

State Legislative Efforts to Regulate Physician Speech

Summary:

More states have enacted – or are considering – laws to mandate what physicians can—and cannot—say to their patients. Two such laws are the Florida “Privacy of Firearm Owners Act” and the New York “Palliative Care Information Act.”

Privacy of Firearm Owners Act

Florida’s “Privacy of Firearm Owners Act” restricts the ability of doctors to ask patients about gun ownership or record information about the patient gun ownership unless it’s medically necessary. The law is a compromise from the initial, more restrictive, bill that would have made it a felony, punishable of up to five years in prison with a fine of up to \$5 million, for physicians to ask patients about gun ownership.

The ACP Florida Chapter, working in coalition with the Florida Chapter of the American Academy of Pediatrics (AAP) and other organizations, opposed the legislation from the onset and filed suit in Florida contesting the new law. The lawsuit seeks a temporary injunction against the new law and a declaration that it violates the plaintiffs' constitutional right to free speech, as well as due process.

As of September 14, 2011, the federal judge reviewing the case agreed with the plaintiffs and has issued a temporary injunction blocking enforcement of the law ruling the law violates the U.S. Constitution’s free speech guarantees. The outcome of the lawsuit may affect similar pending legislation in other states.

Palliative Care Information Act

The New York “Palliative Care Information Act” became law last year and requires health care practitioners to provide palliative care information and end of life options to patient(s) diagnosed with a terminal illness or condition. Violations of the law are punishable by fines of up to \$5,000 for repeated offenses, and willful violations by a jail term of up to 1 year.

The Medical Society of the State of New York (MSSNY), and the New York Chapter of the American College of Physicians (ACP), objects to the new law expressing concerns that the law is vague in its usage of the term “terminally ill”; intrudes unnecessarily upon the physician-patient relationship and mandates “legislatively designed standard of care.”

ACTION: If these or similar actions to regulate physician speech emerges in your state, consider contacting your state medical societies/association and the ACP national office for assistance with these issues.

Resources

- Florida “Gun Gag” (“Privacy of Firearm Owners Act”
<http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=44993>)

- Florida Restricts Physicians Ability to Ask Gun Question
http://www.acponline.org/advocacy/state_policy/hottopics/florida_gun.pdf
- ACP Policy on Firearm Injury Prevention
<http://www.acponline.org/ppvl/policies/e000160.doc>.)
- New York End-of-life Mandate (“Palliative Care Information Act”)
<http://www.lexisnexis.com/community/estate-elderlaw/blogs/topcases/archive/2010/08/25/new-york-palliative-care-information-act-2009-ny-a-b-7617-signed-by-governor-on-aug-13-2010.aspx>)
- New England Journal article <http://healthpolicyandreform.nejm.org/?p=14487>
- NY ACP Letter to the Editor on End-of-life Mandate
http://www.acponline.org/advocacy/state_policy/hottopics/nejm_letter.pdf