

Protecting the Patient-Physician Relationship in Florida

PEDIATRICIANS PLAY A key role in injury and disease prevention by providing anticipatory guidance to minimize risk in a child's everyday environment. It is the pediatrician's duty to raise awareness of all health risks and guide caretakers to prevent and mitigate these risks. Screening for child and adolescent access to firearms is an essential component of injury prevention.

More than 128 000 children in Florida live in a home with at least 1 loaded and unlocked firearm.¹ In the United States in 2007, 17% of all injury-related pediatric deaths and 25% of deaths among adolescents 15 to 19 years of age were firearm-related deaths.² In the same year, 177 youths in Florida were killed by firearms.² US children 5 to 14 years of age have 8 times the firearm suicide rate and 10 times the unintentional firearm death rate of children in comparable high-income nations. For older teens, firearms are the leading method of homicide, which is the second leading cause of death, with suicide being the third leading cause.² Unintentional firearm fatalities are undercounted, and often the shooter is also a child or other family member.³ In 2010, more than 15 500 children and teens were treated in emergency departments for nonfatal firearm injuries, and 40% required hospitalization.²

Based on the accumulated data, the American Academy of Pediatrics (AAP) has concluded that the most effective means of firearm injury prevention is the separation of children and adolescents from firearms, that the safest home for a child is one without guns, although AAP policy recommends that if a home does have firearms, those firearms ought to be stored away, locked, and

unloaded. Furthermore, the AAP urges pediatricians to assess for child access to firearms and counsel families about risk of a firearm fatality.⁴

In Florida, House Bill 155, the Privacy of Firearm Owners bill ("gag law"), was filed on January 10, 2011. The original bill purported to make it a third-degree felony crime with penalties of up to \$5 million in fines and 5 years of imprisonment for any health care personnel to inquire of patients or family members if a gun was in the home. Although the final bill was stripped of criminal penalties, it nonetheless called for disciplinary action by the Florida Board of Medicine if physicians violated any of its provisions, including causing a patient to feel harassed because questions about gun ownership were posed. The bill allowed an exemption by which providers might inquire about gun ownership only if such information was deemed to be relevant to the patient's medical care or safety, or the safety of others.⁵ The determination of relevancy was not defined.

The Florida Chapter of the AAP (FCAAP) worked with the AAP Division of State Government Affairs to educate legislators and coordinate media coverage in an effort to defeat the bill. Education and advocacy focused on the bill's affront to child safety and physician practice. If the bill became law, it would restrict physician practice in an unprecedented fashion and put pediatricians in conflict with evidence-based, nationally recommended prevention standards set to save children's lives.

Nonetheless, the bill advanced with strong support to the Governor's desk. The FCAAP and partner physician groups urged a veto, raising again our previously stated concerns and the bill's violation of First

Amendment rights. Yet, the bill was signed into law to be effective upon signing.⁴

Immediately after, the AAP and the FCAAP led a coalition of individual physicians and the state chapters of the Academy of Family Physicians and the College of Physicians, which worked with the Brady Center to Prevent Gun Violence, as well as the law firms Ropes & Gray, LLP, and Astigarraga Davis, to file suit against the state entities that would enforce the law on the grounds of freedom of speech infringement. "This case is about the core principle of the First Amendment that the government cannot tell individual citizens what they can and cannot say," stated Doug Hallward-Driemeier, partner at Ropes & Gray, who, like all cocounsel, represented the physicians pro bono.⁶ He also stated that "[p]atients have a right to trust that doctors are providing their honest and best advice about matters of health and safety. The Florida legislature cannot require that doctors first put that advice through a government-approved filter."⁶

The suit charges that the law violates the First Amendment by having a severe chilling effect on confidential, lifesaving discussions. The suit also claims that the law is too vague in terms of how one might perceive harassment or who might determine medical relevancy. Because pediatricians routinely ask questions regarding home safety, including access to firearms, the FCAAP members were targeted victims in this new legislation. Furthermore, because the First Amendment also protects the rights of individuals to hear speech, the rights of patients were also effected by this legislation.

