

The Patient Trust Act: Taking Politics Out of the Exam Room in Pennsylvania

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Across the country, politicians are playing doctor – pushing for laws that intrude into exam rooms and conflict with professional and ethical standards of medical care. The laws they are enacting put politicians' words in the mouths of health care providers, prohibit providers from communicating important health information, mandate unnecessary procedures or outdated modes of care and much more.

The government has an important role to play in regulating the medical profession, but when those regulations do not comport with medical standards and/or when they interfere in the patient-provider relationship and undermine patient-centered care, lawmakers are abusing their authority.

The **Patient Trust Act** would help ensure that in Pennsylvania, medical decisions are left where they belong – in the hands of patients and their professional health care providers.

The Patient Trust Act states that Pennsylvania and its local and county governments:

- ▶ Will not require health care providers to give patients information that is medically inaccurate or prohibit the provision of information that is medically appropriate and accurate;
- ▶ Will not require health care providers to perform services that are inconsistent with appropriate and evidence-based medical standards; and
- ▶ Will not prohibit health care providers from delivering care in a manner that is appropriate and consistent with evidence-based medical standards.

“Politicians are increasingly overstepping their boundaries by considering and enacting unprecedented numbers of measures that inappropriately infringe on clinical practice and patient-physician relationships and improperly intrude into the realm of medical professionalism, often without regard to established, evidence-based care guidelines.”

—Executive leadership of the American Academy of Family Physicians, American Academy of Pediatrics, American College of Obstetricians and Gynecologists, American College of Physicians, and American College of Surgeons, *New England Journal of Medicine*, October, 2012

Why the Patient Trust Act is Needed

The Patient Trust Act addresses the serious and growing problem of laws that impose politics and ideology on clinical care. This dangerous trend threatens evidence-based, patient-centered medicine, the delivery of quality care, and public health. Restrictions on how providers may deliver care have impaired health care professionals' ability to give patients medically appropriate care and counseling on issues such as gun safety, environmental risk factors and abortion care.¹

For example:

- ▶ In Florida, a law restricts health care providers' ability to counsel patients about gun safety² – despite the fact that the American Academy of Pediatrics recommends such counseling to help prevent unintentional shooting deaths especially among children.³
- ▶ In Pennsylvania, Act 13 of 2013⁴ restricts health care providers from performing their public health obligations to protect third parties from harm due to exposure to toxic fracking chemicals by limiting provider use of that information to treatment of a specific potentially exposed patient through a mandatory confidentiality agreement. Thirteen states require that information regarding fracking chemicals be shared with health professionals, but many of those requirements have provisions that may limit sharing that information with anyone else, including other potentially exposed patients and the public.⁵
- ▶ In several states, health care providers are required to give, offer or refer women seeking abortion care to state-mandated materials that include medically inaccurate information that falsely asserts a link between abortion and breast cancer.⁶ Thirteen states require health care providers to perform an ultrasound,⁷ three of which also require providers to describe and display the image, regardless of medical need or the wishes of the patient.⁸ Twenty-seven states force providers to delay abortion care for up to 72 hours.⁹ These are just a few examples of the widespread political interference in abortion care. In 2015 alone, lawmakers considered 396 provisions restricting abortion and enacted a total of 57 new abortion restrictions.¹⁰

“State legislatures should not stop physicians from practicing good medicine. This law has a chilling effect on life-saving conversations [about gun safety] that take place in the physician's office.”

—James M. Perrin, MD, FAAP, Former President of the American Academy of Pediatrics, in the American Academy of Pediatrics' statement on the “Florida Privacy of Firearm Owners Act,” July 28, 2014

Health Care Providers Speak Out to Protect Patient Trust

Medical organizations in Pennsylvania and around the country are taking a stand against political intrusion into the exam room. The executive leadership of five major medical groups – the American Academy of Family Physicians, American Academy of Pediatrics, American College of Obstetricians and Gynecologists, American College of Physicians and American College of Surgeons – signed a statement published in the *New England Journal of Medicine* that decried the growing encroachment of politics into medical care.¹¹ Twenty-

three organizations, including more than a dozen medical associations, have endorsed the principles of the **Coalition to Protect the Patient-Provider Relationship**, a national consortium of medical and advocacy groups dedicated to keeping politics out of the exam room.¹² The American Medical Association adopted a resolution in opposition to “any government regulation or legislative action on the content of the individual clinical encounter between a patient and physician without a compelling evidence-based benefit to the patient, a substantial public health justification, or both.”¹³

