RACHAEL A. CABRAL-GUEVARA

STATE REPRESENTATIVE • 55TH ASSEMBLY DISTRICT

Testimony before the Assembly Committee on Health

Representative Rachael Cabral-Guevara

July 29th, 2021

Hello, Chairman Sanfelippo and members of the committee. Thank you for allowing me to testify on Assembly Bill 128, an important bill that will ensure patients' privacy is not violated without informed consent.

Historically, one practice of teaching medical students how to perform pelvic exams has been on unconscious, sedated patients undergoing gynecological medical procedures. This practice, however, for the sole educational benefit of a medical student, often failed to obtain the informed consent of the sedated patient.

This practice somehow is able to still be performed on a patient. The reasoning behind it is for educational purposes only, regardless of if the patient is aware it's even happening. This is a gross oversight that needs to be corrected in order to treat sedated patients with respect and within the code of ethics.

In recent years, people have been more vocal about defending their bodily integrity. This bill ensures that their voice is heard by giving the patient a clear, unveiled choice. It is not only a compassionate practice, it is a necessary one.

In addition, this bill is not the first of its kind. At least six other states have adopted this practice, and Wisconsin's two medical schools either already have this process in place or are setting the groundwork for it.

As a woman and healthcare provider myself, I was disgusted to learn that sedated patients can still have their bodily integrity violated with no informed consent. It is long past time we ended this outdated practice and at the very least inform patients of what is happening to their bodies while undergoing a medical procedure. At the end of the day, they are people, not lab experiments.

Thank you for your time. I am hopeful that this committee can support this bi-partisan piece of legislation.

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Testimony before the Assembly Committee on Health
Senator André Jacque
July 29, 2021

Chairman Sanfelippo and Committee Members,

Thank you for holding this hearing on Assembly Bill 128, the Patient Privacy Protection Act, strong bi-partisan legislation to ensure hospitals have a policy requiring written and verbal informed consent before a medical student may perform a pelvic exam on a patient who is under general anesthesia or otherwise unconscious.

Historically, one practice of teaching medical students how to perform pelvic exams has been on unconscious, sedated patients undergoing gynecological medical procedures. This practice, however, for the sole educational benefit of a medical student, often failed to obtain the specific, informed consent of the sedated patient.

Unfortunately and unbelievingly, this practice continues at some hospitals, as detailed in a 2018 article in *Bioethics,* numerous other articles, and anecdotal reports right here in Wisconsin. At certain hospitals, gynecological surgery patients under anesthesia continue to be used as practice tools for medical students, often without the patient's specific consent that they will be undergoing a pelvic exam by a medical student for solely educational purposes. A recent survey of 101 medical students from seven American medical schools found that 92% had performed a pelvic exam on anesthetized female patients, 61% of whom reported not having explicit consent from the patients. This is a violation of a patient's rights and trust between patient and doctor, and directly ignores a patient's right to bodily autonomy.

Informed verbal and written consent in these instances should be required. Like any medical procedure, there should be an explicit explanation of what will happen while the patient is under anesthesia, including the presence and practice of pelvic exams by medical students for solely educational purposes.

In recent years, many women have felt empowered for the first time to discuss experiences of sexual assault and harassment. The practice of trauma informed care has emerged as an essential treatment tool in clinical settings to address the experience of trauma patients. This bill helps ensure compassionate practice and that the experiences and voice of the patient is respected.

Wisconsin's two medical schools either have a policy or are in the process of adopting a policy to require specific written consent before a pelvic exam may be performed by a medical student. This bill makes certain that all hospitals training and teaching medical students also abide by obtaining specific patient consent in these instances.

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Under the Patient Privacy Protection Act, hospitals must obtain a patient's written and verbal consent before allowing a medical student to perform a pelvic exam on a sedated patient. AB 128 closely tracks a proposed UW Hospital policy and aligns with the positions of the American Medical Association, which formally opposes "performing physical exams on patients under anesthesia or on unconscious patients that offer the patient no personal benefit and are performed solely for teaching purposes without prior informed consent to do so," and the Association of American Medical Colleges, which has denounced pelvic exams without specific consent as "unethical and unacceptable." AB 128 is supported by the Wisconsin Nurses Association and the Wisconsin Coalition Against Sexual Assault.

Wisconsin should join the growing list of more than a dozen states that already have legislation prohibiting this practice of teaching. Female patients deserve to have their bodily integrity respected when they are unconscious and vulnerable during a medical procedure.

Thank you for your consideration of Assembly Bill 128.

WISCONSIN COALITION AGAINST SEXUAL ASSAULT

Testimony

To:	Members of the Assembly Committee on Health
From:	Wisconsin Coalition Against Sexual Assault (WCASA)
Date:	July 29, 2021
Re:	Assembly Bill 128
Position:	Support

The Wisconsin Coalition Against Sexual Assault (WCASA) appreciates the opportunity to offer this written testimony for your consideration. WCASA is a is a hybrid organization: functioning both to support member Sexual Assault Service Providers (SASPs), while advancing the anti-sexual assault movement in the state and nationally.

WCASA thanks Committee Chair Sanfelippo for bringing this important piece of legislation forward for a hearing today. We also thank the leading sponsors of the bill, Representatives Cabral-Guevara and Bowen and Senators Jacque and Taylor for their leadership on this legislation in both houses.

A survey of 101 medical students from seven medical schools and found that 92% percent reported performing a pelvic exam on an unconscious patient[1]. 61% reported performing this procedure without explicit patient consent.[2] Furthermore, a survey conducted in 2005 at the University of Oklahoma found that a majority of medical students had performed pelvic exams to gynecologic surgery patients under anesthesia, and that in nearly 75% of these cases the women had not consented to the exam[3]. We support AB 128 as it requires hospitals to have and enforce a policy requiring written and verbal informed consent before a medical student, nursing student, or anyone providing nursing care may perform a pelvic examination upon a patient who is under general anesthesia or otherwise unconscious.

The emphasis on consent and body autonomy in this legislation are important as they are cornerstones of sexual violence prevention efforts. As a result, AB 128 not only reflects the values of the anti-sexual violence movement, but it is also extremely important for survivors seeking healthcare. A sexual violence survivor has already experienced a violation of their bodily autonomy. Performing a pelvic examination without their informed consent represents yet another violation – however this time it is when they are seeking critical healthcare services. By ensuring survivors' boundaries are respected during medical procedures, this bill prevents re-traumatization by ensuring no pelvic examination is performed without their written and verbal permission.

This legislation also reflects the values of patient-centered health care, which is defined as care that "is respectful of and responsive to individual patients' preferences, needs and values, and ensures the patients' values guide all clinical designs."[4] Given the invasive nature of a pelvic exam, it only makes sense that a patient's consent is obtained before a medical student performs such an exam upon a patient who is not able to provide informed consent. Patient-centered health care represents a cultural shift in our health care

[1] https://www.elle.com/life-love/a28125604/nonconsensual-pelvic-exams-teaching-hospitals/
[2] Ibid.
[3] https://www.ncbi.nlm.nih.gov/pubmed/16206868
[4] "What are Important for Patient Centered Care?" Journal of Caring Sciences. Published November 2013.

system, and this legislation honors that shift by focusing on the patient's preferences and shared decision making with their health care provider.

We thank you for your attention to this matter and for your continued efforts to improve health care responses for sexual assault survivors. If you have any questions, you can reach me at ianh@wcasa.org.

To: Members of the Assembly Committee on Health

From: American College of Obstetricians and Gynecologists – Wisconsin Section
Medical College of Wisconsin
University of Wisconsin School of Medicine and Public Health
Wisconsin Hospital Association

Date: July 29, 2021

RE: Wisconsin Hospital, Physician and Medical School Coalition's Position on Assembly Bill 128

Wisconsin's hospitals, medical school faculty and physicians all greatly value the physician-patient relationship and take their respective informed consent obligations very seriously. Physician faculty are trained to show medical students appropriate informed consent practices and provide students with clinical training opportunities that are relevant to the patient's condition. Further, through the existing informed consent process, a patient will have a choice to have student learners involved in their care. If the patient chooses not to involve students, that is the patient's choice and it is respected by their provider.

Any patient who believes that their wishes have not been respected by a provider practicing within a hospital should report a complaint to the Department of Health Services' Division of Quality Assurance (DQA) for review. DQA is the state's entity for regulating hospitals and DQA surveyors have authority to interview providers, hospital staff and even investigate a patient's medical record when a complaint has been filed. No other state official, including elected officials, are ever able to see a complete picture of the patient's care because of patient confidentiality laws.

