

Appeals Court Overturns Florida's Physician 'Gun-Gag' Law

Robert Lowes | February 16, 2017

In a decision that may be contested in the Supreme Court, a federal appeals court in Atlanta, Georgia, today overturned a Florida law that prohibits physicians from asking patients if they own a gun unless the question is medically relevant.

The American Medical Association, the American Academy of Pediatrics (AAP), and other major medical societies have opposed the so-called gun-gag law, saying it infringes on the First Amendment right of physicians to discuss gun safety, especially when patients have children who may come across a loaded, unsecured firearm. They liken questions about gun ownership — always relevant, in their view — to those about unfenced swimming pools and other household hazards.

Florida lawmakers, along with the National Rifle Association (NRA), counter that the law prevents physicians, some with an antigun bias, from harassing gun owners. Besides banning the ownership questions except when clinically necessary, the law forbids physicians from recording in the medical chart that a patient owns a gun, "unnecessarily harassing" gun owners, or otherwise discriminating against them.

The law, called the Firearm Owners Privacy Act (FOPA), has been on a judicial rollercoaster since its passage in 2011. Several Florida physicians and state chapters of the AAP, the American Academy of Family Physicians, and the American College of Physicians immediately sued the state in a federal district court in Miami, Florida, to challenge FOPA. US District Judge Marcia Cooke struck it down as unconstitutional. Cooke said its vagueness about what constituted a medically relevant gun question had a chilling effect on clinicians.

Florida then went upstairs to the US Court of Appeals for the Eleventh Circuit in Atlanta. There, a three-judge panel upheld FOPA as constitutional in a 2-to-1 vote. The majority opinion held that the law affected only clinical practice, not a physician's First Amendment rights. The two judges who voted to uphold the law were Republican appointees; the dissenting judge was appointed by Bill Clinton.

However, the plaintiffs convinced the full roster of the appellate courts judges — dominated by Democratic appointees — to rehear the case. This time around, 10 of the 11 judges voted to reaffirm the key elements of the original district court decision. The appellate court majority agreed that FOPA's prohibition against questions about gun ownership, record-keeping, and harassment were indeed unconstitutional. However, the court held that the law's antidiscrimination provision did not violate the constitution.

Like the federal district judge in Miami, the appellate court majority said that physicians and their gun questions did not threaten the Second Amendment right to bear arms.

"There was no evidence whatsoever before the Florida legislature that any doctors or medical professionals have taken away patients' firearms or otherwise infringed on patients' Second Amendment rights," the court said, noting that lawmakers based their measure on six anecdotes about medical gun questions in a state with more than 18 million residents. "There is no actual conflict between the First Amendment rights of doctors and medical professionals and the Second Amendment rights of patients that justifies FOPA's...restrictions on speech."

Medscape Medical News asked the NRA to comment on the decision, but did not receive a comment by press time.

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