



DOCTOR GAG ORDER LAWS

- ❑ **Bottom Line:** The gun lobby promotes state legislation that bars doctors from asking patients questions about gun ownership, often referred to as “doctor gag order” laws.
 - Doctor gag order laws interfere with the doctor-patient relationship and obstruct physicians’ ability to share potentially life-saving information on responsible gun storage practices with their patients—despite scientific evidence that patients counseled by their doctors on gun safety practices are more likely to store their firearms responsibly.
 - Florida passed a law in 2011 restricting doctors’ First Amendment right to discuss and record gun safety information with patients, and similar bills have been introduced in at least ten other states. Doctors and medical associations have challenged the constitutionality of Florida’s gag order law; that litigation is ongoing.
- ❑ **Evidence shows that physician counseling can encourage responsible gun storage and reduce the number of children who are injured and die from unintentional shootings and gun suicides.**
 - Children who live in homes with irresponsibly stored guns are at elevated risk of being injured or killed in unintentional shootings and gun suicides.¹ And **1.7 million American children** live in homes with guns that are both loaded and unlocked.²
 - An Everytown analysis found that more than two-thirds of unintentional child shooting deaths could have been avoided if gun owners stored their guns locked and unloaded.³
 - Multiple studies have found that doctor counseling of patients is effective in promoting responsible storage of guns in homes with children.⁴
- ❑ **The medical community supports firearm counseling by physicians.**
 - The American Academy of Pediatrics, the American Academy of Family Physicians, the American College of Physicians, the American College of Surgeons, and the Society for Adolescent Medicine all recommend that doctors inform parents of the risks of gun injuries and how to prevent them.⁵
 - Physicians consider counseling patients about responsible gun storage as similar to discussing the risks associated with swimming pools, riding without car seats, and exposing children to alcohol or drugs—and leading medical associations all recommend counseling patients on these topics as part of a good preventive medicine practice.
- ❑ **Despite this evidence and support from medical professionals, the NRA is campaigning to pass “doctor gag order” laws that prohibit physician counseling on gun safety.**
 - The gun lobby claims that doctor gag order laws are necessary to stop doctors from gathering information on gun ownership for a national gun registry—even though no such national registry exists, and the federal government is prohibited from creating or maintaining a national registry of gun owners multiple times over.⁶
 - In addition, at the urging of the National Rifle Association (NRA), Congress added an amendment to the Affordable Care Act to specify that nothing in the Act could be used to create a federal gun registry.⁷
 - In 2011, Florida became the first state to pass a doctor gag order law, prohibiting doctors from asking patients whether they own guns or recording any information about gun ownership in their medical records.⁸ This constitutionality of this law is currently being



litigated.

- Shortly after its passage, a group of doctors and medical associations challenged the Florida gag order law as a violation of free speech.
 - The federal trial court in Miami struck down the law, finding it violated doctors' First Amendment rights and did not impact patients' Second Amendment Rights.⁹
 - Governor Rick Scott appealed the decision, and in July 2014 a three-judge panel of the Eleventh Circuit Court of Appeals voted 2-1 to reverse the trial court's decision and reinstate the law.¹⁰
 - The law's challengers have filed a petition asking the full Eleventh Circuit to re-hear the case, and a decision on that petition is pending since August 2014.¹¹
- At least ten other states have introduced doctor gag order bills, though no other has yet become law.
 - In 2015, legislation was introduced in North Dakota,¹² Ohio,¹³ and Texas¹⁴ would have prohibited doctors from asking patients any question relating to the ownership or possession of firearms. None of these bills passed.
 - In 2014, legislators introduced bills modeled on the Florida law in Oklahoma¹⁵ and West Virginia.¹⁶ These bills would have prohibited doctors from asking about guns in the home. Neither passed.
 - Several other states have also previously introduced doctor gag order legislation, including Tennessee (2012), Alabama (2011), Minnesota (2011), North Carolina (2011), and Virginia (2006). None of these bills passed.
- ❑ **The gun lobby also actively promotes other legislation that interferes with doctor-patient relationships and could have a chilling effect on doctor counseling regarding gun safety.**
 - In 2013, Montana enacted NRA-supported legislation that prohibits doctors from using questions about gun ownership to determine what patients they will treat.¹⁷
 - In 2014, the Missouri legislature overrode a veto by Governor Jay Nixon to enact a law opposed by the state chapter of the American Academy of Pediatrics that:
 - (1) prohibits doctors from using an electronic record-keeping system that requires recording data about gun ownership to allow doctors to save medical records; and
 - (2) provides that doctors cannot be compelled by law to ask patients about guns, record data on guns in medical records, or notify government agencies about who owns guns.¹⁸
 - (Missouri also introduced failed legislation in both 2013 and 2014 that would have barred doctors from recording firearm ownership information in medical records.¹⁹)
 - Other states have considered similar legislation meddling in doctor-patient relationships in recent years.
 - In 2015, a bill was introduced in Indiana²⁰ that would have prohibited doctors from disclosing any information on patient gun ownership except under a court order. And a North Carolina bill was introduced that prohibited doctors from including questions about patients' gun ownership in written questionnaires.²¹
 - In 2014, a bill was introduced in Tennessee, similar to the Montana law, which would have prohibited physicians from using questions about gun ownership to determine what patients they will treat.²²
 - In 2013, legislators in five states—Kansas, Ohio, Oklahoma, South Carolina, and West



