

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

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**DR. BERND WOLLSCHLAEGER, et al.**

Plaintiffs,

v.

**RICK SCOTT, et al.**

*In his official capacity as Governor of the  
State of Florida*

Defendants.

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## DECLARATION OF DR. BERND WOLLSCHLAEGER

I, Dr. Bernd Wollschlaeger, declare as follows:

1. My name is Bernd Wollschlaeger, and I am a member of the Florida Academy of Family Physicians ("FAFP"). I also currently serve on the Board of Directors of FAFP. I live in Miramar, Florida and work in North Miami Beach, FL. I am a physician specializing in family medicine and addiction medicine and have been practicing for 25 years. I received my medical degree from the University of Erlangen-Nuernberg (Germany) School of Medicine in 1986. I am licensed to practice medicine in Florida, and I am Board-certified in Family Medicine and Addiction Medicine.

2. My patients range from ages 2 to 98. My practice consists of treating patients for particular symptoms or established medical diagnoses as well as performing well-child checkups/yearly physical examinations, and includes counseling my patients on preventative health and safety measures.

3. I have been a member of FAFP since 1995. I joined FAFP because it offers a

number of services for family physicians, including professional and regulatory updates and continuing medical education (“CME”), and because FAFP advocates for the interests of family physicians, including myself.

4. Preventative health and safety counseling is an essential part of standard family medical practice today. I routinely counsel my patients regarding effective ways to minimize a variety of health and safety risks and to prevent the onset or worsening of diseases through making good nutritional, exercise, and lifestyle choices. Advising patients and their families about the health risks associated with alcohol, drugs, driving without a seatbelt, unprotected sex, household chemicals, smoking, and firearms, among other things, is a particularly crucial part of my practice as a family physician because of the heightened risks of accidental injury and death posed to infants, children, and young adults.

5. Practice guidelines issued by physicians’ organizations, including the American Academy of Family Physicians (“AAFP”) and the American Academy of Pediatrics (“AAP”) inform my understanding of current applicable standards of medical care. I understand that AAFP and AAP recommend preventative health and safety counseling to patients and families.

6. All of my patients are asked to fill out a basic, preventative-health related questionnaire aimed at uncovering specific risk factors, such as substance use, exercise, seatbelt use, firearm ownership and safe firearm storage. Attached as Exhibit I is a true and correct copy of the patient questionnaire that I used prior to passage of the H.B. 155 (the “Physician Gag Law” or the “Law”).

7. I generally use the patient questionnaires as the basis for taking an in-depth, individualized patient history. For example, if I have a middle-aged, sexually active patient, and I learn that she has multiple sexual partners, I will inquire into whether or not she uses

protection, and will counsel her about the risks of contracting an STD. If my patient has children at home, I will ask about car seat use and whether there are firearms in the home. My role as a family physician is to develop a relationship of trust with my patients so that I can engage them in an educational discussion in order to improve their health, including discussions regarding potentially sensitive topics.

8. As a family practitioner, I consider anticipatory guidance regarding safe firearm practices to be a key part of preventative health consultations, in light of the significant health risks posed by firearms to my patients. Prior to passage of the Physician Gag Law, I included questions about firearm ownership and safe storage in my patient questionnaire. If a patient declined to fill out the questionnaire, or indicated on it that he or she owned a firearm and did not keep it locked safely, I would follow up and ask further questions about firearms during my exam and offer counseling on safe storage practices. In addition, I would typically ask about firearm ownership and safe firearm storage if access to guns could potentially result in harm to the patient or others (*e.g.*, patients who have children at home, are suffering from addiction, depression, or suicidal ideations, have an unstable family environment, or are involved in a domestic violence situation).

9. In my discussions with patients prior to passage of the Physician Gag Law, I would usually share that I myself am a gun owner and concealed weapon permit-holder, and I would explain to them the steps that I take to ensure that my gun is properly secured. I also would discuss with patients the need to secure their guns from inadvertent use by third parties, avoiding accidental discharge, and keeping guns out of children's access. Many of my patients are unaware of how to use child safety mechanisms and lock boxes and the importance of separately storing guns and ammunition and are appreciative of learning more on these topics. I

would record information regarding gun ownership in a patient's chart if it relates to the patient's medical condition. I would also ask parents of minor children whether there are guns in the home as part of preventative healthcare screening, and I note in the children's medical records that I have discussed firearm safety with their parents.

