

When states practice medicine: Physician gag laws

by Alexis Macias

As a physician, you ask your patients a number of personal questions during the course of exams in order to provide the best care. Imagine if you were unable to ask those questions, thus diminishing your standard of care and undermining the physician–patient relationship. Throughout the 2011 legislative session, a few state legislatures aimed to do just that by introducing a number of physician gag order laws prohibiting health care providers from asking about gun ownership and safety.

Florida legislative efforts

Early last year, the Privacy of a Firearm Owners Act (H.B. 155) was introduced in the **Florida** legislature. Sponsored by the National Rifle Association (NRA), the original language of the bill would have prohibited health care professionals from asking patients or guardians, in cases involving children, if firearms are present in the home. The bill included criminal penalties, making violations of the legislation a third-degree felony punishable by a fine of up to \$5 million or a maximum of five years in jail.

In late March, the bill was amended to reflect compromise language agreed upon by the Florida Medical Association and the NRA. Essentially, the amended bill stated that health care professionals could inquire about firearms in the house when they, in good faith, believed that the information was relevant to the patient's medical care or the safety of the patient or other parties. All criminal penalties were removed from the bill, but patients could notify the Florida Board of Medicine if they felt "unnecessarily harassed" about firearms during an examination by their health care provider.

In June 2011, Florida Gov. Rick Scott (R) signed this bill into law. Soon thereafter, a group of physicians filed a lawsuit against Governor Scott to overturn the law. The plaintiffs included the Florida chapter of the American Academy of Pediatrics, the Florida chapter of American College of Physicians, and the Florida chapter of the American Academy of Family Physicians. The physicians argued that the

law restricted their constitutional right to free speech. In September, U.S. District Judge Marcia Cooke ruled that the law violated the First Amendment and ordered a temporary injunction blocking it from taking effect. Both parties have forgone appealing the temporary injunction decision and are seeking a decision for a permanent injunction. It is expected that arguments in the permanent injunction case will be heard early this year.

Gag laws in other states

Florida legislators were not the only ones debating the privacy of firearm owners. The NRA sponsored similar legislation in five other states: Alabama, Minnesota, North Carolina, Oklahoma, and West Virginia.

The **Alabama** legislature considered a bill (H.B. 516) late in the session that shared many similarities with the Florida bill. The language of H.B. 516 contained three main components:

- Prohibiting a health care provider from asking a patient or patient's guardian whether a gun is in the home
- Prohibiting documentation in a patient's chart if the question regarding gun ownership was asked
- Prohibiting a health care provider from denying treatment for a patient based upon the patient's refusal to answer the question—or, if answered, based on the answer provided

Whereas H.B. 516 provided some exemptions to when health care providers could ask about gun ownership, in the course of emergency treatment and mental health emergencies as well as disclosures to police officer conducting active investigations, it was not as broad as the Florida bill, and only allowed physicians to inquire about guns during a "mental health or psychotic episode where the patient's conduct or symptoms reasonably indicate that the patient has the capacity of causing harm to himself, herself, or others." The bill moved quickly through the state's House Public Safety and Homeland Security Committee but was killed upon adjournment of the legislature.

The **North Carolina** Senate introduced the No Firearms Questioning of Patients during a Medical Exam bill (S.B. 765), prohibiting health care providers from questioning patients about firearms when providing health care to patients unless the health care provider first informed the patient of four things:

- That the health care practitioner would like to question the patient or family about firearms
- The purpose of the questions
- That patients are not obligated to answer questions regarding firearm ownership
- That the health care provider cannot refuse treatment to a patient if he or she does not answer the questions

The bill saw little movement in the Senate before dying upon adjournment of the legislature in August.

The **West Virginia** legislature introduced firearm owner privacy legislation (H.B. 3085) for the second time since 2003. The bill would have amended the West Virginia Medical Practices Act to include a section that would have allowed for professional discipline of health care practitioners who ask patients if they own or possess firearms when the inquiry has “no relationship to the practice of medicine or the medical condition of the patient and is for the purpose of gathering statistics or to justify patient counseling, unless the inquiry is related to a medical complaint made by the patient.” H.B. 3085 specified that the state medical board could refuse to issue, suspend, or revoke any license if it concluded a physician had violated this section of the Medical Practice Act. H.B. 3085 saw little movement during the session and died upon adjournment.

Bills introduced in **Minnesota** (H.F. 1717) and **Oklahoma** (S.B. 858) were similar to those introduced in the previously mentioned states. Neither bill saw movement during the 2011 session and died upon adjournment of the legislatures.

Organized medicine’s position

The American College of Surgeons (ACS) is committed to protecting the relationship between physicians and patients, as well as to educating patients

about unsafe habits and behaviors. The College’s Committee on Trauma, in conjunction with the ACS Board of Regents, created a statement that recognizes the impact of firearm injuries and supports a number of gun safety efforts. These activities include developing and promoting programs directed at the prevention of firearm injuries by improving safe and knowledgeable transport, storage, and use of firearms, as well as making firearm injury a reportable condition.*

Other organizations, such as state medical societies and specialty societies, also oppose physician gag laws. In fact, during the November 2011 American Medical Association (AMA) House of Delegates meeting, the House passed a resolution (Resolution 219) that would oppose any restrictions on physicians being able to inquire and talk about firearm safety issues and risks with their patients. The statement also mandates that the AMA will oppose any law restricting physicians’ discussions with patients and their families about guns as an intrusion in medical privacy.†

It is important that the relationship between a physician and patient is not compromised through legislative means. Nonetheless, it is anticipated that a number of physician gag order bills will be introduced in the upcoming 2012 state legislative sessions, and the College will work with ACS chapters to implement appropriate grassroots advocacy initiatives. For additional information on physician gag laws, contact Alexis Macias at amacias@facs.org. [Ω]

Ms. Macias is Regional State Affairs Associate, Division of Advocacy and Health Policy, Chicago, IL.



*Statement on Firearm Injuries. American College of Surgeons. Available at: http://www.facs.org/fellows_info/statements/st-12.html. Accessed November 17, 2011.

†American Medical Association. Report of Reference Committee B. Resolution 219 Censorship of physician discussion of firearm risk. Available at: <http://www.ama-assn.org/assets/meeting/2011/i11-refcommhearings.pdf>. Accessed November 22, 2011.