

The Need for Systematic Training on Gun Rights and Mental Illness for Forensic Psychiatrists

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Individual ownership of firearms is common in the United States. According to the FBI, which oversees the National Instant Criminal Background Check System (NICS), the annual number of background checks for firearm purchases surpassed 20 million for the first time in 2013 and has not fallen below that level since. In 2020, the annual tally passed 30 million, with 32 million checks as of the end of October.¹ As of that date, there had been over 365 million background checks since the inception of the NICS in 1998. When that figure is added to the number of firearms that were in private hands prior to 1998, it is clear that the number of legally owned guns exceeds the nation's total population by a significant amount.

A complex and evolving array of state and federal laws governs who is and is not eligible to possess a firearm. Many such laws specify categories of mental illness diagnosis or treatment (such as involuntary commitment) as disqualifiers. Given the prevalence of firearm ownership, these laws affect many patients treated by psychiatrists. Yet the subject of mental health firearm prohibitions is not a routine part of psychiatric training in most residency and fellowship programs. In this issue of *The Journal*, Nagle *et al.*² demonstrate the dearth of knowledge about this topic among psychiatrists. The authors surveyed a group of South Carolina psychiatrists regarding their

knowledge of and attitudes toward the firearm rights of people with a history of mental illness or mental health treatment.²

Their study appears to be the first to specifically examine psychiatrists' understanding of mental health firearm laws. Much of the previous work in this area has surveyed physicians from a variety of specialties on the narrower topic of concealed-carry permits.³⁻⁵ One study examined the attitudes of psychiatrists (specifically residency directors) regarding mental health firearm prohibitions but did not assess their knowledge of these laws.⁶ The findings reported by Nagle *et al.*² highlight the pressing need for increased training of psychiatrists on this subject. It is especially important that forensic psychiatrists, as experts in risk assessment, have familiarity with mental health firearms laws, as well as with procedures for the restoration of rights after prohibition. This study should serve as a call to action for the strengthening of forensic psychiatry training about legal regulation of firearm ownership for individuals with a mental health history.

The Knowledge Gap

The knowledge portion of the survey consisted of five questions about South Carolina's legal framework for firearms prohibition and restoration of rights. As Table 2 (Ref. 2, p 4) illustrates, three of the questions were answered incorrectly by more than half of the respondents, and only 61 percent correctly identified South Carolina's criterion for prohibition, i.e., judicial commitment to a mental hospital. Only what is arguably the most straightforward of the questions (i.e., whether a restoration evaluation considers

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risk to self, risk to others, or both) was answered correctly by 81.6 percent of the psychiatrists. Cumulatively, as shown in Figure 1 (Ref. 2, p 5), a mere 4 percent answered all five questions correctly; another 23 percent got at least four questions right, while 41 percent answered two or fewer questions correctly.

These results are not surprising, considering that for many years there was little literature on the topic of mental health firearms laws. Although Nagle *et al.*² analyzed the responses from only 190 psychiatrists, there is little reason to believe that other psychiatrists in South Carolina who did not respond to their survey, or psychiatrists in other states, would have a stronger grasp of the subject. Despite the fact that federal laws prohibiting certain individuals from owning guns on the basis of prior involuntary mental health treatment or a legal determination of inability to manage one's own affairs were passed back in 1968, it was not until nearly four decades later that Norris *et al.*⁷ published the first systematic review of federal and various state laws in this area. It was a decade after that when a comprehensive book examining various aspects of the relationship between firearms and mental illness appeared, edited by Liza Gold, MD, and Robert Simon, MD, published by the American Psychiatric Association.⁸ Though not exclusively focusing on medicolegal topics, the book includes chapters covering mental health firearm laws, as well as procedures for the restoration of firearm rights. Dr. Gold, along with attorney Donna Vanderpool, also published two key papers in the pages of *The Journal* in 2018, reviewing in detail the topic of restoration of firearms rights.^{9,10} Meanwhile, the only published research reporting on the outcomes of petitions for restoration of rights is now more than a decade old.¹¹ Although the American Psychiatric Association offered a position statement on the subject of firearms restrictions and mental illness in 2013,¹² it was not until 2020 that the APA issued a resource document addressing evaluations for restoration of firearms access after prohibition.¹³ This must-read paper is a welcome step that addresses the call by Nagle *et al.* for "the creation of resource documents or practice guidelines for conducting these types of assessments." (Ref. 2, p 7).

Beyond these publications, psychiatrists' exposure to this subject remains limited, as Nagle *et al.*² show, and as many can undoubtedly attest from personal experience. During my general residency training,

although I was vaguely aware that in California people who have been involuntarily hospitalized on a 72-hour hold lose the right to possess firearms for five years, I had no inkling that federal laws in this area even existed. Only in my forensic fellowship (also in California) did I learn that the state has a process for restoration of firearm rights for those who had been on a 72-hour hold, as well as that a lifetime federal ban is imposed for those whose 72-hour hold had been extended to a 14-day hold. In my fellowship year, there were no didactics on this subject; my exposure during the fellowship came about through work in Los Angeles County's mental health court, where petitions for relief from prohibition are heard.

