

**FIREARMS SAFETY COUNSELING REPRESENTATION:
PHYSICIAN QUALIFICATIONS AND LIABILITY**

Part One: Qualifications

I affirm that I am certified to offer (Name of Patient: _____), hereinafter referred to as "the Patient", qualified advice about firearms safety in the home, having received:

Specify Course(s) of Study:

from:

Specify Institution(s)

on:

Specify Course Completion Date(s):

resulting in:

Specify Accreditation(s), Certification(s), License(s) etc.:

Check one, as appropriate:

I represent that I have reviewed applicable scientific literature pertaining to defensive gun use and beneficial results of private firearms ownership. I further represent that I have reviewed all other relevant home safety issues with the Patient, including those relating to electricity, drains, disposals, compactors, garage doors, driveway safety, pool safety, pool fence codes and special locks for pool gates, auto safety, gas, broken glass, stored cleaning chemicals, buckets, toilets, sharp objects, garden tools, home tools, power tools, lawnmowers, lawn chemicals, scissors, needles, forks, knives, etc. I also acknowledge, by receiving this document, I have been made aware that, in his inaugural address before the American Medical Association on June 20, 2001, new president Richard Corlin, MD, admitted "What we don't know about violence and guns is literally killing us...researchers do not have the data to tell how kids get guns, if trigger locks work, what the warning signs of violence in schools and at the workplace are and other critical questions due to lack of research funding." (UPI). In spite of this admission, I represent that I have sufficient data and expertise to provide expert and clinically sound advice to patients regarding firearms in the home.

OR

I am knowingly engaging in Home/Firearms Safety Counseling without certification, license or formal training in Risk Management, and; I have **not** reviewed applicable scientific literature pertaining to defensive gun use and beneficial results of private firearms ownership.

Part Two: Liability

I have determined, from a review of my medical malpractice insurance, that if I engage in an activity for which I am not certified, such as Firearms Safety Counseling, the carrier (check one, as appropriate):

will

will not

cover lawsuits resulting from neglect, lack of qualification, etc.

Insurance Carrier name, address and policy number insuring me for firearms safety expertise:

I further warrant that, should the Patient follow my firearm safety counseling and remove from the home and/or disable firearms with trigger locks or other mechanisms, and if the patient or a family member, friend or visitor is subsequently injured or killed as a result of said removal or disabling, that my malpractice insurance and/or personal assets will cover all actual and punitive damages resulting from a lawsuit initiated by the patient, the patient's legal representative, or the patient's survivors.

Signature of attesting physician and date: _____

Name of attesting physician (please print): _____

Signature of patient and date: _____

Name of patient (please print): _____

Patient: Indicate if physician "REFUSED TO SIGN." Have physician place a copy in your chart/medical record.

Risk Management Advice to Physicians and Malpractice Insurance Providers: Don't Borrow Trouble

© 2000 by Joe Horn crowtalk@theriver.com

One of the best games in town is litigation, and litigating against physicians is even more popular than suing gun manufacturers. Physicians and their malpractice insurance carriers are well aware that litigators are constantly looking for new opportunities to sue. Let's talk about one of those new areas of liability exposure.

Nowadays, many physicians and other health care providers are engaging in the very risky, well intentioned, albeit naive and politically inspired business of asking their patients about ownership, maintenance and storage of firearms in the home, and even removal of those firearms from the home. Some could argue that this is a "boundary violation," and it probably is, but there is another very valid reason why these professionals should NOT engage in this practice -- MASSIVE LIABILITY.

Physicians are licensed and certified in the practice of medicine, the treatment of illnesses and injuries, and in preventative activities. They may advise or answer questions about those issues. However, when physicians give advice about firearms safety in the home, without certification in that field, and without physically INSPECTING that particular home and those particular firearms, they are functioning outside the practice of medicine.

Furthermore, if they fail to review the gamut of safety issues in the home, such as those relating to electricity, drains, disposals, compactors, garage doors, driveway safety, pool safety, pool fence codes and special locks for pool gates, auto safety, gas, broken glass, stored cleaning chemicals, buckets, toilets, sharp objects, garden tools, home tools, power tools, lawnmowers, lawn chemicals, scissors, needles, forks, knives, and on and on, well, you get the drift. A litigator could easily accuse that physician of being NEGLIGENT for not covering whichever one of those things that ultimately led to the death or injury of a child or any one in the family or even a visitor to the patient's home.

