IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CIVIL ACTION NO. 11-CV-22026-MGC

DR. BERND WOLLSCHLAEGER, et al.

Plaintiffs,

v.

RICK SCOTT,
In his official capacity as Governor of the State of Florida, et al.

Defendants.

DECLARATION OF DR. LISA COSGROVE

I, Dr. Lisa Cosgrove, do hereby declare as follows:

1. My name is Dr. Lisa Cosgrove, and I am a member and the President of the Florida Chapter of the American Academy of Pediatrics ("FAAP"), a plaintiff in the above-captioned matter.

2. FAAP is a nonprofit Florida corporation, which serves as the Florida chapter of the national American Academy of Pediatrics ("AAP") organization. The mission of FAAP is to promote the health and welfare of Florida's children, including newborns, infants, children, adolescents and young adults, and to support pediatricians and pediatric specialists in providing quality healthcare to this group of patients.

3. As of June 2, 2011, FAAP has 1,682 members. Members include medical students, residents, and fully licensed doctors and dentists who have either studied or practiced

pediatric medicine. FAAP members reside and work in all major cities and geographic regions of Florida, with the highest concentration in Miami-Dade County. FAAP offers various levels of membership status, including Fellows, Associate Members, Young Physicians, Emeritus Fellows, Honorary Members, Resident Members, Medical Student Members, and Military Members, corresponding to the career status of its member physicians. In order to belong to FAAP, members must pay annual dues that vary according to membership level, with annual full dues currently set at $200 in addition to AAP national dues. Members of FAAP vote to elect FAAP's Executive Committee including its President, President-Elect, Immediate Past President, Secretary and Treasurer, as well as FAAP's Board of Directors. Only certain types of FAAP members are eligible to hold office. Attached as Exhibit 1 is a true and correct copy of FAAP's Constitution and Bylaws.

4. FAAP provides important services to its Florida members such as advocating specific local or regional Florida issues, bringing those issues to national attention as necessary, hosting local seminars, discussion groups, and meetings in Florida, and providing members with practice updates, newsletters, and organizational updates specific to Florida. As President of FAAP, I work with FAAP's Executive Committee to provide leadership and governance, and FAAP's standing committees such as the Committee on Finance, the Committee on Continuing Medical Education, and the Committee on Practice Support take a lead role in organizing other specific organizational services.

5. FAAP also works closely with its national-level affiliate, the American Academy of Pediatrics ("AAP"), a national organization comprising more than 60,000 pediatricians. The AAP and its chapters have a unique partnership of autonomy and cooperation. They are required to maintain bylaws and see that these bylaws do not conflict with the Academy's bylaws, and are

required to elect officers (President and Vice President) that are voting members of the national Academy. Chapters have complete organizational control over their activities, allowing them the freedom to address the needs and interests of their individual members.

6. AAP and its member pediatricians dedicate their efforts and resources to the health, safety and well-being of infants, children, adolescents, and young adults. AAP has approximately 60,000 members in the United States, Canada, Mexico, and many other countries. Members include pediatricians, pediatric medical subspecialists, and pediatric surgical specialists.

7. Both AAP and FAAP further the professional education of their members through meetings, seminars, and publications. In addition, AAP produces patient brochures containing safety guidance adopted by both AAP and FAAP that are available to FAAP members to distribute to their patients. Both AAP and FAAP also engage in advocacy, promoting the interests of their members and their organizational mission.

8. FAAP's goals include increasing its voice and influence on behalf of both children and pediatricians, promoting the art and science of pediatrics, encouraging young physicians to specialize in pediatrics, uniting qualified pediatricians in Florida, and addressing the changing needs and interests of pediatricians.

9. In support of FAAP's goal of increasing the quality of medical care available to the children of Florida and promoting the art and science of Pediatrics, FAAP together with its parent organization AAP publishes, promotes, and disseminates practice guidelines, policy statements, and academic literature relating to best practices in pediatric medicine.