In addition to DQA's regulatory enforcement authority over hospitals, physicians and other health care providers are regulated by their respective examining boards through the Department of Safety and Professional Services. Any complaints regarding unprofessional conduct by a health care provider should be submitted to DSPS.

This coalition remains concerned with this legislation, as drafted. We look forward to working with the author and committee members to ensure the bill is consistent with informed consent practices in Wisconsin and that the legislation does not cause unintended consequences for hospitals, care providers, health care student learners and patients.

Testimony in support of Assembly Bill 128
Sarah Wright
7.29.21

Chairman Sanfelippo and Members of the Health Committee:

My name is Sarah Wright, and I am proud to say that it is partly because of me that this bill exists and we are here today. I am here because my bodily autonomy was violated during surgery, and I am determined to prevent others from suffering as I have. I am thankful to my former Representative, Chris Taylor, for listening to me and taking action when I told her my story. She helped to craft the original version of the pelvic exam bill. I am grateful to Representative Janel Brandtjen and Senator Andre Jacque, who sat next to me as I testified for the first time in 2020 and struggled to get through my story, and to Rep. Rachael Cabral-Guevara for joining them to revive this bill. And I thank Rep. Sanfelippo and the members of the Committee on Health for hosting this hearing.

I will share words that may be uncomfortable to hear. They are uncomfortable for me to say, too, although I live with them every day. When I first testified in January 2020, I was afraid to disclose such intimate details of my life. What I realized as the bill died in March 2020 was that there is a bigger fear: that those in positions of power would not be listening. That my suffering, and the embarrassment of sharing it so publicly, would be for naught. So I ask you to bear with me, and to really hear what I have to say. I think there is a great opportunity for everyone here. When this bill becomes law, it will protect women throughout Wisconsin, and it will help me to heal. And let's face it: there is not a lot that all Wisconsinites agree about right now. So let's grab a victory where we can. Colby cheese, the Bucks, and respect for informed consent....let's make this the Wisconsin Trinity of 2021!

This testimony could be extremely short. It could go something like this:
People put their fingers in the vaginas of unconscious women without their knowledge or permission. This happens in hospital operating rooms. We do not know how often this happens. The consent forms that patients are required to sign are written to be intentionally vague and cover a broad range of procedures.

I predict that people hearing this would be thinking two things:
1. If that truly does happen, that is reprehensible and should be stopped immediately. It only takes common sense and basic human decency to understand that penetrating the vagina of an unconscious woman without her consent is wrong.
2. This sounds so outrageous that this can't *really* happen, right? And you might need to hear more evidence. And that is why we are here, except that I wish we could just stop at point #1.

When I was here in 2020 to testify, I felt a need to summarize all the research and previous efforts to stop this practice, as though my testimony might be the only one. Today, I prefer to spend the rest of my time giving you a more personal perspective on the importance of this bill. I will also offer counterarguments to what you will hear from opponents of this bill. But I urge

you to read the testimony submitted by the legal scholar, Robin Fretwell Wilson, who has worked on this issue for decades; bioethicist, Dr. Phoebe Friesen, who has extensively documented the occurrence of educational pelvic exams without clear consent; and Dr. Ari Silver-Isenstadt, who took a leave from medical school to study bioethics after refusing to conduct pelvic exams on anesthetized women. Dr. Silver-Isenstadt is a huge inspiration. I repeat: he actually left medical school rather than be coerced into learning how to perform a pelvic exam without clear consent. This was a lonely and courageous position, and shows that this is an issue that affects and must be solved by both men and women.

In late 2018, I was preparing myself to undergo surgery to remove a potentially cancerous ovary. It was stressful, to say the least, to face the possibility of a serious illness while attending to my everyday life as a teacher and a mom. But what made the situation even worse was that I had had a traumatic experience with a similar surgery in 2009.

Certainly, it is hard to prove definitively what happened to me; after all, I was unconscious! But I entered that operating room as a healthy woman whose medical history included nothing more exciting than a wisdom tooth removal. When I emerged, I was nauseous for days, had trouble urinating, and was covered with purple bruises along my left torso from my ribcage to my hips. The worst of the injuries also took the longest to heal: an extreme sensitivity of the vulva, the tissue surrounding the entrance to the vagina. I was dumbfounded. The surgeon had accessed my ovaries through incisions in my abdomen. No one had given me any indication prior to the surgery that my vagina would be involved in any way. What on earth had happened to me when I was on that operating table?

My post-op appointment yielded no answers; the surgeon seemed to take it as a personal affront that I had a difficult recovery in any way. I obtained my medical records, but the sparse, 2-page document didn't provide any useful information either. They simply stated, "the vagina was prepped properly." Nothing in the pink pamphlet I was given about pelvic surgery stated anything about the vagina at all. Reading WebMD and MayoClinic.org did not specify anything either. The only way I had any idea what may have happened to me to result in the vulvar pain was that I am lucky to have a close relative who has worked in operating rooms for decades at multiple hospitals, often assisting during pelvic surgeries. She told me that an instrument called a uterine manipulator, which penetrates the vagina, is commonly used in order to position the uterus and hold it in place during surgery. She inferred that this device may have caused my vulvar pain, since it remains in place throughout surgery, although I most likely was subjected to pelvic exams for educational purposes as well.

By the way... Someday, I would love to see the expectations for informed consent apply to uterine manipulators and to pelvic exams performed by all practitioners. But it is especially urgent that we require explicit written consent for pelvic exams done by medical students for two reasons: 1) the exam done by a medical student is of no benefit to the patient at all, so failing to inform her of it is an especially egregious violation; in essence, she is being used as a test subject. 2) I have spoken with physicians young and old who agree that having consistent expectations for informed consent will protect not only patients, but also medical students who

feel uncomfortable doing pelvic exams without clear consent. In any case, this bill would raise awareness so that more patients will at least have a better idea what questions to ask.

When I needed surgery again in 2018, I was determined to be fully informed. Surely, I thought, things have changed since 2009. I approached hospital and medical school officials to inquire about their policies regarding informed consent for pelvic exams under anesthesia, as well as uterine manipulators. I even drew up my own "informed consent contract" that I intended to share with my surgeon, and sent it to hospital officials with the suggestion that something like it could it be used for all pelvic surgeries. That afternoon, I had a voicemail from the Patient Relations office asking me to call about my document.

At least I had drawn enough attention to get a call from the *head* of Patient Relations! In the course of our conversation, that Patient Relations head made many of the same arguments that are laid out in the joint statement from the medical lobbyists that was submitted against the bill in 2020 (although the lobbyists were notably absent from the hearing). She told me that if having the opportunity to withhold consent for an educational pelvic exam was "a dealbreaker," I should have my surgery at a private, all-female clinic (as if only women are capable of performing surgeries ethically). Here are arguments she and the lobbyists made against strengthening informed consent, and my counterarguments:

1. ***Not everyone wants to know what exactly will happen to them when they undergo a procedure.***
To this I say, it is the responsibility of the medical system to ensure that complete information is provided to all patients. Then, it is the choice of the patient what to do with that information. But attempting to hide behind the supposed squeamishness of some fraction of hypothetical patients is a poor excuse for failing to obtain fully informed consent. Moreover, as I said to the PR person, we are not talking about someone's cornea or hand or liver; we are talking about sexual organs. Touching them without first informing the patient is an especially heinous violation. When I pressed her, "can you imagine anyone NOT wanting to know that their vagina is going to be penetrated?", she conceded, "well, as a woman, I would want to know."

(By the way, this is not simply a "woman's issue." The same problem applies to rectal exams performed on unconscious patients undergoing colonoscopies, for example, as reflected in medical schools' updated policies on sensitive exams.)

2. ***We cannot possibly have a separate informed consent document for every procedure***. The consent form I was required to sign simply states that (and I quote): "medical student(s) or other assistant(s) present during my procedure will be able to, while under the supervision of my primary physician(s)/surgeon(s), perform and assist with important parts of the procedure(s)." (unquote) As written, it is the prerogative of the individual surgeon whether to inform patients about which "important parts of the procedure" may be performed by students. Adding a line to such forms to require explicit, specific written consent for educational pelvic exams may seem like a small matter. But to fail to do so leaves open the

possibility that women's bodies could be violated like I was. And as Dr. Silver-Isenstadt points out, it is NOT difficult or time-consuming to obtain true consent, if one really values it.

3. ***If a patient feels that their rights were violated or their informed consent was not obtained, they have recourse through the Department of Justice.***
First of all, patients are often unaware that this option exists. I did not learn of it until years after my surgery, when it was far too late for me to submit a complaint. Furthermore, in the aftermath of a traumatic incident, it is understandable for someone to simply want to try to forget about it and move on, or feel too emotionally fragile to pursue a complaint. The way that I was treated by the surgeon who failed me, who was only defensive and dismissive, definitely discouraged me from pursuing any recourse.

