

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

|  |   |
|--|---|
| <hr/>  |   |
| <b>DR. BERND WOLLSCHLAEGER, et al.</b>             | ) |
|  | ) |
| Plaintiffs,  | ) |
|  | ) |
| v.   | ) |
|  | ) |
| <b>RICK SCOTT, et al.</b>                          | ) |
| <i>In his official capacity as Governor of the</i> | ) |
| <i>State of Florida</i>                            | ) |
|  | ) |
| Defendants.  | ) |
|  | ) |
| <hr/>  |   |

**DECLARATION OF DR. SHANNON FOX-LEVINE**

I, Shannon Fox-Levine, declare as follows:

1. My name is Shannon Fox-Levine, and I am a member of the Florida Chapter of the American Academy of Pediatrics (“FAAP”). I live and work in Wellington, Florida. I am a physician specializing in pediatric medicine and have been practicing medicine for 10 years. I received my medical degree from the University of Maryland in 1997 and completed my residency at New York University’s Bellevue Hospital. I am licensed to practice medicine in Florida, and I am Board-certified in Pediatrics.

2. My patients range in age from newborns to 21. My practice consists of treating my patients for common illnesses such as upper respiratory infections, ear infections, and asthma and performing well-child checkups/yearly physical examinations, and includes counseling my patients on preventive health and safety measures.

3. I have been a member of the national American Academy of Pediatrics (“AAP”) since 1997 and recently joined FAAP in January 2011. I originally joined AAP to become part of a professional network, to stay current on best medical practices, and to receive continuing medical education. I specifically joined FAAP to develop professional relationships with other pediatricians in the state and to build a network of peers from whom I could receive advice.

4. I regularly receive information from FAAP and AAP, including newsletters, journals, and brochures. I use this information to stay updated on recent studies, new practice tips, and the latest preventive healthcare information and guidelines. I write my own practice newsletter that I circulate to my patients, and I sometimes include information from the AAP newsletter. For instance, the AAP newsletter recently contained a helpful article on safety tips for boating which I added into my letter. I consider the information that I receive from AAP and FAAP to be trustworthy, current, and consistent with applicable standards of patient care.

5. Preventive health and safety counseling is an important part of standard pediatric medical practice today, and a crucial part of my practice as a pediatrician. I routinely advise my patients and their families on the health risks associated with swimming pools, household chemicals, smoking in the home, and firearms, among other things, because of the heightened risks of accidental injury and death posed to infants, children, and young adults. Many of my patients’ parents are not aware that child proofing their home, putting a fence around their pool, having smaller children ride in the backseat, and using car seats, for example, can drastically lower their child’s potential for sustaining serious injury.

6. I depend heavily on the use of a computerized intake questionnaire to determine the unique health and safety risks that affect each individual patient. The questionnaire covers a diverse array of topics such as use of seatbelts and car seats and whether a family owns a

swimming pool. One of my medical assistants verbally runs through the questions with a patient's parents at the beginning of the appointment, and records their answers in the computer. The computer then highlights for me any "yes" answers, so that I can narrow down the applicable preventive healthcare topics that I need to cover during the examination.

7. Practice guidelines issued by physicians' organizations including the American College of Physicians ("ACP") and the American Academy of Pediatrics ("AAP") inform my understanding of current applicable standards of medical care. I understand that both ACP and AAP recommend preventive health and safety counseling to patients of all ages. I use AAP's Bright Future guidelines, which include a checklist of safety-related questions and advice geared specifically to each age, to help me discern what issues I should focus on during a check-up.

8. I also understand that both ACP and AAP recommend counseling children of all ages and parents regarding firearm safety. Specifically, current guidance from these organizations 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.

9. As a pediatrician, I consider anticipatory guidance regarding safe firearm practices to be a key part of preventive health consultations, in light of the significant health risks posed by firearms to my patients. Children are at a great risk for serious injury or death from guns in the home due to the possibility of an accidental misfiring, careless storage of guns, domestic disputes, or other violence. Up until a few months ago, my intake questionnaire included the question, "Do you own a gun?" If the parents indicated that they owned a gun, my medical assistant would ask two follow-up questions regarding whether the gun was kept locked up, and whether ammunition was stored separately, and record the answers in the computer.

10. Once I started seeing articles in the news about the pending legislation banning doctors from asking about gun ownership, I deleted the question concerning firearms from the intake form. At that time, I also blocked all information related to gun ownership in our medical records system, so that my medical assistants could not see it and that information would not print out on any medical forms. I was nervous that a patient might register a complaint against me with the Board of Medicine if I did not change the intake form, as I have had patients in the past who have questioned why we were asking about gun ownership.

