

Guns, Doctors, Children and First Amendment Rights

by Ann Gerhardt, MD

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In 2011, the Florida legislature passed a law prohibiting physicians from asking parents about guns in the home and safety measures they employ to prevent their children's death. It was called the Firearm Owners' Privacy Act (FOPA) and pitted a state legislature's ability to regulate the practice of medicine against a physician's First Amendment right of free speech and her/his responsibility to promote healthful behaviors by patients.

The law prohibits 1) physicians from routinely asking patients about firearm ownership; 2) prohibits entering information about firearm ownership in patient records; 3) discriminating against patients based on firearm ownership; and 4) "unnecessarily harassing a patient about firearm ownership." The consequence of doing so could result in punishment as severe as losing their professional license.

Physicians and medical societies have challenged the law in courts. A successful stay of enforcement was overturned by a three-judge panel of the Eleventh Circuit Court of Appeals, but reinstated by the full 11-judge court. The full court decided that the Act violated physicians' free speech rights and that the anti-harassment clause was unconstitutionally vague. They decided that all the prohibitions except the one about discrimination were unconstitutional.

Free speech could not be inhibited under the guise of State regulation. The state could not prove a substantial state interest and that "there is no claim, much less any evidence, that routine questions to patients about the ownership of firearms are medically inappropriate, ethically problematic or practically ineffective."

The part of the decision I like the best is this statement: "We expect doctors to doggedly exhort unhealthy patients to exercise more, eat less, or stop smoking, even when such admonishments may 'annoy persistently.'" I'd be in big trouble if it were illegal to nag patients to switch to healthful and safe lifestyles.

The court felt that laws regulating physician speech must be designed to enhance rather than harm patient safety. **In other words, the law must favor a physician's duty to the child's safety over a parent's right to privacy concerning gun ownership.**

Approximately one-third of all U.S. households with children under the age of 18 have a firearm. In more than 40% of these households, gun owners store them unlocked, a key factor contributing to the approximately 2000 accidental shootings of children and teens each year. That doesn't include homicides and suicides, and all these numbers are hard to pin down because of variable reporting methods. Though most Americans believe that having a gun in the home makes them safer, public health research shows that being in a home with a gun significantly increases one's risk of death by homicide, suicide or an unintentional shooting.

So now what, other than a possible appeal to the Supreme Court? This law presumes that physicians ask about firearms in the home. Unfortunately, most don't. I hope the good that comes out of this law becomes a reminder that doctors should include firearm safety in the litany of health and injury-related behaviors we address. ¶