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

DR. BERND WOLLSCHLAEGER, et al.

Plaintiffs,

v.

RICK SCOTT,
In his official capacity as Governor of the State of Florida, et al.

Defendants.

DECLARATION OF DR. TOMMY SCHECHTMAN

I, Dr. Tommy Schechtman, declare as follows:

1. My name is Tommy Schechtman. I am a pediatrician who resides and practices medicine in Palm Beach Gardens, Florida. I received my medical degree from the University of Texas Medical Branch at Galveston and have been practicing medicine for approximately 25 years. I am licensed to practice medicine in Florida, and I am certified by the American Board of Pediatrics in General Pediatrics.

2. I am a member of the Florida Chapter of the American Academy of Pediatrics ("FAAP"). I also currently serve on the Board of Directors and as Secretary of FAAP. I joined FAAP because it offers a number of services for pediatricians, including professional and regulatory updates and continuing medical education, and because FAAP advocates for the interests of pediatricians, including myself.

3. In my practice as a pediatrician, my role is to treat and prevent physical and mental illnesses in children and adolescents. I treat patients for particular symptoms or established medical diagnoses and also perform well-child checkups and yearly physical examinations. As part of this practice, I counsel my patients on preventative health and safety measures.

4. Preventative health and safety counseling is an essential part of standard pediatric medical practice. I routinely counsel my patients and/or their parents, as appropriate, regarding effective ways to minimize a variety of health and safety risks and to prevent injuries or the onset or worsening of diseases. Depending on the particular patient's age and circumstances, this counseling may address a large range of topics, including cigarette smoking, diet, seatbelt use, unprotected sex, household chemicals, swimming pool safety, and firearm safety.

5. It is crucial that I have the ability to talk about many different kinds of potential injuries and risks with patients or their parents as medically appropriate. It is also crucial that I be able to ask patients or their parents screening questions so that I know which areas of counseling are relevant to them. There are simply too many areas for important discussion to waste time, energy, and patients' attention on topics that are wholly irrelevant to them. For example, for patients who do not own swimming pools, counseling regarding how to safeguard their pools is not necessary.

6. The American Academy of Pediatrics ("AAP"), the standard-setting professional organization for pediatricians, advises me to counsel patients of all ages about injury prevention, including firearm injury prevention. Specifically, current guidance recommends that I counsel parents to keep guns away from the environments in

which children live and play, and that any guns kept in the home be stored safely and securely.

7. I routinely ask patients during checkups about a long list of risk factors, including whether guns are present in the home. When patients respond that they have firearms in their households, I discuss with them the need to store their guns safely. Children can also be harmed by firearms even if there is no firearm in the household where they live, because they may encounter firearms in their friends' homes. I therefore advise parents to ensure that firearms are safely stored in any household where their children play, and, once children reach sufficient maturity, counsel children themselves regarding firearms they may encounter.

8. In addition to such counseling during regular checkups, when patients come to me with certain mental health circumstances, such as suicidal ideation, I make it a point to ask about guns in the home, because the presence of guns creates an increased risk of self-injury.

9. I find the knowledge of firearm safety among my patients varies, and I believe that my educational efforts have been informative, changed behavior, and/or prevented serious injury or death for many of my patients.

10. As with other elements of patients' care, I record information regarding firearm ownership in my patients' medical records. Recording such information is important, because it communicates to a limited number of other staff members within my practice the discussion that took place with the patient or parent; it documents the preventative care that was given; and it allows me, as the child grows older, to look back

and know what topics I may need to cover again or expand upon. The confidentiality of these records is legally protected.

11. I recognize that this law contains "good faith" exceptions allowing me to ask questions of patients regarding firearms and to record related information in their medical records if, in good faith, I believe it to be "relevant." However, I do not know how this rule will be interpreted or applied. I have always asked patients about firearms out of a "good faith" belief that such questions are "relevant" to their care; such questions are a standard part of the practice of preventative medicine, intended to help them avoid injury. But the law may be interpreted to require a higher level of "imminent" harm to patients and not to include typical annual office visits at which I routinely ask patients about firearms, among a long list of other risk factors. Further, since the law envisions patients making complaints to the Board of Medicine, the law seems to leave it to the judgment of patients—who lack medical training—to decide in the first instance what is medically "relevant."

12. To the extent this new law restricts physicians from asking certain questions of their patients or recording information in patients' medical records, it interferes tremendously with the doctor-patient relationship. The trust between a doctor and patient is paramount. My role is to help them make decisions. I need to learn information from them in order to formulate effective advice, and they need to trust me in order to give me that information and understand and follow my advice. This law puts up a new barrier between doctor and patient, diminishing that trust and relationship, insofar as it restricts doctors in the questions they can ask their patients. At a very concrete level, patients would likely lose trust in me if I started talking about firearm safety without even

asking whether there were firearms in their household. They might think that I did not care about their particular circumstances, they might be offended, and they would lose faith that I am actually caring for *them*. Diminishing this relationship would harm my patients and me as a physician, because I would be prevented from doing my job as effectively as possible, and my patients would lose the chance to receive the most effective counseling and advice regarding their health and safety.

13. The penalties for violating this new law are severe. Being called before the Board of Medicine, even if I were in the right, would have significant consequences. I would have to incur the cost of hiring an attorney, because my medical license would be at risk. If news that I had been brought before the Board of Medicine for a statutory violation were made public, it would sully my reputation in the community, even if I were eventually cleared of wrongdoing. I would also have to report it on applications, and it would likely affect my insurance premiums. Even an entirely meritless claim that is ultimately dismissed can nonetheless cause considerable strain, cost, and distraction.

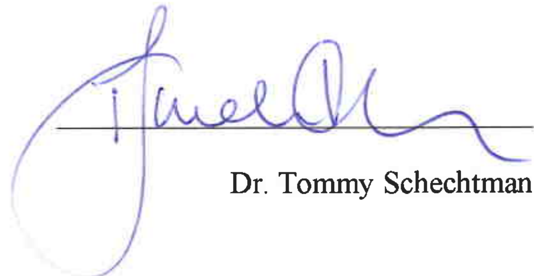
14. I have made a decision that I will continue, in good faith, to ask patients about the presence of firearms in their households as a part of my routine practice of preventative medicine, and to record in good faith related information in their medical records, even if this practice puts me at risk that patients may file complaints against me with the Board of Medicine. I believe that such questions are "relevant," and, indeed, simply too important to forgo. It is not a viable alternative to give every single patient or parent a one-sided speech about storing their firearms safely. Such monologues, which would be wholly irrelevant to the many patients who do not have firearms in their

households, would not be effective, would damage patients' trust in me and the care I provide, and would waste many precious minutes per day.

15. However, as a result of this new law, I will not follow up as thoroughly as I would otherwise have done so, if a patient or parent avoids answering or responds with hostility to questions regarding firearms—despite the fact that I think that such follow-up is important, because such patients may well be in need of counseling on this subject. I have had experiences in the past where patients have avoided answering or responded with hostility when questions regarding firearms were asked. For example, recently, a 16-year-old patient became upset when a nurse in my practice followed up to ask why he had not answered the question related to firearms on a written questionnaire of risk factors. Whereas before this law was passed I would ask such patients follow-up questions when they avoided answering or responded with hostility to such questions, I will now forgo such follow-up questions, for fear of being accused of violating this law.

16. Nevertheless, given that I plan to continue in good faith routinely asking patients initial screening questions regarding firearms, I have an immediate fear that a patient of mine, spurred by this law, may make a report against me to the Board of Medicine.

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



Dr. Tommy Schechtman

Executed on June 21, 2011.