

Feb. 7, 2019: Advocacy spotlight on Illegal firearm sales are public health emergency

AMA to court: Illegal firearm sales are public health emergency

A website specifically designed to facilitate the illegal sale of firearms cannot escape liability for the harm that results from those transactions, according to an amicus brief (PDF) filed in the Wisconsin Supreme Court by the AMA and the Wisconsin Medical Society.

The brief, prepared by the Litigation Center of the AMA and State Medical Societies, cites AMA policy that declares firearm violence is a public health issue, advocates waiting periods and background checks for gun buyers, and highlights the need to bar high-risk individuals under domestic-violence restraining orders from possessing or purchasing a firearm.

The case, *Daniel v. Armslist*, seeks to hold the owners of an online marketplace responsible for the murders and injuries committed by Radcliffe Haughton, who bought the gun and ammunition he used after responding to a "for sale" post on the Armslist website. Haughton was prohibited from possessing a firearm by a state court domestic-violence injunction, according to the description of the case written by Wisconsin Appellate Judge Brian Blanchard.

"It's a public health crisis further exacerbated by illegal gun sales," said Wisconsin Medical Society CEO Clyde "Bud" Chumbley, MD. "That's why holding this company accountable is an important step to safeguard our patients and make it clear there are serious consequences for those who would undermine laws put in place to protect the public."

Haughton killed three women, including his wife, and injured four others before taking his own life at a Brookfield, Wisconsin, salon in October 2012. He purchased a semiautomatic handgun from a private seller who posted on Armslist. The seller was not required to conduct a background check or wait 48 hours to complete the sale as is demanded of licensed sellers. Also, no registration of the transaction was required, which allowed the buyer and the seller to remain anonymous. The deal took place in the parking lot of a fast-food restaurant.

One of the injured victims, Yasmeen Daniel, brought the suit both as an individual and on behalf of her mother's estate.

The case was initially dismissed by a lower court that agreed with Armslist's defense that the federal Communications Decency Act of 1996 gave the website immunity because of its status as a passive publisher of content created by third parties.

The state appellate court reversed that decision. It ruled that the allegations were not connected to the website's role as the publisher of third-party content.

The federal law "does not protect a website operator from liability that arises from its own conduct in facilitating user activity, as is the case here," Judge Blanchard wrote. "The claims and supporting allegations do not seek to hold Armslist liable for publishing another's information content. Instead, the claims seek to hold Armslist liable for its own alleged actions in designing and operating its website in ways that caused injuries to Daniel."

The amicus brief notes that facilitating illegal arms sales does not fall under "traditional publisher functions," and that the claim of aiding a murder "does not depend on whether Armslist is treated as a publisher."

Case law is cited that illustrates how, when a statute is ambiguous, its title can provide clarity and indicate legislative intent.

"The law at issue is entitled 'The Communications Decency Act,'" the brief states. "Immunizing Armslist would do nothing to advance communications decency. In fact, immunization would be an action of indecency."

"The do-nothing approach to firearm violence is particularly unacceptable to physicians because, alongside family and community members, physicians and the health care teams they lead bear the emotional weight of firearm violence," the brief says. "Physicians carry these invisible scars into their day-to-day lives."

AMA President Barbara McAneny, MD, elaborated on this point.

"Physicians are compelled to urge the court to consider illegal guns sales a public health emergency," Dr. McAneny said when the brief was filed. "We bear the emotional weight of treating the victims of gun violence everyday: Their wounds, paralysis, colostomies, brain injuries, depression, chronic infections and post-traumatic stress. Common-sense measures to support enacted laws can help prevent more carnage."

Oral arguments are scheduled for Feb. 14, the one-year anniversary of the shooting at Stoneman Douglas High School in Parkland, Florida, where 17 people were killed.

More articles in this issue

- Feb. 7, 2019: National Advocacy Update
- Feb. 7, 2019: State Advocacy Update