In 2012, the Pennsylvania Medical Society (PAMED) sent a letter opposing legislation that would have mandated an ultrasound prior to an abortion and dictated the content of the conversation between a woman and her health care provider, irrespective of medical need or appropriateness. PAMED wrote, “As physicians, we are dedicated to our professional oath to deliver the highest quality care possible and to provide that care in partnership with our patients. . . . [W]e are particularly sensitive to protecting and preserving our confidential relationship with our patients, who are most vulnerable when faced with serious illness or confronted with difficult medical decisions.”¹⁴ The letter noted that, by “legislating specific diagnostic protocols,” the proposed bill, if it became law, would “significantly jeopardize that open dialogue within the physician-patient relationship, which is the very foundation upon which modern medicine was built.”¹⁵ Although this bill did not pass, the threat still looms.

Medically Appropriate Care Should Be Noncontroversial

All patients deserve health care that is medically appropriate and based on scientific evidence. The **Patient Trust Act** would prohibit state, county and municipal laws that mandate care that is inconsistent with evidence-based standards or that ban care that *is* consistent with evidence-based medicine. All health care providers should be able to give their patients high quality, individualized care based on their professional judgment, without fear of political intrusion that undermines professional standards of care. All patients are entitled to receive care based on their individual needs and what is medically appropriate, not on a politician’s ideology.

For more information, please contact Sarah Lipton-Lubet, National Partnership for Women & Families, at slipton-lubet@nationalpartnership.org or Tara Murtha, Women’s Law Project, at tmurtha@womenslawproject.org.

1 Weinberger, S.E., Lawrence, III, H.C., Henley, D.E., Alden, E.R., & Hoyt, D.B. (2012, October 18). Legislative Interference with the Patient–Physician Relationship. *New England Journal of Medicine* 367, p. 1557. Retrieved 9 September 2015, from <http://www.nejm.org/doi/full/10.1056/NEJMsb1209858>

2 FLA. STAT. § 790.338. Upheld as constitutional in *Wollschlaeger v. Governor of the State of Florida*, No. 12-14009, 2015 WL 8639875 (11th Cir. Dec. 14, 2015).

3 Hagan, J.F., Shaw, J.S., & Duncan, P.M. (2008). *Bright Futures: Guidelines for Health Supervision of Infants, Children, and Adolescents*. American Academy of Pediatrics. Retrieved 9 September 2015, from <http://www.first5kids.org/sites/default/files/download/Appendix%20B%20Bright%20Futures%20Guidelines.pdf>

4 58 PA. CON. STAT. ANN. §§ 3203, 3222.1(a).

5 McFeeley, M. (2014). Falling Through the Cracks: Public Information and the Patchwork of Hydraulic Fracturing Disclosure Laws. *Vermont Law Review*, 38. (describing laws of Ala., Ariz., Calif., Colo., Ill., Kan., Mont., Ohio, Pa., Tenn., Texas & W.Va.); N.C. GEN. STAT. §113-391.1(d)(2014).

6 Kansas law explicitly requires doctors to provide this information. See KAN. STAT. ANN. § 65-6709(a)(3). Mississippi and Texas laws require doctors to provide such information “when medically accurate” and to refer patients to state materials mandated by law which inaccurately report a potential link between abortion and breast cancer. See MISS. CODE ANN. §§ 41-41-33(1)(a)(ii), 41-35(1)(c); TEX. HEALTH & SAFETY CODE ANN. § 171.012(a)(1)(B)(iii), 171.014(a)(1). Oklahoma includes this information in its state-drafted written materials, but it is not mandated by state law. See also Guttmacher Institute. (2016, February 1). *State Policies in Brief: Counseling and Waiting Periods for Abortion*. Retrieved 25 February 2016, from https://www.guttmacher.org/statecenter/spibs/spib_MWPA.pdf

