Can Courts Order Kids To Take Drugs?

Sept. 13, 2000

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Can a judge constitutionally order a controversial drug to be given to a child over the opposition of his parents? Such action by a Family Court Judge in Albany, NY has touched off a national debate pitting public schools and the courts against parental rights.

Seven-year-old Kyle Carroll of Berne, NY, was diagnosed by a psychologist as having ADHD (Attention Deficit/Hyperactivity Disorder) and a physician prescribed the psychotropic drug Ritalin. The boy soon exhibited two of the drug's common side effects, sleeplessness and appetite loss.

When Kyle's parents told school officials they wanted to temporarily discontinue the medication, they got a visit from the Albany County Child Protective Services and a petition to appear in court. The school district accused the Carrolls of "educational neglect" and they received what amounted to an order from Judge Gerard E. Maney to start using Ritalin again.

Under what was described as "at least the theoretical threat of having their child removed from their custody," the Carrolls agreed to "an adjournment in contemplation of dismissal (ACOD)." There was no fact-finding hearing before Judge Maney, no testimony taken, and no written decision rendered.

According to law guardian Pamela J. Joern of Albany, who supported the school's position, "The consent ACOD directed the parents to comply with the doctor's treatment regimen, which was a prescription for Ritalin. They could get a second opinion, but they couldn't ignore the problem."

This case underscores the need for better medical privacy protection in order to safeguard against government intervention in personal medical decisions. A family's decision whether or not to use Ritalin is not the government's business.

In order to avoid a prolonged court battle, the Carrolls compromised, which is usually what happens when parents are subjected to intimidation by state child protection agencies. The injustice of Judge Maney's decision will go unreviewed by higher courts, but the Kyle Carroll case has kicked up a storm of protest on the internet.

This case is a good example of judicial activism that would never be known outside of the local community if it were not for the free flow of news and information on the internet. Hundreds of criticisms of this decision appeared on internet message boards within days.

In traditional channels of communication, many disputes degenerate into both sides reciting hearsay and bogus facts, with no hope of resolution. On the internet, it is so easy to include checkable hard facts in the discussion, and one side can actually persuade the other.

A quick search on Yahoo yields a variety of sites that are critical of Ritalin, including support groups, pharmacies and alternative medications. The case against Napster, soon to be heard by the Ninth Circuit Court of Appeals, has ominous implications for this exchange of information about Ritalin on the internet.

The same reasoning behind the injunction recently issued against Napster would chill or even require shutting down web sites that provide medical information to internet users. Since "Ritalin" is a registered trademark and some of the official information on it and ADHD is copyrighted, the arguments behind the anti-Napster injunction could enable the owner of Ritalin to demand that Yahoo provide only authorized links about Ritalin.

Ritalin does not treat an objective physical illness as, for example, insulin treats diabetes. Ritalin is a serious drug used to control behavior problems and is very attractive to the schools because it makes the child more likely to shut up, sit down, and do what he's told.

There are some 3.8 million schoolchildren, mostly boys, who are said to have ADHD, according to the American Academy of Pediatrics. Estimates are that most of them are on Ritalin or similar psychotropic drugs.

The number of children labeled ADHD and taking Ritalin has greatly increased since 1991 when ADHD was covered under the Individuals with Disabilities Education Act (IDEA), a federal program that brings more funding to public schools in order to provide extra services. Under IDEA, the school is required to craft an Individualized Education Plan (IEP) to accommodate each child, which may include drugs prescribed by a medical doctor, and that's how Kyle happened to be given Ritalin.

In May this year, the Dallas law firm Waters and Kraus filed a class action suit alleging fraud and conspiracy against the Swiss-owned manufacturer of Ritalin, Novartis, as well as the private ADHD support group Children and Adults with Attention Deficit/Hyperactivity Disorder (CHADD) and the American Psychiatric Association. The suit charges that the three defendants committed fraud in conspiring to over-promote the diagnosis of ADHD and its treatment with the stimulant drug methylphenidate (Ritalin).

Information about Ritalin's side effects, withdrawal symptoms, manufacturer warnings, and interactions with other drugs is now very accessible on the internet. The public needs the internet to sort out the facts about Ritalin, ADHD, and medical privacy rights.