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Appeals court strikes down Florida 'docs v Glocks' law that barred physicians from asking about gun ownership

By Ben Guarino February 17

In 2011, the Florida state legislature passed a law called the Firearms Owners' Privacy Act. The act prohibited Florida doctors from asking routine questions about their patients' gun ownership, unless that information was deemed relevant to patient care or the safety of others.

It also barred physicians from noting in medical records whether patients owned guns. Patients, too, could report doctors for "unnecessarily harassing" about guns. The law was a reaction to a handful of highly publicized cases, including an incident in which a health professional privately asked children if their mother owned guns and an Ocala pediatrician who, in 2010, dropped a patient after she called his query about her gun ownership an invasion of privacy.

A few days after Florida Gov. Rick Scott (R) signed the Firearms Owners' Privacy Act into law, doctors challenged it in court. "Each year, Florida children are harmed when they or other children gain access to firearms that have not been stored properly," said the 2011 suit. The case, which became known as "Doc vs Glocks," wound its way from the state to the federal court system over the course of six years.

On Thursday, the U.S. Court of Appeals for the 11th Circuit in Atlanta ruled that the matter was not one of the Second Amendment, which protects the right to bear arms, but the First. The court ruled in a 10 to 1 decision that the law infringed upon doctors' freedom of speech.

"[T]here was no evidence whatsoever before the Florida Legislature that any doctors or medical professionals have taken away patients' firearms or otherwise infringed on patients' Second Amendment rights," wrote Judge Adalberto J. Jordan in the first of two majority opinions issued on Thursday.

The judges concluded that three provisions of the law — those involving record-keeping, inquiry and anti-harassment — violated the First Amendment. One aspect of the law was judged constitutional: Doctors could not discriminate against patients

who owned firearms, wrote Jordan.

The suit was brought by the Florida chapter of the American Academy of Pediatrics and other physician groups, including the American College of Physicians and American Academy of Family Physicians.

Several large professional medical groups have said it is within the bounds of ethical medical care for doctors to ask about gun safety at home, in the way a physician might ask parents of small children if they have a backyard pool. A May 2016 review, published in the Annals of Internal Medicine, noted that the majority of physicians believe that "they have the right to counsel patients about firearms."

"Firearm violence is an important health problem, and most physicians agree that they should help prevent that violence," Garen J. Wintemute, a co-author of the paper and a public health expert at the University of California Davis, told The Washington Post in May.

The American Medical Association, for instance, "encourages its members to inquire as to the presence of household firearms as a part of childproofing the home and to educate patients to the dangers of firearms to children," as Jordan noted. Likewise, the American Academy of Pediatrics' 2012 policy on gun safety cites a 2008 trial, which indicated that physician counsel plus distributing gun locks led to an increase in safe firearm storage.

Doctors are not wholly united on this front. Some groups, such as Doctors for Responsible Gun Ownership, have voiced their dissent, believing that doctors should not discuss guns with their patients. (Medical groups had "declared a culture war on gun ownership," the DRGO said on its website. It also warned that "your doctor may have a personal prejudice against gun ownership, shaped by her training in medical school or residency.")

For their part, Wintemute and his colleagues did not argue that doctors should tell patients to stop owning guns. Rather, as Wintemute told The Post, doctors should educate themselves about gun ownership, in order to offer nonjudgmental advice on safe gun storage. Plus, no matter how many times a doctor asks patients about their firearm safety, as Eugene Volokh noted in The Post in December 2015, the guns will not vanish.

When the law was barely a year old, U.S. District Judge Marcia G. Cooke of Miami declared it to be unenforceable, as the legislature failed to "provide any standards for practitioners to follow." She wrote that the law "aims to restrict a practitioner's ability to provide truthful, non-misleading information to a patient, whether relevant or not at the time of the consult with the patient."

Two years later, a panel of the appeals court reversed the ruling in a 2 to 1 decision. "The act simply codifies that good medical care does not require inquiry or record-keeping regarding firearms when unnecessary to a patient's care," Circuit Judge Gerald Tjoflat wrote in the majority opinion, as the Associated Press noted at the time.

The court battle continued. In 2016, the federal appeals court allowed the case to be reviewed en banc — which is to say, before the entire circuit — leading to Thursday's 10 to 1 ruling against the law, with Tjoflat dissenting.

Circuit Judge William Pryor, floated as a possible nominee to the Supreme Court by President Trump, wrote a concurring opinion to emphasize the First Amendment defense. He argued that the First Amendment "does not discriminate on the basis of motivation or viewpoint — the principle that protects pro-gun speech protects anti-gun speech with equal vigor."

Docs vs. Glocks may not be completely settled yet. As the AP pointed out, although the case will be sent back to Cooke, it could be further appealed to the Supreme Court.

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