Ethics Concerns

Adequate Knowledge

As noted in AAPL's Ethics Guidelines for the Practice of Forensic Psychiatry, "Expertise in the practice of forensic psychiatry should be claimed only in areas of actual knowledge, skills, training and experience" (Ref. 14, Section V). In other words, experts acting ethically will not accept appointments if their knowledge is not sufficient to complete the task. The results reported by Nagle *et al.*² demonstrate that, when it comes to laws regulating firearm possession by people with mental illness or a history of mental health treatment, the knowledge base of many psychiatrists is inadequate.

It would be interesting to know what percentage of residency training programs currently provide specific instruction on mental health firearm laws. Only by increasing the exposure to this area, either in residency or certainly in forensic fellowship training (Nagle *et al.*² advocate for both), will psychiatrists have the opportunity to gain sufficient knowledge to ethically accept a restoration-of-rights evaluation. Lacking adequate knowledge of the subject, practitioners should decline such appointments unless they recognize the knowledge gap and take steps to remedy that deficit prior to performing the assessment.

Another finding of the study further reinforces the need for better training in this area. Knowing how much one does not know is especially challenging. As shown in Table 3 (Ref. 2, p 5), despite the generally poor performance of the sample in the study by Nagle *et al.*² on the knowledge questions, when asked why they had never participated in a firearm

restoration evaluation, only one-third cited a lack of knowledge as one of the reasons. This suggests that the other two-thirds could be underestimating the extent of their knowledge gap in this area. This concern may be somewhat mitigated by the fact that, in the section on attitudes (Table 4) (Ref. 2, p 6), 94.7 percent of the psychiatrists either agreed or strongly agreed with the statement, “I believe there should be special training involved prior to conducting an evaluation to restore gun rights in persons with mental illness.”

Attitudes Toward Guns and Potential Bias

The portion of the survey examining respondents’ attitudes highlights another ethics concern that could potentially be countered by increased educational exposure. In addition to providing a window into the knowledge of South Carolina psychiatrists regarding that state’s mental health firearm laws, Nagle *et al.*² also describe the range of attitudes of their survey respondents in terms of who should be allowed to have a firearm. Table 4 (Ref. 2, p 6) shows the wide range of beliefs regarding firearm rights for individuals with various diagnoses and histories. For many of the hypothetical situations, there is little consensus among the surveyed psychiatrists; in some of the cases the distribution of responses resembles a Gaussian distribution across the spectrum from “Strongly Disagree” to “Strongly Agree” (e.g., for the question of whether a patient with a history of suicidal ideation not involving a firearm should have access to firearms, 12.1% strongly disagreed and 13.7% strongly agreed, with 33.2% disagreeing, 21.6% agreeing, and 17.9% neutral). Perhaps even more concerning is the fact that half of the respondents either agreed or strongly agreed with the statement that a patient with antisocial personality disorder should not have access to a firearm. With the possible exception of the state of Hawaii,¹⁵ there is no jurisdiction in the United States in which a diagnosis of a personality disorder alone can be grounds for prohibiting possession of firearms. Of course, the attitude questions do not require answers that reflect current law, but the responses to the question about antisocial personality disorder are intriguing in that it may elicit what many of the respondents think the law ought to be.

As is the case for other controversial or politically charged topics that may require the expertise of a forensic psychiatrist (e.g., capital punishment being perhaps the most obvious example), there is a danger in a

restoration-of-rights evaluation of the evaluator bringing unconscious (or even conscious) bias into the process. A psychiatrist who is strongly in favor of stricter gun control measures and has a restrictive view of private gun ownership should reflect carefully before accepting an appointment in a restoration case, as those underlying beliefs may prevent an objective evaluation of the petitioner and unnecessarily restrict the petitioner’s rights. Conversely, a psychiatrist who believes strongly in the individual right to own a firearm must reflect just as carefully before taking on such a case, as that preexisting stance could potentially jeopardize public safety or the safety of the petitioner. A psychiatrist who is considering becoming involved in this type of evaluation needs to consider, just like a potential juror must, whether any bias for or against the petitioner can be set aside to apply the law to the question at hand. This may prove a difficult challenge for those who have strong beliefs on one side or the other, and refusal to take the case would be the most ethical and appropriate option for many. Exposure to these topics in fellowship training would help practitioners better identify any potential bias and allow them to analyze their attitudes before they have to decide whether to accept a case in this area.