Shortly following enactment of this law, a request for a preliminary injunction was filed,⁷ which asked

that a federal district court judge immediately block enforcement of the law, as it was already curtailing First Amendment rights of physicians across the state to speak with their patients about gun safety. On September 14, 2011, federal district judge Marcia Cooke awarded the preliminary injunction, and following further briefing, she permanently enjoined enforcement of the Physician Gag Law.

Florida appealed this decision to the US Court of Appeals for the 11th Circuit, where briefing has now been completed. The National Rifle Association filed an amicus brief in support of the state's position, while the American Medical Association (and other national and statewide physician organizations and the American Civil Liberties Union) filed amicus briefs in support of the FCAAP. Unless and until the District Court's decision is overturned on appeal, enforcement of the Physician Gag Law will remain blocked.^{7,8}

While Florida is the first state to pass such a law, it is not the first legislature to entertain such a bill. In 2006, similar bills were filed, although not passed, in Virginia and West Virginia.⁹ Recently, gag legislation has been proposed in Alabama, Minnesota, North Carolina, Oklahoma, and Tennessee.

Physicians must ask families about guns and how they are stored, just as they ask about other potential dangers in the home, at school, or wherever children play or travel. These guided conversations are respectful and nonjudgmental. Because they begin with an individualized assessment (ie, by asking), pediatricians can provide appropriate information tailored to the needs of the patients and their families to

improve health and reduce risk, just as physicians provide specific management and teaching for any other risk factor.

Physicians routinely ask questions that would be inappropriate in other, nonmedical settings. These questions are asked in private, with confidentiality assured, and with state and federal laws protecting the privacy of any health information a patient may confide in his or her physician. These questions lead to bidirectional understanding and targeted learning. Dialogue stemming from these questions will help families protect children from multiple forms of harm.

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REFERENCES

1. Okoro CA, Nelson DE, Mercy JA, Balluz LS, Crosby AE, Mokdad AH. Prevalence of household firearms and firearm-storage practices in the 50 states and the District of Columbia: findings from the Behavioral Risk Factor Surveillance System, 2002. *Pediatrics*. 2005;116(3):e370-e376.
2. Centers for Disease Control and Prevention (CDC). Injury prevention and control: data and statistics (WISQARS). Fatal injury reports 1999-2010, national or regional. CDC website. http://www.cdc.gov/injury/wisqars/fatal_injury_reports.html. Accessed November 1, 2012.
3. Schaechter J, Duran I, De Marchena J, Lemard G, Villar ME. Are "accidental" gun deaths as rare as they seem? a comparison of medical examiner manner of death coding with an intent-based classification approach. *Pediatrics*. 2003;111(4, pt 1):741-744.
4. Council on Injury, Violence, and Poison Prevention Executive Committee. Firearm-related injuries affecting the pediatric population. *Pediatrics*. 2012;130(5):e1416-e1423.
5. CS/CS/HB 155—Privacy of Firearm Owners. Florida House of Representatives website. <http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=44993>. Accessed November 11, 2011.
6. Singer S. Doctors sue Florida over gun-speech law. June 6, 2011. *The Palm Beach Post*. <http://blogs.palmbeachpost.com/on-call/2011/06/06/doctors-sue-florida-over-gun-speech-law/>. Accessed December 10, 2012.
7. *Wollschlaeger et al v Farmer et al*, Preliminary Injunction 11-cv-22026-MGC (2011).
8. *Wollschlaeger et al v Farmer et al*, Summary Judgment 11-cv-22026-MGC (2011).
9. Vernick JS, Teret SP, Smith GA, Webster DW. Counseling about firearms: proposed legislation is a threat to physicians and their patients. *Pediatrics*. 2006;118(5):2168-2172.