10. AAP and FAAP, as its Florida chapter, recommend that pediatricians provide counseling and anticipatory guidance regarding the prevention of unintentional and intentional

injury as part of their preventive healthcare services. AAP and FAAP believe that pediatricians play a key role in educating parents about the risks of unintentional injuries and suggesting specific measures to minimize those risks, including environmental modification or the use of safety equipment. AAP and FAAP advise pediatricians that anticipatory guidance is a major component of well-child care and injury visits, and that anticipatory guidance for injury prevention should be an integral part of the medical care provided for all infants, children, and adolescents.

11. AAP and FAAP recommend that pediatricians implement preventive care practices such as counseling patients on effective methods for minimizing a variety of health and safety risks. To promote appropriate preventive counseling practices, AAP together with its subchapters, including FAAP, organized and implemented an initiative beginning in 1983 called The Injury Prevention Program ("TIPP"). TIPP includes a safety-counseling schedule for physicians, age-appropriate safety surveys, and age-appropriate safety sheets for physicians to distribute to patients and their families. Attached as Exhibit 2 is a true and correct copy of an example of physician literature regarding injury prevention published by AAP as part of TIPP.

12. Another initiative supported by AAP and FAAP called Bright Futures similarly encourages physicians to provide a wide range of injury prevention counseling and other preventive practices, and includes guidelines and literature aimed at both physicians and their patients. The injury prevention counseling recommended as part of the Bright Futures guidelines echoes that provided through the TIPP program.

13. Preventive consultations are particularly important in a pediatrician's medical practice because of the dangers to which infants, children, and young adults are disproportionately at risk. Through TIPP, Bright Futures, and related materials, AAP and FAAP

recommend counseling patients and families on matters including household chemicals, swimming pools, bike helmets, automotive safety seats, and firearms safety.

14. As set forth in the Bright Futures literature, unintentional injury occurring from many causes—including firearms—is the leading cause of death and morbidity among children older than 1 year, adolescents, and young adults. *Promoting Safety and Injury Prevention*, Bright Futures Guidelines for Health Supervision of Infants, Children, and Adolescents, http://brightfutures.aap.org/pdfs/Guidelines_PDF/10-Promoting_Safety_and_Injury_Prevention.pdf (last visited June 8, 2011) (hereinafter, "Bright Futures Guidelines"). Firearms in particular pose risks in households with children. One third of U.S. homes with children younger than eighteen have a firearm. Johnson, Renee M., MPH, Tamera Coyne-Beasley, MD, MPH, and Carol W. Runyan, Ph.D. "Firearm Ownership and Storage Practices, U.S. Households, 1992-2002." *American Journal of Preventive Medicine* 27 (2004): 173-82, 179. In addition, more than 40 percent of gun-owning households with children store their guns unlocked and one quarter of those homes store them loaded. *Id.* According to the most recent data sets published by the Centers for Disease Control and Prevention, every day in America 38 children and teens are injured by firearms, and 8 are killed by firearms. *WISQARS Nonfatal Injury Reports*, National Center for Injury Prevention and Control, http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html (report last accessed on June 16, 2011); *WISQARS Injury Mortality Reports, 1999 – 2007*, National Center for Injury Prevention and Control, http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html (report last accessed on June 16, 2011). Children and families in Florida face particular risk of gun violence, as Florida's overall gun death rate exceeds the national average. *National Vital Statistics Reports*, U.S. Department of Health and Human Services, http://www.cdc.gov/nchs/data/nvsr/nvsr58/nvsr58_19.pdf (last visited June 8, 2011). From 1999 to 2007,

1,195 children and teens in Florida were shot and killed with firearms. *WISQARS Injury Mortality Reports, 1999 2007*, National Center for Injury Prevention and Control, http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html (report last accessed June 8, 2011).

