in the post office at Minneapolis, Minnesota, directed to them at their last known address:

Julia Petersen

Julia Petersen

Subscribed and sworn to before me
this 12th day of May, 2009.

Harriett A. Dvorak

Notary Public

HARRIETT A. DVORAK
NOTARY PUBLIC - MINNESOTA
MY COMMISSION EXPIRES 1-31-10