Virginia—introduced bills regulating doctor-patient relationships. None passed.

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- ¹ David C. Grossman, Donald T. Reay, and Stepanie A. Baker, *Self-inflicted and unintentional firearm injuries among children and adolescents: the source of the firearm*, Archives Pediatric Adolesc. Med. Vol. 153, No. 8 875-878 (1999).
- ² See Firearm Storage Patterns in US Homes With Children (Schuster et al., 2000); Okoro et al., *Prevalence of Household Firearms and Firearm-Storage Practice In the 50 States and the District of Columbia: Findings From The Behavioral Risk Factor Surveillance System, 2002*, Pediatrics 116(3): e370-e376.
- ³ See Everytown for Gun Safety, *Innocents Lost: A Year of Unintentional Child Gun Deaths* 3-4 n. 13-15 (2014).
- ⁴ T. Albright and S. Burge, *Improving Firearm Storage Habits: Impact of Brief Office Counseling by Family Physicians*, 16 J. Am. Bd. Of Family Practice 40 (2003); S.L. Barkin, et al., *Is office-based counseling about media use, timeouts, and firearm storage effective? Results from a cluster-randomized, controlled trial*, 122(1) Pediatrics 2008.
- ⁵ See Prevention of Firearm Injuries in Children (Gill et al., 2013); Alexis Macias, *When States Practice Medicine: Physician Gag Laws*, Bulletin of the American College of Surgeons, Feb. 1, 2012.
- ⁶ 18 U.S.C. § 926(a); P.L. 112-55; 28 C.F.R. 25.9(b)(3); 18 U.S.C. § 922(t)(2)(C); 28 C.F.R. 25.9(b)(1)(ii)
- ⁷ Title X, Protection of Second Amendment Gun Rights.
- ⁸ Act of Apr. 26, 2011, 2011 Fla. Laws 112 (codified at Fla. Stat. §§ 381.026, 456.072, 790.338).
- ⁹ *Wollschlaeger v. Farmer*, 880 F. Supp. 2d 1251 (S.D. Fla. 2012), *appeal docketed*, No. 12-14009 (11th Cir. 2012).
- ¹⁰ *Wollschlaeger v. Governor of Fla.*, 2014 U.S. App. LEXIS 14192, (11th Cir. July 25, 2014).
- ¹¹ Petition for Rehearing En Banc, *Wollschlaeger v. Governor of Fla.*, No. 12-14009 (11th Cir. Aug. 15 2014).
- ¹² 2015 N.D. H.B. 1241.
- ¹³ 2015 Ohio S.B. 177.
- ¹⁴ 2015 Tex. H.B. 2823.
- ¹⁵ 2014 Okla. H.B. 2022.
- ¹⁶ 2014 W.Va. H.B. 2502.
- ¹⁷ 2013 Mont. H.B. 459 (signed into law April 19, 2013).
- ¹⁸ 2014 Mo. S.B. 646 (veto override Sept. 9, 2014).
- ¹⁹ 2014 Mo. S.B. 613, § 571.012.
- ²⁰ 2015 Ind. H.B. 1494.
- ²¹ 2015 N.C. H.B. 699.
- ²² 2014 Tenn. H.B. 1827; 2014 Tenn. S.B. 1974.