Physicians, Patients, and Firearms: The Courts Say “Yes”

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On 16 February 2017, the Eleventh Circuit Court of Appeals overturned key provisions of Florida’s Firearm Owners’ Privacy Act (FOPA), the 2011 “gag law” that sought to deter physicians from discussing firearms with patients (1, 2). This 10-to-1 decision focused on physicians’ and patients’ First Amendment rights to freedom of speech. It upheld the original District Court ruling in favor of physicians who had challenged FOPA and nullified 3 prior opinions by a panel of the Eleventh Circuit Court itself. Four provisions of the law were challenged, and the court invalidated 3 of them. The invalidated provisions related to the following.

**Recordkeeping:** FOPA held that a physician or medical professional “may not intentionally enter any disclosed information concerning firearm ownership into [a] patient’s medical record” if he or she “knows that such information is not relevant to the patient’s medical care or safety, or the safety of others” (2).

**Inquiry:** FOPA provided that a physician or medical professional “should refrain from making a written inquiry or asking questions concerning the ownership of a firearm or ammunition by the patient or by a family member of the patient, or the presence of a firearm in a private home” unless he or she in “good faith believes that this information is relevant to the patient’s medical care or safety, or the safety of others” (2).

**Anti-harassment:** Under FOPA, a physician or medical professional “should refrain from unnecessarily harassing a patient about firearm ownership during an examination” (2).

The court held that the Second Amendment rights of patients do not outweigh the First Amendment rights of providers: “The Second Amendment right to own and possess firearms does not preclude questions about, commentary on, or criticism for the exercise of that right” (1). It found no evidence that health care providers had been inappropriately asking, documenting, or counseling about firearm safety, or that even “blanket questioning on the topic of firearm ownership is leading to bad, unsound, or dangerous medical advice” (1). The court also noted that there was no evidence that providers had been engaged in efforts to confiscate firearms. As a result of these findings, it remains legal for health care providers in Florida and elsewhere to ask and educate their patients about firearms and to document these discussions in the medical record.

The 1 provision of FOPA that was not deemed unconstitutional states that a medical professional “may not discriminate against a patient based solely upon the patient’s exercise of the constitutional right to own and possess firearms” (2). The court construed this provision to apply to such nonspeech actions as “failing to return messages, charging more for the same services, declining reasonable appointment times, not providing test results on a timely basis, or delaying treatment because a patient (or a parent of a patient) owns firearms” (1).

The court noted that health care providers may terminate a relationship with a patient over firearm issues, provided that they follow proper procedures to allow the patient to transfer care to a different provider. Patients can fire their physicians, too. As the court wrote, “[D]octors and patients undoubtedly engage in some conversations that are difficult and uncomfortable . . . [t]here is nothing in the record suggesting that patients who are bothered or offended by such questions are psychologically unable to choose another medical provider, just as they are permitted to do if their doctor asks too many questions about private matters like sexual activity, alcohol consumption, or drug use” (1).

**HOW DID WE GET HERE?**

A brief reminder of what made FOPA seem necessary to its supporters will help guide future efforts to engage with patients about firearms. Many leading medical professional associations have recommended that members discuss firearm safety with patients and have adopted positions on policy proposals seeking to prevent firearm injury. These measures have been seen as overreaching, and perhaps threatening, to those who view firearm safety discussions as beyond the scope of medical practice (3-5).

FOPA was also a response to a series of inflammatory incidents during interactions with patients. In 1 case, a Florida pediatrician terminated care with a patient whose mother wouldn’t answer questions about firearms (1). There were reports of patients being informed that Medicaid would not pay for care unless they answered questions about firearms and of children being “interrogated” without their parents present (1). At a legislative hearing for FOPA, a National Rifle Association representative testified that “[q]uestioning patients about gun ownership to satisfy a political agenda . . . needs to stop” (1).

We firmly agree that questioning patients for political reasons about firearms, or anything else, is wrong. But seeking and providing information about potential health risks, including those associated with firearms, is at the heart of the practice of medicine. We need to do it more often, and better (6).

**WHERE DO WE GO NOW?**

Most patients find discussing firearms with providers acceptable, especially in particular clinical contexts (such as when the patient exhibits suicide risk or is a...
child) (3–5). “Cultural competency”—at least basic knowledge about the risks and benefits of firearm ownership, combined with knowledge of and respect for other points of view—is important here, as with other sensitive topics (7). Judgment, shaming, and rigidity have no place in the examination room.

How can physicians become more competent on firearms and health? A 2016 article in Annals of Internal Medicine included resource information (6), and a recent review addresses state laws that may apply in particularly high-risk situations (8). The Massachusetts Attorney General has recently published helpful materials (9). Brochures from the National Shooting Sports Foundation, which recently partnered with the American Foundation for Suicide Prevention on a campaign to prevent firearm suicides, may be useful (10). The California Medical Association has established an ad hoc expert group that will review existing research and make recommendations later this year on the physician’s role in preventing firearm violence.

We have much to learn about how best to discuss firearms with patients. But the Eleventh Circuit’s decision in Wollenschlaeger v Florida makes clear that the right to have those discussions is protected by the Constitution. We know enough to proceed while further research is done. The real victory here is not for us physicians, but for our patients.

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