15. Suicide prevention is another reason why firearm safety counseling is an important part of our members' preventive consultations. Studies have shown that the presence of a firearm at home increases the risk of suicide even among those children and adolescents without a previous psychiatric diagnosis. D.A. Brent, J.A. Perper, et al., *Firearms and Adolescent Suicide: A Community Case-Control Study,* 147 Am. J. Dis. Child 1066 (Oct. 1993).

16. Physician safety counseling practices such as those outlined in programs supported by AAP and FAAP including TIPP and Bright Futures have been shown to be effective in improving parental safety practices. Robert H. DuRant, Shari Barkin, et al., *Firearm Ownership and Storage Patterns Among Families with Children Who Receive Well-Child Care in Pediatric Offices*, 119 Pediatrics 1271 (2007). In turn, parental safety practices are associated with lower risk of suicide and unintentional shootings in children and adolescents. David C. Grossman, Beth A. Mueller, et al., *Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries,* 293 JAMA 707 (2005). For example, a review of the literature on childhood injury-prevention counseling in primary care settings demonstrated that 18 of 20 studies have shown positive outcomes in increasing knowledge and behavior and in decreasing injury rates in children. This research has appeared in *Pediatrics*, a monthly peer-reviewed academic journal published by AAP. Attached as Exhibit 3 is a true and correct copy of an article published in *Pediatrics* that addresses firearms safety counseling recommendations specifically, and the proven effectiveness of such safety counseling generally.

17. AAP's and FAAP's injury prevention counseling research and recommendations can also be found in *AAP's Textbook of Pediatric Care*, a textbook published by AAP to help educate practitioners. Attached as Exhibits 4 is an excerpt from this textbook regarding firearms safety counseling guidance.

18. AAP and FAAP specifically urge practitioners to ask parents about firearm ownership and inform parents about the dangers of firearms in and outside the home. AAP and FAAP recommend that pediatricians incorporate questions about firearms into the patient history process and support the education of physicians and other professionals to increase understanding of the effects of firearms and help reduce the morbidity and mortality associated with their use.

19. In particular, AAP and FAAP make the following specific recommendations to physicians regarding firearms safety counseling:

a. In infancy and early childhood, pediatricians are encouraged to counsel on firearms safety in the context of home safety and safe storage of other hazardous items such as medications or cleaning supplies.

b. In early and middle childhood, this message can be built upon by encouraging parents to ask about the presence of firearms in homes where their children play; it should be emphasized that young children simply do not understand how dangerous firearms are and cannot be taught to overcome their curiosity about firearms.

c. Counseling on firearms injury prevention should be directed solely to parents through the 5 and 6 year visits; beginning with the 7 and 8 year visits,

pediatricians can counsel children not to touch firearms and to tell a parent if they see a gun.

d. In adolescence, youth should be asked about fighting and weapon carrying and counseled on nonviolent approaches to conflict resolution.

e. Pediatricians should talk to parents about the risk posed by keeping firearms in homes where teens live. Firearms are used in a majority of adolescent suicides, and over 90% of suicide attempts involving a firearm are fatal. Because teens can be very spontaneous and most teens have at least brief periods of depression, keeping a firearm in the home—even if it is unloaded and locked up—can be very dangerous for adolescents. For adolescents at risk of suicide, parents should be urged to remove firearms and ammunition from the home.

20. As one FAAP member physician recently explained, questions about firearms in the home are merely one part of a larger discussion about potential hazards in the home, a discussion that includes such topics as water temperature, access to pools, and the type of dog parents may own. "These [other] questions are just as personal as whether my patients' families own a gun," she said. "Physicians take care of toddlers who are accidently burned by water that is too hot in the bathtub. We feel the gut-wrenching pain when a child who has a drowned is transported into the ER." She explained asking about gun ownership enables her to "find out whether I need to provide suggestions for improved safety in the home."