4. ***It is not the place of the legislative system to interfere in the patient-provider relationship.***
First of all, it IS the place of the legislative system to intervene when private or public entities fail to do their job, or cause harm to others. Ideally, hospitals would successfully regulate themselves. But this is not the case. Frankly, we may not be here if the officials I contacted had treated me as a patient in need of care, rather than an enemy to be avoided and discredited. If they had answered my questions about their informed consent policies, if they had conducted an investigation of my surgery like they promised, if they had truly listened to me and given an answer other than "have your surgery somewhere else," I would not have felt the need to approach my legislator in the first place. The medical school I contacted only updated their sensitive exams policy after Chris Taylor applied pressure on them to do so.

I can only speak to my own experience in having two surgeries, but in both instances, I was simply assigned the first available surgeon at a clinic covered by my insurance. It's not as if there was some personal connection from which to build a foundation of trust. All I had to go on was the general assumption that someone working in medicine is motivated to help others. Beyond that, currently, the burden of information-seeking is placed too heavily on the patient. A first-time patient does not know enough to even understand what questions to ask. It is mainly because I had learned the hard way what to expect that I knew what to ask of my second surgeon. It would have been so simple for the surgeon in 2009 to just tell me that he needed to perform a pelvic exam, as well as his resident, and ask if it was okay for trainees to do so as well in order to learn proper technique. I likely would have said yes—after all, I am a teacher! But having been deceived and ill-informed has left me guarded and less likely to offer my consent in the future.

There are questions that haunt me. Who were the doctors-to-be who put their hands inside my unconscious body? Did they realize that no one had explicitly asked for my permission, that I had no idea any pelvic exam would occur? Did they think they had the right to use my body as a test subject, simply because I was there? Or did they believe the surgeon had informed me, and later realized with shame what had really happened? Did they even know my name? I will never know theirs. I do not even know who to ask to get these answers. I have spent years trying to reconcile myself with the knowledge that I never will get answers.

I know I will never receive anything close to an apology, and I am learning to be okay with that. What is NOT okay, and what keeps me fighting, is that what happened to me can still happen to other women. I will live with what happened to me for the rest of my life. It has changed me. I underwent physical therapy to address the tangible pain of that traumatic surgery. But my body was violated, and my sense of safety punctured in that operating room on August 31, 2009. So my body has forced me to pay attention. In situations that chip away at my sense of control, my body tingles with panic. Getting my teeth cleaned triggers unwarranted alarm. Unexpected touch makes me jump. I have exited crowded buses to escape the jostle of fellow passengers, my heart pounding and my vision blurring. I have delayed medical screenings and treatments because of the anxiety they induce. For me, the damage is done. But this should not keep happening to others. You have the power to ensure that it does not.

I hope I have convinced you that the need for this legislation is clear. We must all treat informed consent as if it is of the utmost importance, because it is. I am grateful to the bipartisan coalition of legislators from throughout Wisconsin who have signed on. You help to restore my faith that most of us want to do what's right. Please do not leave women's consent up to chance. I urge you to support scheduling a vote on this important bill, and to vote YES on Assembly Bill 128.

References

Friesen, P (2018). Educational pelvic exams on anesthetized women: Why consent matters. *Bioethics* 32 (5), 298-307.

Ubel, PA, C Jepson & A Silver-Isenstadt (2003). Don't ask, don't tell: a change in medical student attitudes after obstetrics/gynecology clerkships toward seeking consent for pelvic examinations on an anesthetized patient. *American Journal of Obstetrics & Gynecology* 188(2): 575-9.

Wisconsin Alliance for Women's Health
www.supportwomenshealth.org

TO: Assembly Committee on Health
FROM: Katrina Morrison, Health Equity Director, Wisconsin Alliance for Women's Health
RE: Testimony in Support of AB 128
DATE: July 29, 2021

Dear Chairman Sanfileppo and Members of the Health Committee:

Thank you for the opportunity to provide testimony in support of Assembly Bill 128. My name is Katrina Morrison, and I am here on behalf of the Wisconsin Alliance for Women's Health. Our vision is that every Wisconsin woman -- at every age and every stage of life -- is able to reach her optimal health, safety, and economic security. In the spirit of our vision, we support legislation that will positively impact women's health and well-being in Wisconsin.

It seems obvious that if a woman is under anesthesia in a hospital, she should not have to worry about having a pelvic exam performed on her by a student learner without her explicit consent. However, the unsettling reality is that cases of unconsented pelvic exams continue to surface. Across the nation, this unethical practice has already been condemned by the American College of Obstetricians and Gynecologists, the American Medical Association, the Association of American Medical College, legal scholars, and ethicists, and banned in seventeen states and counting.

While we appreciate that some hospitals in Wisconsin have strengthened their internal policies, patient consent forms and procedures, without statewide legislation there is no guarantee that a patient seeking care at any hospital in the state couldn't potentially undergo an unnecessary invasive, intimate exam without explicit consent. No matter where you seek care in Wisconsin, we believe all patients should never undergo a pelvic or rectal exam without explicit and informed consent.

Under AB 128, all Wisconsin hospitals require written and verbal informed consent prior to performing a pelvic exam on a patient prior to surgery. While existing consent procedures from some Wisconsin hospitals request permission for a student learner to be involved in the patient's care, it does not specify that a pelvic exam may be performed. In addition, if a patient wishes to report a non-consensual intimate exam, the structure of the current reporting system is complex and difficult to navigate, and in certain cases may lead to further traumatization.

At the national level, ACOG's Committee on Ethics published an Opinion addressing this very issue. The Opinion states, "Pelvic examinations on an anesthetized woman that offer her no personal benefit and are performed solely for teaching purposes should be performed only with her specific informed consent obtained before her surgery." This clarifies that the physician-patient relationship is underpinned by the ethical responsibility to prioritize patient welfare; and when teaching experiences are placed above patient care and patient bodily autonomy, the physician-patient relationship loses its integrity.

For the past 17 years, our organization has relied on the expertise and experiences of medical professionals, especially those on the front lines of women's healthcare, and we have the utmost respect for their dedication and work. The development of the next generation of healthcare professionals is an imperative we all share. This legislation aims to strike that balance between medical education and patient bodily autonomy.

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Wisconsin Alliance for Women's Health
www.supportwomenshealth.org

AB 128 ends the unethical practice of performing pelvic exams on women under anesthesia without their explicit consent. It brings Wisconsin in line with the evidence-based practice and trauma-informed approach of receiving a patient's explicit consent before intimate and invasive exams. It protects survivors of sexual assault from enduring further violation of their bodies unnecessarily. It reinforces clinicians' ethical responsibilities by ensuring shared decision-making between patients and providers. And it honors patient preferences by safeguarding bodily autonomy. AB 128 is a critical intervention that showcases our elected leaders' commitment to the health and safety of all Wisconsin women.

As you consider this pressing legislation, we encourage you to expand the bill to include all intimate invasive exams, including rectal. While non-consensual pelvic exams have captured the attention of many, all non-consensual invasive and intimate procedures are equally as disturbing and should be prohibited.

Thank you, State Representative Cabral-Guevara and Senator Jacque, for your important leadership on this issue. We ask that this Committee support this bipartisan effort and move AB 128 forward to ensure Wisconsin's consent requirements are crystal clear.

Testimony Contact:
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Assembly Committee on Health
Public Comment for AB128
July 29, 2021

Hello, my name is Denise Brusveen. I live near Poynette. I am thankful to the authors for re-introducing this bill this session, and I would also like to thank the rest of the legislators who have signed on as co-authors and co-sponsors. For those who still have not, I implore you to do so.

It is shameful that this bill even needed to be written in order for women and girls to maintain basic bodily autonomy. If this was happening outside of a hospital, it would be called rape, plain and simple. But somehow, being in a hospital setting and involving people with initials after their names allows them to exert an unequal power dynamic and do what they wish to unsuspecting women and even girls.

When I first learned that this was even a possibility that could happen to me or my daughters, I was sick to my stomach thinking about being violated in this way. According to the CDC, 1 in 5 women has been the victim of rape or attempted rape, and I'm sadly one of them. This makes it extremely hard to trust others, especially when being put in a vulnerable position. I cannot think of anything more vulnerable than being unconscious and unable to advocate for myself. But we are supposed to be able to trust that medical professionals will be just that – professional.

Unfortunately my experience as a birth doula for 10 years proved otherwise. From the 70 births I have attended, I could share with you countless stories of women receiving vaginal exams that they did not consent to and were not given the opportunity to decline. In multiple cases, women asked that the exam be stopped, and they were told 'no' and that it would only be a little longer. In some cases, these women were screaming at the top of their lungs and trying to physically move their laboring bodies away from the person doing the exam. But it didn't matter to these doctors and nurses. And this was for women who were awake and having unmedicated births. What about those who do not even get forewarning let alone the ability to say 'stop' at any time because they are sedated?