To engage in Home Safety Counseling without certification, license or formal training in home safety and Risk Management and to concentrate on one small politically correct area, i.e., firearms to the neglect of ALL of the other safety issues in the modern home, is to invite a lawsuit because the safety counselor, (Physician) Knew, Could have known or Should have known that there were other dangers to the occupants of that house more immediate than firearms. Things like swimming pools, buckets of water, and chemicals in homes are involved in the death or injury of many more children than accidental firearms discharge [Source: CDC.] Firearms are a statistically small, nearly negligible fraction of the items involved in home injuries. Physicians SHOULD know that. So, why all of a sudden do some physicians consider themselves to be firearms and home safety experts? Where is their concern for all the other home safety issues that they DON'T cover with their patients?

Once physicians start down this path of home safety counseling, they are completely on their own. A review of their medical malpractice insurance will reveal that if they engage in an activity for which they are not certified, the carrier will not cover them if (or when) they are sued.

Consider a physician asking the following questions of his or her malpractice insurance carrier:

- *One of my patients is suing me for NOT warning them that furniture polish was poisonous and their child drank it and died. I only warned them about firearms, drugs and alcohol. Am I covered for counseling patients about firearms safety while not mentioning and giving preventative advice about all the other dangers in the home, and doing so without formal training or certification in any aspect of home safety risk management? You know their answer.*
- *How much training and certification do I need to become a Home Safety Expert Doctor? They will tell you that you are either a pediatrician or you are the National Safety Council. But, you don't have certification to do the National Safety Council's job for them.*

Homeowners and parents are civilly or criminally responsible for the safety or lack thereof in their homes. My advice to physicians is to not borrow trouble by presuming to be able to dispense safety advice outside your area of expertise: the practice of medicine. Your insurance carrier will love you if you simply treat injuries and illnesses, dispense advice on how to care for sick or injured persons, manage sanitation problems and try to prevent disease, but stay out of the Risk Management business unless you are trained and certified to do it. For example, E.R. doctors do not tell accident victims how to drive safely.

Now, let's discuss the very serious issues involving the lawful possession and use of firearms for self and home defense, and the danger and liabilities associated with advising patients to severely encumber the firearm(s) with locked storage, or advising the patient to remove them entirely. Patient X is told by Doctor Y to remove or lock up a firearm so it is not accessible. Patient X, does as counseled and has no firearm available at close at hand. Subsequently, patient is then the victim of a home invasion and calls 911, but the police are buried in calls and don't arrive for 20 minutes during which time Patient X is raped, robbed and murdered. Anyone can see the liability issue here, particularly Risk Management specialists and liability insurance carriers.

It's just a matter of *when* and not *if* this will happen. Sooner or later, it will - if a home invasion takes place and Patient X takes Doctor Y's advice.

Now, imagine what follows this horrendous event. Who is to blame? The perpetrator is long gone, and even so, the Plaintiff's litigator will state that the perpetrator could have been neutralized by the appropriate lawful defensive use of a firearm, which *had* been in the home, but was no longer available to the deceased/injured because he/she followed a Physician's *expert* advice to render him/herself and his/her home defenseless against violent crime.

The Litigator will further argue that the Physician Knew, Could have known, Should have known that removing a firearm from use for home defense would result in harm to the patient if and when a crime was committed against the patient in the home, as any reasonable person would have surmised.

If one acknowledges the already dangerous general liability of home safety counseling and then adds the very risky practice of advising patients to disarm themselves in the face of the reality of violent crime daily perpetrated against home owners, condo and apartment tenants, it is apparent that the Physician is placing him/herself in a very risky position for suit.

It is my strong recommendation to Malpractice Carriers and those Physicians they insure to strictly avoid this high risk practice and reserve counseling for the area of expertise in which they are certified: Medicine. In my professional opinion, this is an emotionally charged political issue that Physicians and their Carriers should not be manipulated for whatever well-intentioned reason into taking the risk, which is considerable.....

Physicians in doubt of the veracity of what I've said are encouraged to call their carriers and ask them what they currently cover, and to ask if this new counseling policy is covered under the existing policy. We already know what they will say: **Don't borrow trouble.**

Since retiring from the LA County Sheriff's Department, Mr. Horn has provided Risk Management and related issue Human Resource consulting. Among other firms, he has consulted to IBM, Gates Learjet, National Semiconductor, and Pinkerton International Protection Services.