11. The Physician Gag Law has adversely affected the quality of care that I am able to give my patients because it has prevented me from inquiring into the potential health risks associated with firearms that may be affecting my patients, and providing effective, patient-specific, firearms safety counseling. Due to my fear of the harsh consequences if I were found to have violated the law, I have censored my speech regarding firearms and modified my previous practices in an effort to comply with the law's unclear requirements.

12. Before the law was drafted, I relied on parents' answers to the intake questionnaire to determine whether firearms posed any risk to a particular child. If a parent indicated that they kept guns in the home, but they were not locked, I engaged them in a discussion about the dangers that presented to their child. If they also kept the ammunition in the same place as the gun, I would strongly advise them to modify their practices for the health and safety of their child, and instruct them in safer ways to store their firearms.

13. I am now afraid to use the questionnaire, for fear of violating the law or having a patient accuse me of harassing them. 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 asking questions about gun ownership or discussing firearms safety with my

patients. The law also fails to define the term “harassment,” leaving me to wonder whether a patient’s (or their parent’s) subjective and unpredictable reaction to my questions or advice will trigger disciplinary proceedings against me.

14. I feel that the quality of the healthcare I am providing has declined since the passage of the Physician Gag Law. Without the questionnaire to tell me which patients might be at risk from guns, and to remind me to discuss firearms safety, many of my patients and their parents will leave my office without a sufficient understanding of the grave risks posed by firearms and the knowledge to mitigate those risks. In the first two weeks alone after the Physician Gag Law was signed, the elimination of the firearm question from the preventive health questionnaire I use during well-child visits, and the concomitant provision of less patient-specific preventive care with respect to firearms, affected 125 of my patients.

15. I still advise some of my patients about safe firearm practices, because I feel that it is vitally important to their health and well-being. However, I am extremely careful about how I word my advice, keeping it very brief and phrasing it in a hypothetical fashion: “If you have a gun at home, make sure that you keep it locked up and store the ammunition separately.” For example, before the law existed, if I was treating a teenager who appeared depressed or suicidal, I would have conducted a detailed inquiry with his or her parents, without any hesitation, about what items in the home might present a particular danger, and instruct them on how to eliminate such risks. Now, however, I will provide only a cautiously worded suggestion that they remove or secure any weapons or pills from the home, which I fear will not impress upon patients or parents the gravity of my concerns as the treating physician responsible for the patient’s safety.

16. I feel that that such censored advice is a poor substitute for the in-depth and specific preventive healthcare information that I gave before the existence of the law. Some of

the parents that I speak with may not even own guns, as I am no longer allowed to ask that screening question, and may feel that I am wasting their time. Others may disregard such generic counseling as not applicable to them, as I am no longer able to dialogue with them regarding safe firearms practices and tailor my advice to their specific situation.

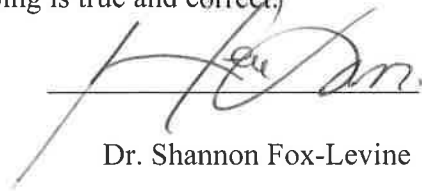
17. If I have an established relationship with a family, and I know that they own guns, I might feel more comfortable discussing firearms safety with them. For example, many of my patients' parents are police officers and keep a gun in the house. If their child is in the 8-11 age bracket, generally a high risk period for gun-related accidents, and I have been treating them for many years, I might ask them if they are employing proper gun safety practices. I will not ask any specific questions or provide any detailed counseling to a family that I am not as familiar with, though.

18. I am a law abiding citizen, and hope to practice medicine for many more years, so I do not want to engage in any conduct that might result in a complaint accusing me of having violated the law and the possible loss of my license. The possibility of having to appear before the Florida Board of Medicine if I even inadvertently violate the law has caused me to self-censor almost all direct questions about gun ownership, and to provide only watered-down advice regarding gun safety. I do not want to end up in the middle of a controversy with my patients, their parents, and the state medical board, which could result in severe sanctions and cost me my reputation in the medical community as well as my professional standing with colleagues and patients alike.

19. If the Physician Gag Law is rescinded, I will reinsert firearms-related questions into my intake questionnaire. I will also resume counseling my patients and their families regarding firearms safety in a more in-depth manner, 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. Shannon Fox-Levine

Executed on June 16, 2011