Additionally, I have had many clients who only wanted female doctors present due to past sexual trauma. If they go to the hospital for a procedure entirely unrelated to their pelvis, they may have no reason to state that they feel uncomfortable with male doctors or nurses. Then what happens if they are practiced on by one or more male doctors or nurses? Can you imagine the new trauma and distrust created by that? Imagine BEING one of the male doctors or nurses who violated a woman in that way and later learning that you caused that trauma for her. Or what about the male OR female students being told that they must perform the pelvic exams in order to complete their program even if it goes against their conscience?

There is nothing that can justify using women's bodies for practice and learning without so much as notifying them ahead of time let alone asking for consent. I have had a couple nurse friends that have told me that they are very professional while they do these exams. I don't really care how professional they think they are being. Rapists justify that it's ok to rape women too. It doesn't make it right.

I do not disagree that medical and nursing students need to gain experience with real people. But why not ask for permission? Why not leave it up to each individual woman as to whether or not she wants a pelvic exam by one or more individuals when it offers her no personal benefit? Yes, it may take more time to get enough women to say 'yes', but at the end of the day, I would hope that doctors and nurses could go home with a clean conscience then, knowing that they did not violate any women in order to gain their needed experience. They can know that they did not cause additional trauma to an unsuspecting woman.

We are at a time now more than ever that we need to BUILD trust in the medical system, which is why it is so sad that any hospital or medical organization would be opposed to this bill. It is deplorable that the American College of Obstetricians and Gynecologists – WI Chapter, Medical College of Wisconsin, Wisconsin Hospital Association, and the Wisconsin Medical Society all registered against this bill during the 2019-2020 session. So far, three of these organizations have registered as "undisclosed" on this current bill.

Why they are not registering in favor is beyond me. People who have nothing to hide, hide nothing. What IS their motive behind being deceptive and secretive about this practice? Even the American College of Obstetricians and Gynecologists, which the WI chapter falls under, stated in 2011 in a Committee on Ethics document, which was reaffirmed in 2020 that,

> "Pelvic examinations on an anesthetized woman that offer her no personal benefit and are performed solely for teaching purposes should be performed only with her specific informed consent obtained before her surgery."

The committee opinion goes on to state,

> "Some procedures, such as pelvic examinations under anesthesia, require specific consent 6. In women undergoing surgery, the administration of anesthesia results in increased relaxation of the pelvic muscles, which may be beneficial in some educational contexts. However, if any pelvic examination planned for an anesthetized woman offers her no personal benefit and is performed solely for teaching purposes, it should be performed only with her specific informed consent, obtained before her surgery 7 8. When patients are not making decisions for themselves, as may be the case with minors or those with brain injury or intellectual disability, consent for these pelvic examinations under anesthesia must be obtained from the patient's surrogate decision maker (eg, a parent, spouse, designated health care proxy, or guardian); however, when possible and clinically appropriate, the health care provider should also obtain the assent of the patient herself for such examinations."

It makes me want to vomit to think of one of my daughters being put under general anesthesia for a surgery or procedure potentially entirely unrelated to their reproductive health only to have doctors or nurses decide that their body is going to be a teaching tool at their disposal for the day. This is not ok. There ARE alternatives.

The authors of this committee opinion go on to state that,

> "Alternatives to teaching pelvic examinations exist that do not raise the challenges of securing informed consent. Today, many medical schools employ surrogates for patients to teach learners

how to perform pelvic examinations. These surrogates are variously referred to as gynecology teaching associates, professional patients, patient surrogates, standardized patients, or patient simulators."

So I do not want to hear that unconscious, unsuspecting women are the only way for doctors and nurses to gain experience. ACOG lists out that there ARE other options. And if our Wisconsin hospitals still insist that anesthetized patients are their best option, then they need to obtain consent. Plain and simple.

I urge you to pass this bill. Thank you.

Reference: ACOG Professional Responsibilities in Obstetric-Gynecologic Medical Education and Training. Committee on Ethics Opinion. Number 500. August 2011. https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2011/08/professional-responsibilities-in-obstetric-gynecologic-medical-education-and-training?utm_source=redirect&utm_medium=web&utm_campaign=otn

Assembly Bill 128
Public Hearing July 29, 2021

Sharon Hale testifying in favor of AB 128

Thank you for showing an interest in protecting vulnerable patients from egregious violations of their personal boundaries in a healthcare setting by considering and sponsoring AB 128.

I have been a healthcare provider since 1984. I practice as a licensed clinical social worker with licensure in WI and IL. I understand from my training, research, and from what my patients report from their experiences with healthcare that how our bodies are cared for by healthcare providers is integral to not only our physical health but also to our emotional, spiritual and relational health. This bill addresses a vital issue of respect for the boundaries, privacy, dignity, autonomy and trust of women seeking medical care.

One of my areas of specialty is the treatment of trauma. Over the years, I have treated many women who have been traumatized by experiences of violations of their personal boundaries, either by sexual assault and abuse, sex trafficking or sexual misconduct by healthcare professionals. The consequences of the trauma are often profound and long lasting, requiring arduous healing work.

It is a given that as healthcare professionals we are always in a more powerful position than our patients who are vulnerable and put their trust in us to care for them. That trust is a sacred trust. Healthcare organizations and professionals are ethically bound not to betray that trust by not violating the patient's boundaries and taking advantage of the patient's vulnerability. It is important that healthcare professionals and healthcare organizations have clear policies to ensure that the personal boundaries, dignity, autonomy and trust of the patient are not violated. The guardrails of fully informed verbal and **written** consent are essential to protecting the well- being of patients.

When a woman seeks medical care for an issue involving the pelvic area and her reproductive organs, she typically experiences being very vulnerable. She, therefore, needs to be able to trust that she will be treated respectfully.

Respectful treatment involves being fully informed about procedures, with credible and understandable reasons given for the procedures, as well as the opportunity for the patient to either give verbal and **written** consent or withhold verbal and written consent without any coercion by the provider or fear of retribution or withholding of medical care.

Procedures like doing a pelvic exam while the patient is unconscious or the taking of photographs of the genitalia while the patient is draped for a pelvic exam and unable to see what the provider is doing are invasive. If they are done without the patient being fully informed and given the opportunity to give verbal and **written** consent, the patient will experience the procedure as a serious violation of her personal boundaries. The patient is then left feeling shocked, shamed and powerless to object when she becomes conscious of the violation.

Many patients, because of experiencing shock, shame and being powerless, will not report the violation. But if the patient tries to report, her report is often met with discounting and an attempt to change the patient's reality. Coverups by the provider and discrediting of a patient's report further compound the trauma the patient experiences.

For women who have a history of sexual trauma—which is true of a significant percentage of women seeking medical care—the experience of having their boundaries violated in a medical setting by providers in whom they have put their trust is likely to undo much of the work of healing from former trauma. The consequences can be devastating, long term and interfere with the patient getting necessary medical care in the future.

This trauma and damage to the well-being of patients can be prevented by the guardrail proposed in AB 128. Thank you for your work on behalf of the welfare of vulnerable patients in medical settings.

Sharon Hale MA MSSW
ACSW CIRT LCSW
Lic WI & IL

Testimony in support of Assembly Bill 128
Sarah Wright
7.29.21

Chairman Sanfelippo and Members of the Health Committee:

My name is Sarah Wright, and I am proud to say that it is partly because of me that this bill exists and we are here today. I am here because my bodily autonomy was violated during surgery, and I am determined to prevent others from suffering as I have. I am thankful to my former Representative, Chris Taylor, for listening to me and taking action when I told her my story. She helped to craft the original version of the pelvic exam bill. I am grateful to Representative Janel Brandtjen and Senator Andre Jacque, who sat next to me as I testified for the first time in 2020 and struggled to get through my story, and to Rep. Rachael Cabral-Guevara for joining them to revive this bill. And I thank Rep. Sanfelippo and the members of the Committee on Health for hosting this hearing.

I will share words that may be uncomfortable to hear. They are uncomfortable for me to say, too, although I live with them every day. When I first testified in January 2020, I was afraid to disclose such intimate details of my life. What I realized as the bill died in March 2020 was that there is a bigger fear: that those in positions of power would not be listening. That my suffering, and the embarrassment of sharing it so publicly, would be for naught. So I ask you to bear with me, and to really hear what I have to say. I think there is a great opportunity for everyone here. When this bill becomes law, it will protect women throughout Wisconsin, and it will help me to heal. And let's face it: there is not a lot that all Wisconsinites agree about right now. So let's grab a victory where we can. Colby cheese, the Bucks, and respect for informed consent….let's make this the Wisconsin Trinity of 2021!

