

Follow up regarding potential civil liability, vaccinations
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Tue 5/5/2015 12:54 PM

Representative Lippert,

In case this question is still of interest to the committee, I did look into whether parents may be held civilly liable if a child who is not vaccinated transmits the illness to others. The most relevant Vermont case I found was *Endres v. Endres*, 2008 VT 124, where the Vermont Supreme Court recognized generally that “courts have uniformly imposed on persons with communicable diseases a tort duty not to infect others.” This 2008 decision cites to another case that lists many older cases involving negligence claims for contagious diseases, including whooping cough and smallpox. In *Endres*, the court held that this duty not to infect others extends to transmission of sexually transmitted diseases. The Vermont court looked to similar decisions in other states and noted that, “to establish an actionable breach of that standard of care, the plaintiff must show that the defendant had actual or constructive knowledge that he or she was infected with the transmitted STD.” So, this case is saying that a person may be held liable for transmitting a sexually transmitted disease if the person knew they were infected, or had reason to know (because, for example, they had symptoms of the disease), and acted in a way that foreseeably put others at risk. Although this case is specifically about sexually transmitted diseases, the broader language I quoted above suggests that a similar standard would apply to persons who know that they have other serious contagious illnesses.

The *Endres* standard, which seems on a quick look to be in line with other states, has nothing to do with a person’s vaccination status. It’s about whether the person knows they have a contagious disease, and then acts in a way that unreasonably puts others at risk. The case does not suggest that a parent could be held liable merely because a child wasn’t vaccinated. I found a couple of law review articles making policy arguments on that issue, and those articles seem to confirm that current law would not impose liability solely on that basis.

This was only a quick review, but I hope it is helpful. If you have any questions, please let me know.

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