10. I understand that physicians' organizations including AAP and others recommend counseling children of all ages and parents regarding firearm safety. Specifically, current guidance recommends that physicians counsel parents to keep guns away from the environment in which children live and play, and that any guns kept in the home be stored safely and securely.

11. The Physician Gag Law has adversely affected the quality of care that I am able to give my patients because it effectively prevents me from advising my patients on the health risks associated with firearms. With its vague language and ambiguously-defined exceptions, the Law does not provide me with a clear understanding of what I can and cannot do with respect to discussing firearms safety with my patients. In particular, the Law's narrow exception for EMTs, which permits only questions concerning gun possession or ownership in response to a medical emergency or specified exigent circumstances, suggests that incorporating routine questions concerning firearm safety as part of a yearly examination, such as I have undertaken in the past, is now prohibited. In addition, the Law includes phrases such as "relevant to the patient's medical care" and "unnecessarily harassing" without defining them. The possibility of having to appear before the Florida Board of Medicine if I even inadvertently violate the Law will cause me to err on the side of caution and refrain from discussing firearms as part of my standard preventative counseling, because appearing before the Board would damage my reputation in the medical community and my professional standing with colleagues and patients alike.

12. Appearing before the Board would harm not only my medical reputation but also

my business, as my patients would potentially question my medical judgment and ethics. Any reprimand or sanction would become a matter of public record that patients could easily find on an internet website. Moreover, I would need to hire an attorney, which would involve a great deal of personal expense and stress.

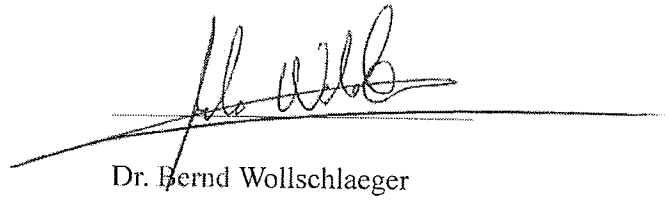
13. Most importantly, my patients will suffer as a result of my inability to counsel them on the hazards of firearms. Before the Physician Gag Law, if during an office visit for her two children, a woman expressed concern to me that her husband had an explosive temper and kept guns in the home, I would proactively speak with both her and her husband about firearms safety as a preventative health measure. I will now refrain from discussing firearms as part of my standard medical counseling, though, for fear being accused of violating the Law. Effective preventative medicine and safety counseling will thus be undermined in Florida, and infants, children, adolescents, and others will likely suffer as a result.

14. Since the Physician Gag Law was enacted, I have avoided discussing firearms with patients and families that I would normally have counseled regarding firearm safety. In addition, I have removed the firearms ownership and safe firearms storage question from my screening questionnaire. These questionnaire items used to provide valuable information – for example, if a well patient filled out a questionnaire at intake and subsequently developed depression or psychological illness, I could look back and see whether the patient had reported firearm ownership without having to rely the patient's answer in a potentially altered state of mind. Nevertheless, the Physician Gag Law precludes me from being able to administer firearm ownership and storage questions to all of my new patients through the questionnaire. Attached as Exhibit 2 is a true and correct copy of the patient questionnaire that I use currently following the enactment of the Physician Gag Law.

15. I have seen approximately 63 new patients from the date that the Physician Gag Law was signed on June 2, 2011 through June 16, 2011. On or about June 2, 2011, I altered my patient intake questionnaire to omit firearm ownership and storage questions. As a result, new patients I have seen since that time were not asked in writing about firearm ownership or storage. I also did not ask these new patients questions about firearms or provide firearm counseling to them in-person unless they presented with a medical condition or situation that called for immediate action. Due to the constraints imposed upon me by the Physician Gag Law, I have therefore been unable to effectively counsel these new patients regarding firearm safety, and the quality of care I am able to provide them has been diminished.

16. If the new Law is rescinded, I will resume inquiring about firearms ownership and counseling my patients and their families regarding firearms safety, free from any concerns that I will be disciplined for doing so, in an effort to provide the best possible medical care to my patients.

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



Dr. Bernd Wollschlaeger

Executed on June 17, 2011