This testimony could be extremely short. It could go something like this:
People put their fingers in the vaginas of unconscious women without their knowledge or permission. This happens in hospital operating rooms. We do not know how often this happens. The consent forms that patients are required to sign are written to be intentionally vague and cover a broad range of procedures.

I predict that people hearing this would be thinking two things:
1. If that truly does happen, that is reprehensible and should be stopped immediately. It only takes common sense and basic human decency to understand that penetrating the vagina of an unconscious woman without her consent is wrong.
2. This sounds so outrageous that this can't *really* happen, right? And you might need to hear more evidence. And that is why we are here, except that I wish we could just stop at point #1.

When I was here in 2020 to testify, I felt a need to summarize all the research and previous efforts to stop this practice, as though my testimony might be the only one. Today, I prefer to spend the rest of my time giving you a more personal perspective on the importance of this bill. I will also offer counterarguments to what you will hear from opponents of this bill. But I urge

you to read the testimony submitted by the legal scholar, Robin Fretwell Wilson, who has worked on this issue for decades; bioethicist, Dr. Phoebe Friesen, who has extensively documented the occurrence of educational pelvic exams without clear consent; and Dr. Ari Silver-Isenstadt, who took a leave from medical school to study bioethics after refusing to conduct pelvic exams on anesthetized women. Dr. Silver-Isenstadt is a huge inspiration. I repeat: he actually left medical school rather than be coerced into learning how to perform a pelvic exam without clear consent. This was a lonely and courageous position, and shows that this is an issue that affects and must be solved by both men and women.

In late 2018, I was preparing myself to undergo surgery to remove a potentially cancerous ovary. It was stressful, to say the least, to face the possibility of a serious illness while attending to my everyday life as a teacher and a mom. But what made the situation even worse was that I had had a traumatic experience with a similar surgery in 2009.

Certainly, it is hard to prove definitively what happened to me; after all, I was unconscious! But I entered that operating room as a healthy woman whose medical history included nothing more exciting than a wisdom tooth removal. When I emerged, I was nauseous for days, had trouble urinating, and was covered with purple bruises along my left torso from my ribcage to my hips. The worst of the injuries also took the longest to heal: an extreme sensitivity of the vulva, the tissue surrounding the entrance to the vagina. I was dumbfounded. The surgeon had accessed my ovaries through incisions in my abdomen. *No one had given me any indication prior to the surgery that my vagina would be involved in any way.* What on earth had happened to me when I was on that operating table?

My post-op appointment yielded no answers; the surgeon seemed to take it as a personal affront that I had a difficult recovery in any way. I obtained my medical records, but the sparse, 2-page document didn't provide any useful information either. They simply stated, "the vagina was prepped properly." Nothing in the pink pamphlet I was given about pelvic surgery stated anything about the vagina at all. Reading WebMD and MayoClinic.org did not specify anything either. The only way I had any idea what may have happened to me to result in the vulvar pain was that I am lucky to have a close relative who has worked in operating rooms for decades at multiple hospitals, often assisting during pelvic surgeries. She told me that an instrument called a uterine manipulator, which penetrates the vagina, is commonly used in order to position the uterus and hold it in place during surgery. She inferred that this device may have caused my vulvar pain, since it remains in place throughout surgery, although I most likely was subjected to pelvic exams for educational purposes as well.

By the way… Someday, I would love to see the expectations for informed consent apply to uterine manipulators and to pelvic exams performed by all practitioners. **But it is especially urgent that we require explicit written consent for pelvic exams done by medical students for two reasons:** 1) the exam done by a medical student is of *no benefit to the patient at all*, so failing to inform her of it is an especially egregious violation; in essence, she is being used as a test subject. 2) I have spoken with physicians young and old who agree that *having consistent expectations for informed consent will protect not only patients, but also medical students* who

feel uncomfortable doing pelvic exams without clear consent. In any case, this bill would raise awareness so that more patients will at least have a better idea what questions to ask.

When I needed surgery again in 2018, I was determined to be fully informed. Surely, I thought, things have changed since 2009. I approached hospital and medical school officials to inquire about their policies regarding informed consent for pelvic exams under anesthesia, as well as uterine manipulators. I even drew up my own "informed consent contract" that I intended to share with my surgeon, and sent it to hospital officials with the suggestion that something like it could it be used for all pelvic surgeries. That afternoon, I had a voicemail from the Patient Relations office asking me to call about my document.

At least I had drawn enough attention to get a call from the *head* of Patient Relations!
In the course of our conversation, that Patient Relations head made many of the same arguments that are laid out in the joint statement from the medical lobbyists that was submitted against the bill in 2020 (although the lobbyists were notably absent from the hearing). She told me that if having the opportunity to withhold consent for an educational pelvic exam was "a dealbreaker," I should have my surgery at a private, all-female clinic (as if only women are capable of performing surgeries ethically). Here are arguments she and the lobbyists made against strengthening informed consent, and my counterarguments:

Opponents' argument #1. ***Not everyone wants to know what exactly will happen to them when they undergo a procedure.***
To this I say, it is the responsibility of the medical system to ensure that complete information is provided to all patients. Then, it is the choice of the patient what to do with that information. But attempting to hide behind the supposed squeamishness of some fraction of hypothetical patients is a poor excuse for failing to obtain fully informed consent. Moreover, as I said to the PR person, we are not talking about someone's cornea or hand or liver; we are talking about sexual organs. Touching them without first informing the patient is an especially heinous violation. When I pressed her, "can you imagine anyone NOT wanting to know that their vagina is going to be penetrated?", she conceded, "well, as a woman, I would want to know."

(By the way, this is not simply a "woman's issue." The same problem applies to rectal exams performed on unconscious patients undergoing colonoscopies, for example, as reflected in medical schools' updated policies on sensitive exams.)

Opponents' argument #2. ***We cannot possibly have a separate informed consent document for every procedure***. The consent form I was required to sign simply states that (and I quote): "medical student(s) or other assistant(s) present during my procedure will be able to, while under the supervision of my primary physician(s)/surgeon(s), perform and assist with important parts of the procedure(s)." (unquote) As written, it is the prerogative of the individual surgeon whether to inform patients about which "important parts of the procedure" may be performed by students. Adding a line to such forms to require explicit, specific written consent for educational pelvic exams may seem like a small matter. But to fail to do so leaves open the

possibility that women's bodies could be violated like I was. And as Dr. Silver-Isenstadt points out, it is NOT difficult or time-consuming to obtain true consent, if one really values it.

Opponents' argument #3. ***If a patient feels that their rights were violated or their informed consent was not obtained, they have recourse through the Department of Justice.***
First of all, patients are often unaware that this option exists. I did not learn of it until years after my surgery, when it was far too late for me to submit a complaint. Furthermore, in the aftermath of a traumatic incident, it is understandable for someone to simply want to try to forget about it and move on, or feel too emotionally fragile to pursue a complaint. The way that I was treated by the surgeon who failed me, who was only defensive and dismissive, definitely discouraged me from pursuing any recourse.

Opponents' argument #4. ***It is not the place of the legislative system to interfere in the patient-provider relationship.***
First of all, it IS the place of the legislative system to intervene when private or public entities fail to do their job, or cause harm to others. Ideally, hospitals would successfully regulate themselves. But this is not the case. Frankly, we may not be here if the officials I contacted had treated me as a patient in need of care, rather than an enemy to be avoided and discredited. If they had answered my questions about their informed consent policies, if they had conducted an investigation of my surgery like they promised, if they had truly listened to me and given an answer other than "have your surgery somewhere else," I would not have felt the need to approach my legislator in the first place. The medical school I contacted only updated their sensitive exams policy after Chris Taylor applied pressure on them to do so.

I can only speak to my own experience in having two surgeries, but in both instances, I was simply assigned the first available surgeon at a clinic covered by my insurance. It's not as if there was some personal connection from which to build a foundation of trust. All I had to go on was the general assumption that someone working in medicine is motivated to help others. Beyond that, currently, **the burden of information-seeking is placed too heavily on the patient. A first-time patient does not know enough to even understand what questions to ask.** It is mainly because I had learned the hard way what to expect that I knew what to ask of my second surgeon. It would have been so simple for the surgeon in 2009 to just tell me that he needed to perform a pelvic exam, as well as his resident, and ask if it was okay for trainees to do so as well in order to learn proper technique. I likely would have said yes—after all, I am a teacher! But having been deceived and ill-informed has left me guarded and less likely to offer my consent in the future.

