

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, et al.)
<i>In his official capacity as Governor of the</i>)
<i>State of Florida</i>)
)
Defendants.)
)
)

DECLARATION OF DR. STUART HIMMELSTEIN

I, Dr. Stuart Himmelstein, hereby declare as follows:

1. My name is Dr. Stuart Himmelstein, and I am a member and the Governor of the Florida Chapter of the American College of Physicians, Inc. ("FACP"), a plaintiff in the above-captioned matter.
2. FACP is a nonprofit Florida corporation that serves as the Florida chapter of the American College of Physicians ("ACP"), a national organization of internists – physicians who specialize in the prevention, detection and treatment of illnesses in adults. The mission of FACP is to enhance the quality and effectiveness of health care by fostering excellence and professionalism in the practice of medicine.
3. FACP has approximately 5,800 members. Its membership encompasses individuals from across the state of Florida. Although FACP has members in all major metropolitan areas and geographical regions of Florida, the greatest concentration of its members

is in Miami-Dade County. In order to belong to FACP, all members except students are required to pay dues at varying rates according to membership type in addition to their ACP national dues. Members of FACP vote to elect FACP's Officers and at least half of its governing Council. Only active FACP members are eligible to serve as Officers or on the Council. Attached as Exhibit 1 is a true and correct copy of FACP's Bylaws.

4. FACP provides a range of services to its members such as advocating specific local or regional Florida issues, hosting local seminars, discussion groups, and meetings in Florida, and providing members with practice updates, newsletters, and organizational updates specific to Florida.

5. FACP works together with ACP to promote their joint mission of enhancing the quality and effectiveness of health care. The national ACP organization includes over 130,000 members physicians, residents, physicians' assistants, and medical students interested in internal medicine. As a chapter of ACP, FACP generally shares and adopts the policies of ACP, such as ACP's positions on preventive counseling generally and firearms safety counseling in particular.

6. Both organizations' stated goals include: establishing and promoting the highest clinical standards and ethical ideals; serving as the foremost comprehensive education and information resource for all internists; advocating responsible positions on behalf of its members; and promoting research to enhance the quality of practice, the education and continuing education of internists.

7. FACP and ACP work toward the goal of establishing and promoting the highest clinical standards by holding seminars and meetings, and by making updates, newsletters, and other publications available to members. Both FACP and ACP also engage in advocacy, promoting the interests of their members and their organizational mission. In addition, both ACP

and FACP publish, promote, and disseminate policy statements and academic and professional literature relating to best practices in internal medicine.

8. FACP and ACP take the position that preventive injury counseling constitutes a critical role for physicians. In particular, physicians have two principal roles in prevention: they identify risk factors for disease and injury, and they act as teachers and counselors. In order to fill those roles, FACP and ACP recommend that physicians' preventive counseling must cover not only diet, exercise, and substance abuse, but also injury prevention counseling regarding risky recreational activities (e.g., boating, bicycling, and riding motorcycles), use of swimming pools, smoke detectors in the home, domestic violence, and firearms safety. FACP and ACP recognize that studies and empirical evidence show that preventive interventions do in fact reduce certain cause-specific death rates.

9. Studies regarding preventive counseling and related physician guidance can be found in ACP publications, including *ACP Medicine*, a physicians' textbook published by ACP, and *Annals of Internal Medicine*, a peer-reviewed scholarly journal published by ACP. In addition to these sources, ACP and FACP also publish policy statements, practice bulletins, and brochures for patients and physicians regarding, among other things, preventive care recommendations. Attached as Exhibit 2 is a true and correct copy of an excerpt from the current edition of *ACP Medicine* that addresses preventive counseling generally and firearms safety counseling in particular.

10. Specifically with respect to firearm safety, ACP and FACP take the position that physicians have an important role to play in preventing injury. ACP and FACP's policy encourages physicians to inform patients about the dangers of keeping firearms, particularly handguns, in the home and to advise them on ways to reduce the risk of injury. ACP and FACP

further recommend that physicians should inquire about firearms in the home and counsel owners about storing their firearms in a locked container in a safe place.

11. ACP and FACP have also adopted a policy statement that gun violence and firearm injury prevention must be dealt with as high-priority issues, and that physicians must become more active in counseling patients about firearm safety. ACP and FACP believe that the preventable loss of life and injury and the resulting pain, suffering, and consumption of human, economic, and healthcare resources demand that firearm injuries should be considered a public health issue requiring immediate attention.

12. FACP has already begun receiving comments from a number of its members regarding H.B. 155 (the “Physician Gag Law” or the “Law”) and its potential effect on their practice as well as their patients. These FACP member physicians have made clear 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.

13. Across the spectrum of backgrounds and experience, from seasoned practitioners to gun-owning medical students, member physicians reported that the law harms their practices and their patients because it “interferes with a cornerstone of medical practice: free and confidential communication between” a doctor and his patients and the “ability to provide experienced, nonbiased, and informative information to patients.”

14. Physicians also offered examples of why instructing patients of all ages and their families on the importance of gun safety can mean the difference between life and death. One physician cited the example of a Pensacola man suffering from Alzheimer’s who shot and killed his caregiver daughter in his home because he no longer recognized her. Many patients (and

their families) are unaware of the safety risks associated with guns or “lack the necessary judgment” to appreciate the danger because of frailty, illness, depression, or other cognitive impairment. In a sentiment echoed by many others, a doctor stated, “As a physician, I believe patients should be counseled about having a gun in their home. . . . [Guns] could potentially cause a tragedy if left in an unsafe place.” According to another physician, “Our ability to educate our patients by providing counseling and information regarding gun safety is critical in a state where gun ownership is very high and children in particular are not infrequently the victims of gun-related accidents.”


15. Another member physician agreed, stating that the law would “limit and interfere with the patient-physician relationship by restricting what can be said by the physician.” He further expressed his opinion that the law’s restrictions on physician speech will “impact patient care and health prevention measures.”

16. In addition, member physicians noted specific modifications they would make to their practices that would lead to lower quality patient care. For example, one member explained that he would cease writing information in patients’ charts regarding firearms to indicate what had been discussed out of concern for potential disciplinary proceedings. These types of practice modifications diminish the efficiency and effectiveness of care that member physicians are able to provide.

17. I share the deep concerns expressed by these member physicians that the Law will adversely affect the quality of care we are able to provide to patients. I, too, am a physician. Like many FACP member physicians, I will, as a result of this Law, curtail, modify, or cease altogether speech in which I otherwise would engage with patients as part of their medical care.

18. For many member physicians, the Law's ambiguity about what they may ask and how they may ask it will likely cause them to simply stop counseling patients about the risks associated with firearms. Unfortunately, this could place their patients at greater risk of firearm-related injury. For other physicians, the Law will cause them to modify their safety counseling in a way that will lead to less personalized, less adamant, or less effective advice. Even those physicians who choose not to modify their firearms safety counseling practices at all in light of the law are now extremely concerned when discussing this important safety topic with patients that they may someday have to defend themselves in disciplinary proceedings before the Florida Board of Medicine. The Law has essentially forced member physicians to choose whether to adopt less effective firearm safety counseling practices that place patients at greater risk, or to continue to pursue effective and assertive firearms counseling at their own significant personal and professional peril.

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


MO, FACP, Governor,
Florida
Chapter of ACP

Executed on June 19, 2011.

Dr. Stuart Himmelstein