21. Another pediatrician, a "proud" gun owner himself, echoed such sentiments. "Asking whether firearms are in a child's environment is as vital a piece of information in my risk assessment as knowing whether there are alcoholics in the homes, drug abusers, presence of trampolines, or any number of things that could harm a child," he said.

22. FAAP has already received feedback from a number of its members regarding H.B. 155 (the "Physician Gag Law" or the "Law") and its effect on their practices as well as their patients. FAAP member pediatricians have made known to the organization their opposition to the Physician Gag Law, their belief in the value of preventive medicine, and their fear that the law will suppress the free exchange of information and advice between doctors and patients that is necessary to provide effective care.

23. One member wrote to FAAP to express her concerns about the Law's detrimental effects, saying, "I ask about a lot of safety issues when I perform a well child check-up, discussing eliminating a child's access to harmful household dangers including pools, poisons, guns, matches, etc. If I cannot ask about these items in the home, how can I know if the parent is informed enough to keep their child safe? . . . . The patient-physician relationship is a vital part of our role as Pediatricians, and having restrictions placed on what we can and cannot discuss by those who do not practice medicine is simply unbelievable, not to mention horrifying."

24. Another member physician discussed the effect that the law would have on doctors in training, stating "certainly our residents will be hesitant to jeopardize their budding careers in view of the potential penalties for trying to protect their patients for which they all have sworn an oath of responsibility as physicians."

25. As another FAAP physician emphasized, the bottom line is that the Physician Gag Law will harm patients because it restricts physicians' most effective means of counseling – an interactive dialogue with patients. "I suppose my counseling with patients will be impersonal and vague, vanilla statements, such as 'if there are firearms in the house, they should be locked up and out of reach,' rather than a problem solving dialogue which patients have come to expect and we prefer because it leads to better outcomes."

26. In fact, FAAP physicians began experiencing harm caused by the Physician Gag Law even before it became law. As one explained, "[w]e have already felt an impact as some patients have threatened us saying we don't have the right to ask. I guess they believe the law is signed. We are no longer asking or stating anything about firearms as I don't want to get sued."

27. As a physician and gun owner myself, I agree with FAAP's members that the Physician Gag Law will adversely affect the quality of care that I and other physicians are able to give our patients. In my practice, I find that patients are generally appreciative of discussions I have with them regarding gun safety, including the fact that I can provide them with free gun safety locks if necessary. However, now that the Law has passed, I ask parents or patients permission to talk about guns, and if the parent or patient exhibits reluctance to discuss the subject, I no longer ask about guns in order to avoid the potentially dire professional consequences the Law would impose on me should the patient accuse me of violating it. For example, before the Law was passed, I used to ask children aged six to seven years old what they would do if they saw a gun on the ground. Now that the Law is in effect, however, I ask for parental permission before asking that question; if the parent does not give permission, I do not ask.

28. The combination of vague restrictions and dire consequences imposed by the Physician Gag Law has caused physicians like myself to self-censor our speech to patients on this important safety issue. On top of the Law's intrusion into the doctor-patient relationship, the Law is not clear about the circumstances under which a physician may be allowed ask patients or families about guns and what physicians can record regarding the discussion. As a result, physicians are at a loss to determine how to effectively counsel patients without risk of violating the Law. Physicians cannot afford to take lightly the possibility that, by simply asking patients

gun safety related questions, they may face disciplinary proceedings before the Florida Board of Medicine, which can result in revocation of one's license and fines. These consequences can be devastating for physicians both personally and professionally by harming their reputations and their ability to practice medicine. As a result, the Physician Gag Law will cause many physicians to cease advising patients on the health risks associated with firearms altogether, and may cause others to provide less detailed, compelling, or helpful guidance. This will directly harm patients and families who will be deprived of vital safety counseling.

I declare under penalty of perjury that the foregoing is true and correct.

Lisa A. Cosgrove

Dr. Lisa Cosgrove

Executed on June 20, 2011