There are questions that haunt me. Who were the doctors-to-be who put their hands inside my unconscious body? Did they realize that no one had explicitly asked for my permission, that I had no idea any pelvic exam would occur? Did they think they had the right to use my body as a test subject, simply because I was there? Or did they believe the surgeon had informed me, and later realized with shame what had really happened? Did they even know my name? I will never know theirs. I do not even know who to ask to get these answers. I have spent years trying to reconcile myself with the knowledge that I never will get answers.

I know I will never receive anything close to an apology, and I am learning to be okay with that. What is NOT okay, and what keeps me fighting, is that what happened to me can still happen to other women. I will live with what happened to me for the rest of my life. It has changed me. I underwent physical therapy to address the tangible pain of that traumatic surgery. But my body was violated, and my sense of safety punctured in that operating room on August 31, 2009. So my body has forced me to pay attention. In situations that chip away at my sense of control, my body tingles with panic. Getting my teeth cleaned triggers unwarranted alarm. Unexpected touch makes me jump. I have exited crowded buses to escape the jostle of fellow passengers, my heart pounding and my vision blurring. I have delayed medical screenings and treatments because of the anxiety they induce. **For me, the damage is done. But this should not keep happening to others. You have the power to ensure that it does not.**

I hope I have convinced you that the need for this legislation is clear. We must all treat informed consent as if it is of the utmost importance, because it is. I am grateful to the bipartisan coalition of legislators from throughout Wisconsin who have signed on. You help to restore my faith that most of us want to do what's right. Please do not leave women's consent up to chance. I urge you to support scheduling a vote on this important bill, and to vote YES on Assembly Bill 128.

References

Friesen, P (2018). Educational pelvic exams on anesthetized women: Why consent matters. *Bioethics* 32 (5), 298-307.

Ubel, PA, C Jepson & A Silver-Isenstadt (2003). Don't ask, don't tell: a change in medical student attitudes after obstetrics/gynecology clerkships toward seeking consent for pelvic examinations on an anesthetized patient. *American Journal of Obstetrics & Gynecology* 188(2): 575-9.

Mya Lonnebotn
S7708A Lucille Lane
Merrimac, WI 53561

Dear Chairman Sanfelippo and Members of the Committee on Health,

Thank you for the opportunity to testify in support of Assembly Bill 128. My name is Mya Lonnebotn and I reside in Sauk City, WI. As an individual with a degree in Public Health & Community Health Education, and as a future physician assistant (PA), I feel morally obligated to share my support for this important and necessary legislation. In a country that prides itself on a medical system that is ethical and professional, one would wonder why controversy exists regarding a specific informed consent policy for pelvic examinations on patients under general anesthesia or otherwise unconscious. While those who oppose Assembly Bill 128 express concern that pelvic exams are essential for training experience purposes, this training cannot be prioritized above patient care and bodily autonomy.

When I was 19, I attended a yearly physical examination to renew my prescription medications. Upon arriving, I was informed that my primary provider could not see me for the appointment, and I agreed to meet with a physician. When she entered the room, the coolness in her approach resonated with me. She typed aggressively on her computer, keeping her eyes on the screen as she rushed through a lengthy list of health questions. When she said, "Are you sexually active?" I responded with, "No." She paused and looked at me quizzically, then proceeded with, "If you're using any toys or even if you aren't doing full penetration it still counts." I said without hesitation, "NO, I'm not." She stood up and rifled through a drawer in the exam room. She placed a clear tube containing a long cotton swab on the table in front of me. She then said, "This is a self-swab. You will insert it into the vagina like a tampon. I'll step out in the hall, let me know when you're done." Confused, I responded with, "What is that for?" "It tests for Chlamydia," she said curtly. This was the first time I had attended a physical exam without my mother in the room, and at this moment I wished she was sitting there next to me. I had just told this physician that I was not sexually active, in fact, I had never had sex, yet she didn't believe me. I felt an intense anger bubble inside of me, but the disgust and disapproval on the physician's face made me feel small and irrelevant. I completed the test, snapping the swab stick in half and sealing the test tube. I gathered my things and left the exam room, tears pricking my eyes. In the car I called my mom, sobbing. At that moment I didn't know if I was more angry or sad. I had been coerced into testing for a sexually transmitted disease (STD) when the possibility of me having an STD did not exist. I did not experience a non consensual pelvic exam that day, but for the first time in my life I felt unsafe and invalidated in a healthcare setting. Although I was the one who completed the swab for a lab result, I had done so with the mindset that there was no other option. I could not imagine being a patient under anesthesia and having a procedure as invasive as a pelvic examination without my consent. When patients enter the healthcare setting, they do so under the impression that their care is conducted with their best interest in mind. Unfortunately, that is not always the case. As both a future healthcare professional, and as a patient with this unfortunate experience, there must be explicit consent in place to protect the reproductive health, bodily autonomy, and dignity of women.

The American Medical Association stresses the importance of assessing a patient's ability to understand medical information and the implications of treatment in order to voice their independent, voluntary consent. Without explicitly stating in writing that a patient may be subjected to a pelvic examination while under anesthesia, informed consent is not obtained. Specific informed consent also strengthens the provider-patient relationship. By being transparent with patients, providers are deemed trustworthy and demonstrate a commitment to patient welfare. For the well-being of not only myself, but for all Wisconsin women, I urge you to vote in favor of Assembly Bill 128.

Sincerely,

Mya Lonnebotn
College of Science and Health UW La-Crosse
Bachelor of Science in Public Health & Community Health Education, Minor in Spanish
myalonnebotn11@gmail.com
S7708A Lucille Lane
Merrimac, WI 53561

From: Tara Czachor <tara.czachor@gmail.com>
Sent: Wednesday, July 28, 2021, 9:47 PM
To: "Joshua.Hoisington@legis.wisconsin.gov" <Joshua.Hoisington@legis.wisconsin.gov>
Cc: "Rep.Sortwell" <Rep.Sortwell@legis.wisconsin.gov>; "Sen.Jacque@legis.wisconsin.gov" <Sen.Jacque@legis.wisconsin.gov>
Subject: Comments on AB128

Joshua, could you please ensure these public comments get to the full committee on health for tomorrow's public hearing?

Thank you very much!

-Tara Czachor

Dear members of the Assembly Health Committee,

My name is Tara Czachor, and my husband and I have four daughters and live in the Town of Lawrence. Due to prior obligations, I am unable to attend the public hearing tomorrow in person, but wanted to ensure my voice was heard by the full committee.

I am writing to share my strong support of AB128. It is stunning to me, that this type of policy is not already law, and I sincerely hope hospitals in Wisconsin have implemented informed consent policies such as this into their standard procedures.

This bill is common sense, and should already be law. I cannot for one minute comprehend why anyone would advocate against this policy. It is actually frightening to me that the American College of Obstetricians and Gynecologists, as well as the Medical College of Wisconsin and the Wisconsin Hospital Association are all registered as "undisclosed" for this bill.

This bill requires hospitals to have and enforce a policy requiring written and verbal informed consent to be obtained from a patient before a medical student, or anyone authorized to perform pelvic exams may do so on a patient who is under general anesthesia or unconscious.

Why is this not already standard procedure? The fact that there is the possibility and likelihood women in Wisconsin have been victims of pelvic exams being performed on them without their consent or knowledge while under general anesthesia for something else is quite horrifying to me as a woman, mother, and human being. I certainly hope, though I may never know for sure, that this has never happened to me, and I surely expect that my four daughters never have to wonder about this very thing themselves once they are adults. We need to have trust with our medical providers, and this bill reinforces trust by making sure consent is obtained.

If anyone on this committee is truly considering voting “no”, I would seriously request an explanation. If you vote no on this bill, in my view, you are essentially advocating for the unauthorized penetration of unconscious women, which in any other scenario, is called rape.

This is a common sense bill, that supports transparency in medical decision making, and frankly, I believe that the number of cosponsors on this bill should be triple what is currently listed. I encourage the full health committee to add their names to this bill in cosponsorship, vote yes in this committee, as well as push to have this heard and voted on by the full assembly.

Thank you for your time.

Tara Czachor

From: Jessica Devine <jdevine9@gmail.com>
Sent: Tuesday, July 27, 2021, 8:58 AM
To: undisclosed-recipients:;
Subject: Explicit Informed Consent for Pelvic Exams

Dear Legislatures,

My name is Jessica Devine and I would like to write to you to show my support for the proposed legislation to require explicit informed consent for pelvic exams conducted on women under anesthesia. I understand the need for medical students to practice and gain experience. I believe that many women, if given the choice, would consent to these examinations. I know that I would. I am also a rape survivor. Knowing that I may have been examined while under anesthesia without my consent makes me feel like I may have been violated more times than I'm aware. This is very upsetting and unsettling. Please consider this legislation and give women the bodily autonomy and respect that they deserve.