Mental Health Firearm Laws

Although the utility of broad firearm prohibitions for mental health reasons, as opposed to ones more narrowly tailored to individuals for whom there is evidence of violence risk, can be argued,¹⁶ the beliefs and attitudes of the public and of legislators toward the interface between mental illness and firearms make it highly probable that most of these laws will not be repealed. As the growing body of literature reviewed briefly above demonstrates, forensic psychiatrists now have the resources available to educate themselves on this topic. Given the expertise of forensic psychiatrists in risk assessment, it is incumbent upon the field to provide exposure to the topic of mental health firearms laws in fellowship training.

For several years, I supervised forensic psychiatry fellows when they were appointed to perform restoration evaluations in Los Angeles County. Unfortunately, the referrals essentially ceased after the court changed its policy so that the cost of the forensic evaluation is borne by the petitioner rather than the county. We should not leave education about this important topic to the vicissitudes of courts and the

randomness of referrals. Didactics on the subject should occur in all forensic psychiatry fellowships to provide trainees with a solid framework of knowledge on which to build. Some may also discover an interest in conducting research in this area.

The study by Nagle *et al.*² looked at psychiatrists in general and did not quantify how many of their respondents (if any) were forensically trained. Perhaps forensic psychiatrists represented the best performers in the study. In any event, it may be too much to ask that all psychiatrists be exposed to this subject in their residency training and become well-versed in these laws. Given the vast array of topics to be covered, making the understanding of mental health firearms laws a required competency for general psychiatry residents may not be realistic. This is another reason why familiarity with mental health firearms laws is important for forensic psychiatrists: we are frequently consulted by our non-forensically trained psychiatric colleagues on all manner of questions with a forensic component. Firearms laws are no exception. Nagle *et al.*² make a strong case for the incorporation of training on this topic into the curriculum of all U.S. forensic psychiatry fellowships.

References

1. NICS Firearm Background Checks: Month/Year. (November 30, 1998–October 31, 2020). Available at: https://www.fbi.gov/file-repository/nics_firearm_checks_-_month_year.pdf/view. Accessed November 14, 2020
2. Nagle M, Joshi KG, Frierson RL, *et al*: Psychiatrists' knowledge and attitudes about the gun rights of persons with mental illness. *J Am Acad Psychiatry Law* 49:(1)online, 2021
3. Goldstein AO, Barnhouse KK, Viera AJ, *et al*: Assessing competency for concealed-weapons permits – the physician's role. *N Engl J Med* 368:2251–3, 2013
4. Pierson J, Viera AJ, Barnhouse KK, *et al*: Physician attitudes and experience with permit applications for concealed weapons. *N Engl J Med* 370:2453–4, 2014
5. Goldstein AO, Viera AJ, Pierson J, *et al*: Physician beliefs about physical and mental competency of patients applying for concealed weapons permits. *Behav Sci & L* 33:238–45, 2015
6. Price JH, Thompson AJ, Khubchandani J, *et al*: Psychiatric residency directors' perceptions of firearm access by the mentally ill in the United States. *J Community Health* 39:322–6, 2014
7. Norris DM, Price M, Gutheil T, *et al*: Firearm laws, patients, and the roles of psychiatrists. *Am J Psychiatry* 163:1392–6, 2006
8. *Gun Violence and Mental Illness*. Edited by Gold LH, Simon RI. Arlington, VA: American Psychiatric Association Publishing, 2015
9. Gold LH, Vanderpool D: Legal regulation of restoration of firearm rights after mental health prohibition. *J Am Acad Psychiatry Law* 46:298–308, 2018
10. Gold LH, Vanderpool D: Psychiatric evidence and due process in firearms rights restoration. *J Am Acad Psychiatry Law* 46:309–21, 2018
11. Simpson JR, Sharma KK: Mental health weapons prohibition: demographic and psychiatric factors in petitions for relief. *J Forensic Sci* 53:971–4, 2008
12. Pinals DA, Cabaj RP, Appelbaum PS, *et al*: Position statement on firearm access, acts of violence and the relationship to mental illness and mental health services. American Psychiatric Association, 2013, revised May 2018
13. Lee G, Pinals DA, Kraus L, *et al*: APA resource document on mental health issues pertaining to restoring access to firearms. Available at: https://www.psychiatry.org/File%20Library/Psychiatrists/Directories/Library-and-Archive/resource_documents/Resource-Document-2020-Mental-Health-Issues-Pertaining-to-Restoring-Access-to-Firearms.pdf. Accessed August 12, 2020
14. AAPL Ethics Guidelines for the Practice of Forensic Psychiatry. Available at: <https://aapl.org/ethics-guidelines>. Accessed August 14, 2020
15. Simpson JR: Bad risk? An overview of laws prohibiting possession of firearms by individuals with a history of mental illness treatment. *J Am Acad Psychiatry Law* 35:330–8, 2007
16. Binder RL, Appelbaum PS, Bonnie R: Resolved: Persons with Mental Illness Who Have Been Civilly Committed Should Be Precluded From Buying Guns. (Debate). American Academy of Psychiatry and the Law Annual Meeting, October 18, 2007