7 Alabama (ALA. CODE § 26-23A-4(b)(4)); Arizona (ARIZ. REV. STAT. ANN. § 36-2156(A)(1)(a)); Florida (FLOR. STAT. ANN. § 390.011(3)(b)); Indiana (IND. CODE ANN. § 16-34-2-1.1(4)(b)); Kansas (KAN. STAT. ANN. § 65-6709), Louisiana (LA. REV. STAT. ANN. § 40:1061.10(C)); Mississippi (MISS. CODE ANN. § 41-41-34(1)(a)); North Carolina (10A N.C. Admin. Code 14E

.0305); Ohio (O.R.C. ANN. 2919.191); Oklahoma (63 OKL. ST. § 1-748); Texas (TEX. HEALTH & SAFETY CODE ANN. § 171.012(a)(4)(A)); Virginia (VA. CODE ANN. § 18.2-76(b)); and Wisconsin (WIS. STAT. § 253.10(3g)(1)). In Ohio, the governing law requires providers to test for fetal heartbeat, which in most cases requires an ultrasound or similar medical procedure. North Carolina's mandatory describe and display ultrasound law was permanently enjoined in *Stuart v. Camnitz*, 774 F.3d 238 (4th Cir. 2014), but a separate regulation requiring a mandatory ultrasound and offer to display remains in place and enforceable. Oklahoma's mandatory describe and display law was ruled unconstitutional in *Nova Health Systems v. Pruitt*, 292 P.3d 28 (Okla. 2012), but a separate mandate requiring an ultrasound remains in place and enforceable. See also Guttmacher Institute. (2016, February 1). *State Policies in Brief: Requirements for Ultrasound*. Retrieved 25 February 2016, from https://www.guttmacher.org/statecenter/spibs/spib_RFU.pdf

8 Louisiana (LA. REV. STAT. ANN. § 40:1061.10(D)(2)); Texas (TEX. HEALTH & SAFETY CODE ANN. § 171.012(a)(4)); and Wisconsin (WIS. STAT. ANN. § 253.10(3g)). See also Guttmacher Institute. (2016, February 1). *State Policies in Brief: Requirements for Ultrasounds*. Retrieved 22 February 2016, from http://www.guttmacher.org/statecenter/spibs/spib_RFU.pdf

9 Guttmacher Institute. (2016, March 1). *State Policies in Brief: Counseling and Waiting Periods for Abortion*. Retrieved 28 April 2016, from https://www.guttmacher.org/statecenter/spibs/spib_MWPA.pdf; in an additional state (Florida), such a law is temporarily enjoined in pending litigation.

10 Guttmacher Institute. (2016, January 4). *Laws Affecting Reproductive Health and Rights: 2015 State Policy Review*. Retrieved 4 February 2016, from <http://www.guttmacher.org/statecenter/updates/2015/statetrends42015.html>

11 See note 1.

12 Coalition to Protect the Patient-Provider Relationship. Available at: www.coalitiontoprotect.org

13 American Medical Association House of Delegates. (May, 2013). *Resolution 717: Government Interference in the Patient-Physician Relationship*. On file with National Partnership for Women & Families.

14 Pennsylvania Medical Society. (Feb. 10, 2012). *Letter from Pennsylvania Medical Society to Pennsylvania House Representatives Opposing House Bill 107*. On file with National Partnership for Women & Families.

15 Ibid.

The National Partnership for Women & Families is a nonprofit, nonpartisan advocacy group dedicated to promoting fairness in the workplace, reproductive health and rights, access to quality health care and policies that help women and men meet the dual demands of work and family. More information is available at www.NationalPartnership.org.

The Women's Law Project is a legal advocacy organization with a record of protecting reproductive freedom in Pennsylvania and across the country. To create a more just and equitable society, the Law Project engages in high-impact litigation, public policy advocacy, and community education. More information is available at www.womenslawproject.org.

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