Thank you for taking the time to read my feelings about this legislation.

Sincerely,

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Robin Fretwell Wilson

Mildred Van Voorhis Jones Chair in Law
University of Illinois College of Law

July 28, 2021

BY EMAIL

Re: Assembly Bill 128 - An Act to create 50.373 of the statutes; Relating to: requiring informed consent before performing a pelvic exam on a patient who is under general anesthesia or unconscious.

Dear Members of the Assembly Committee on Health:

I write to support Assembly Bill 128, which would require "[e]very hospital [in Wisconsin to] have and enforce a policy that requires written and verbal informed consent to be obtained from a patient before a medical student, a nursing student, any person providing nursing care, or any other person authorized to perform pelvic examinations may perform a pelvic examination on a patient who is under general anesthesia or otherwise unconscious.[1]

The passage of Assembly Bill 128 will ensure that norms of autonomy for all persons are honored and that no one is treated as a means to an end. As I explain below, requiring informed consent for intimate exams guarantees the dignity and respect that patients deserve *without* jeopardizing the quality of medical education in Wisconsin.

It is important that this bill is being considered as the world is yet to recover from the COVID-19 pandemic. We know vaccine hesitancy is real and acute among historically disadvantaged communities,[2] where consent in the healthcare system has not always lived up to our aspirations.[3] The simple act of according respect will go a long way in building trust at a time when trust matters to containing COVID-19.

[1] Assembly Bill 128.

[2] Avilasha Sinha, *Reducing COVID-19 vaccine hesitancy among racial and ethnic minorities*, BAYLOR C. MED. (Jan. 22, 2021), https://blogs.bcm.edu/2021/01/22/reducing-covid-19-vaccine-hesitancy-among-racial-and-ethnic-minorities/ (noting significant vaccine hesitancy among Latinx and African-American communities).

[3] *See generally The Promise of Informed Consent*, OXFORD HANDBOOK OF AMERICAN HEALTH LAW 213 (Glenn Cohen, Allison Hoffman & William Sage, eds., Oxford University Press, 2016).

Part A of this letter applauds this important legislation, which when signed into law, would place Wisconsin squarely within the growing number of states, most recently Texas, giving patients the right to decide whether medical or nursing students will perform intimate exams on them for the students' learning. Part B addresses the claim that lawmakers should *not* act because unconsented exams simply do *not* occur. If unconsented exams do occur, asking for specific consent gives patients the dignity and autonomy all patients deserve—and if teaching exams never occur without consent, Assembly Bill 128 still reinforces the norm that all patients should be respected in deciding what happens with their bodies. Part C details the extent of intimate examinations for medical training without the patient's consent. Part D describes legislation in eighteen states that requires consent. The consensus of medical ethics groups is that such intimate exams should not occur without consent. Parts E, F, and G refute common justifications for performing such intimate exams without permission. Specifically, Parts E and F rebut the unfounded justification that patients have impliedly or expressly consented upon admission to the hospital. Part G shows empirically, that when asked, patients consent to practice exams in overwhelming numbers and consequently, should be enlisted as "respected partners" [4] in medical teaching. Part H remarks on the thoughtful construction of the bill's language.

A. Assembly Bill 128 Would Provide Crucial Protections

Passage of Assembly Bill 128 would place Wisconsin within an emerging legislative trend to require healthcare providers to ask permission before using patients as tools for teaching intimate exams. Arizona, Arkansas, California, Delaware, Florida, Hawaii, Illinois, Iowa, Louisiana, Maine, Maryland, New Hampshire, New York, Oregon, Utah, Virginia, Washington, and most recently, Texas all require explicit consent for intimate examinations performed on unconscious patients for teaching purposes.[5] Twelve of these states enacted laws in the last twenty-four months.

Like the laws of those states, Assembly Bill 128 would ensure that a "[e]very hospital [in Wisconsin] shall have and enforce a policy that requires written and verbal informed consent to be obtained from a patient before a medical student, a nursing student, any person providing nursing care, or any other person authorized to perform pelvic examinations may perform a pelvic examination on a patient who is under general anesthesia or otherwise unconscious." [6]

This duty can be fulfilled with no added cost. Hospitals already facilitate the duty by physicians to obtain informed consent to medical procedures.[7] Thus, hospitals can facilitate informed consent.

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[4] Jennifer Goedken, *Pelvic Examinations Under Anesthesia: An Important Teaching Tool*, 8 J. HEALTH CARE L.& POL'Y 234, 235 (2005).

[5] See *infra* Part C.

[6] Assembly Bill 128.

[7] Alan Meisel, *Canterbury v. Spence: The Inadvertent Landmark Case*, HEALTH LAW AND BIOETHICS: CASES IN CONTEXT (Sandra H. Johnson, Joan H. Krause, Richard S. Saver, & Robin Fretwell Wilson, eds., Aspen Publishers, 2009).

Bioethicists see this as a given. The former director of the Center for Bioethics and Medical Humanities at the Medical College of Wisconsin, Robyn Shapiro, said: "I would be very surprised to run across a state that didn't have that sort of a law."[8]

B. Answering The "We Transparently Ask" Claim

Some medical educators and hospital administrators reflexively assume that unconsented to exams never occur. As I show below, intimate teaching exams without consent have persisted for the two decades that I have worked on this question. As McGill University Bioethics Professor Phoebe Friesen states, medical students widely report being asked to do such exams without the specific consent of the patients.[9]

Against this evidence, some medical educators contend that laws are unnecessary because the communication about the educational nature of the exam is already transparent.[10]

Yet, in the recent months, patients have come forward after discovering that they have been used for medical teaching without permission, as I show below. The patients say they were never asked. How would they otherwise know?

By their very nature, teaching intimate exams, whether prostate or pelvic, occur while the patient is under anesthesia or unconscious. Asking patients to police what is happening to them while they are asleep is asking them to do the impossible. And asking medical students to act as whistleblowers to end this practice is unrealistic and unfair.

Given the fast pace of medical education and teaching on the wards, teaching faculty may simply be unaware when a student or faculty member forgets to ask for specific permission, whether advertent or inadvertent. Further, given the rise of community teaching hospitals, it is difficult for medical schools and their principal teaching hospitals to know whether their rigorous consent practices are adhered to at smaller, far-flung hospitals where medical teaching occurs.[11] Hence the need for this bill.

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[8] Lorelei Laird, *Pelvic exams performed without patients' permission spur new legislation,* AMER. BAR. ASSN. J. (Sept. 1, 2019), https://www.abajournal.com/magazine/article/examined-while-unconscious.

[9] Phoebe Friesen, *Why Are Pelvic Exams on Unconscious, Unconsenting Women Still Part of Medical Training?,* SLATE (Oct. 30, 2018), https://slate.com/technology/2018/10/pelvic-exams-unconscious-women-medical-training-consent.html.

[10] Julia Cron & Shefaly Pathy, *2 Ob-Gyns, on Pelvic Exams and Patients' Consent*, THE N.Y. TIMES (Feb. 24, 2020), https://www.nytimes.com/2020/02/24/opinion/letters/pelvic-exams-consent.html.

[11] Robin Fretwell Wilson, *Autonomy Suspended: Using Female Patients to Teach Intimate Exams without Their Knowledge or Consent*, 8 J. Health Care L. & Pol'y 240 (2005).

Consider the experience of the state of, Maryland. Maryland recognized that while the state's teaching hospitals have informed consent policies, an explicit state law would protect patients and assure students that they would not be asked to do something unethical.[12]

The sponsor of New York's recent law, Senator Jessica Ramos, put it this way:

> "The importance of instilling the value of informed consent on medical students cannot be underestimated."[13]

Maine lawmakers enacted a specific consent law precisely so that "medical students asked to perform the procedure know they are acting ethically."[14]

Trust in the health care system and professions is vital as it affects patient satisfaction, willingness to seek care, and treatment compliance.[15] Moreover, trust is essential to the physician-patient relationship because of the inherent risk and uncertainty of medical care.[16] In 2018, only 34% of Americans reported a positive view of the healthcare industry.[17] This is a staggering decrease from 1975, when 80% reported a positive view.

Today, we have seen that despite the persistence of COVID-19 cases, many are reluctant to choose vaccination. Approximately 40% of Americans are unwilling to be vaccinated.[18] Americans are less willing than the general public in Australia, Canada, and the U.K., where more than 70% indicate willingness.[19]

More fundamentally, Assembly Bill 128 is valuable and should be enacted, *whether or not* strong evidence shows that unconsented exams are occurring. If unconsented exams do occur, asking for specific consent gives patients the dignity and autonomy all patients deserve. And if such exams never occur without consent, Assembly Bill 128 will reinforce the norm that all patients should be

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[12] Jennifer McDermott & Carla K. Johnson, *States Seek Explicit Patient Consent for Pelvic Exams*, NBC CONN. (May 12, 2019, 1:48PM), https://www.nbcconnecticut.com/news/local/bills-seek-special-consent-for-pelvic-exams-under-anesthesia/153538/.

[13] 2019 New York S. 3353.

[14] Associated Press, *States seek explicit patient consent for pelvic exams*, NEWS CTR. ME. (May 12, 2019), https://www.newscentermaine.com/article/news/nation-world/states-seek-explicit-patient-consent-for-pelvic-exams/417-03352df8-4979-4152-8b58-26e7b7e205a4.

[15] *See generally* Oswald A.J. Mascarenhas et al., *Hypothesized Predictors of Patient-Physician Trust and Distrust in the Elderly: Implications for Health and Disease Management*, 1 CLINICAL INTERVENTIONS AGING 175 (2006).

[16] Katrina Armstrong et al., *Racial/Ethnic Differences in Physician Distrust in the United States*, 97 AMERICAN J. PUB. HEALTH 1283, 1283 (2007).

[17] Daniel Wolfson, *Commentary: Erosion of trust threatens essential element of practicing medicine*, MOD. HEALTHCARE (Mar. 9, 2019, 1:00AM), https://www.modernhealthcare.com/opinion-editorial/commentary-erosion-trust-threatens-essential-element-practicing-medicine.

[18] *Why 40% of Americans are unwilling to get the COVID-19 vaccine*, SPEAKING OF RES. (Jan. 26, 2021), https://speakingofresearch.com/2021/01/26/why-40-of-americans-are-unwilling-to-get-vaccinated/.

[19] Kirsten Salyer, *Confidence in the COVID-19 vaccine grows in the UK and US, but global concerns about side effects are on the rise*, WORLD ECON. F. (Dec. 29, 2020), https://www.weforum.org/agenda/2020/12/covid-19-vaccine-confidence-world-economic-forum-ipsos-survey/.

respected in deciding what happens with their bodies. And it will teach students that consent is non-negotiable.

Assembly Bill 128 is a no-harm-no-foul proposition, even as to facilities that have already instituted policies that respect patient autonomy.

C. The Extent of the Practice

Despite widespread ethical condemnation that "the practice of performing pelvic examinations on women under anesthesia, without their knowledge and approval, [is] unethical and unacceptable,"[20] experience shows that unauthorized exams continue across the U.S.

Unconsented pelvic examinations do occur in Wisconsin. Ms. Sarah Wright, testifying before you today, confirms the occurrence of such exams with medical students in Madison.[21]

Empirical studies document the persistent nature of unauthorized pelvic examinations. A recent 2020 survey accepted to the 2021 Council on Resident Education in Obstetrics and Gynecology & The American College of Obstetricians and Gynecologists Annual Meeting reported that 83.6% of the medical students surveyed across five medical schools attached to large academic medical centers performed a pelvic exam on a patient under anesthesia.[22] When asked how often patients were explicitly told that an educational pelvic examination would take place under anesthesia, only 17% of surveyed students replied "every time." Notably, 22.3% replied "rarely" and 20.3% replied "never." Clearly, ethics pronouncements and media attention have not sufficed to ensure that patients are asked to be used for teaching purposes.

Historic studies show the same pattern. A 2005 survey of medical students at the University of Oklahoma found that a large majority had performed educational pelvic examinations on patients under anesthesia—in nearly three of four instances, consent was not obtained.[23] In 2003, Peter Ubel and Ari Silver-Isenstadt reported that 90% of medical students at five Philadelphia-area medical schools performed pelvic examinations on anesthetized patients for educational purposes during their obstetrics/gynecology rotation.[24] In 1992, Charles Beckmann reported that 37.3% of

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[20] Am. Ass'n of Med. Colls., AAMC Statement on Patient Rights and Medical Training (June 12, 2003).

[21] Sarah Wright, Lawmakers should support explicit consent for pelvic exams done under anesthesia, The Cap Times (February 20, 2020), https://madison.com/ct/opinion/column/sarah-wright-lawmakers-should-support-explicit-consent-for-pelvic-exams-done-under-anesthesia/article_6487cdb5-88ba-59f9-b75d-90f6ffac7f13.html.

[22] Hannah Millimet et al., Medical Student Perspective on Pelvic Exams Under Anesthesia: A multi-Institutional Study (2020) (unpublished manuscript) (on file with author).

[23] S. Schniederjan G.K. Donovan, *Ethics versus education: pelvic exams on anesthetized women*, 98(8) *J Okla State Med Assoc* 386 (2005).

[24] Peter A. Ubel et al., *Don't Ask, Don't Tell: A Change in Medical Student Attitudes After Obstetrics/Gynecology Clerkships Toward Seeking Consent for Pelvic Examinations on an Anesthetized Patient*, 635635 AM. J. OBSTETRICS & GYNECOLOGY 575, 579 (2003).

United States and Canadian medical schools reported using anesthetized patients to teach pelvic exams.[25]

D. The Legislative and Professional Response

In response to this unauthorized use of patients, eighteen U.S. states by legislation now require explicit consent for pelvic examinations on unconscious patients for medical teaching purposes.[26]

This legislation reflects the consensus of professional medical organizations that healthcare providers should obtain explicit for intimate teaching exams.[27] In the "Statement on Patient Rights and Medical Training" in 2003, the American Association of Medical Colleges, which--represents 144 accredited U.S. and 17 accredited Canadian medical schools; nearly 400 major teaching hospitals and health systems, including 51 Department of Veterans Affairs medical centers; and 90 academic and scientific societies described—"pelvic examinations on women under anesthesia, without their knowledge and approval ... [as] unethical and unacceptable."[28] The organization has maintained this position since.

In an August 2011 Committee on Ethics ruling reaffirmed in 2020, the American College of Obstetricians and Gynecologists provided that "[r]espect for patient autonomy requires patients be allowed to choose to not be cared for or treated by [medical student] learners when this is feasible."[29] The Ethics Committee ruling applied this ethical tenant to pelvic examinations specifically: "Pelvic examinations on an anesthetized woman that offer her no personal benefit and are performed solely for teaching purposes should be performed only with her specific informed consent before her surgery."[30] An American Medical Association Forum in January 2019, authored by Professor of Medical Science Eli Y. Adashi at Brown University's Warren Alpert

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[25] Charles R. B. Beckmann et al., *Gynaecological Teaching Associates in the 1990s*, 26 MED. EDUC. 105, 106 (1992).

[26] *Unauthorized Pelvic Exams: Public Engagement Initiative*, THE EPSTEIN HEALTH LAW AND POLICY PROGRAM, https://www.epsteinprogram.com/pelvic-exams (last visited March 29, 2021).

[27] *See, e.g.*, Am. Ass'n of Med. Colls., AAMC Statement on Patient Rights and Medical Training (June 12, 2003); American College of Obstetricians and Gynecologists Committee on Ethics, Professional Responsibilities in Obstetric-Gynecologic Medical Education and Training, Ruling No. 500 (August 2011), http://www.acog.org/~/media/Committee%20Opinions/Committee%20on%20Ethics/co500.ashx?dmc=1&ts=20120112T1021153539; Joint Statement of The Association of Academic Professionals in Obstetrics and Gynaecology of Canada and Society of Obstetricians and Gynaecologists of Canada, No. 246 (Sept. 2010) ("[P]atient autonomy should be respected in all clinical and educational interactions. When a medical student is involved in patient care, patients should be told what the student's roles will be, and patients must provide consent. Patient participation in any aspect of medical education should be voluntary and non-discriminatory").

[28] Am. Ass'n of Med. Colls., AAMC Statement on Patient Rights and Medical Training (June 12, 2003).

[29] American College of Obstetricians and Gynecologists Committee on Ethics, Professional Responsibilities in Obstetric-Gynecologic Medical Education and Training, Ruling No. 500 (August 2011), http://www.acog.org/~/media/Committee%20Opinions/Committee%20on%20Ethics/co500.ashx?dmc=1&ts=20120112T1021153539.

[30] *Id.*

Medical School, called unconsented exams "a lingering stain on the history of medical education."[31]

A growing chorus of bioethicists challenge the need for unconsented exams. Pelvic examinations have a "different moral significance than suturing a wound."[32] Even when pelvic examinations are done with a woman's knowledge, women are "frequently nervous before [the procedure], reporting feeling vulnerable, embarrassed, and subordinate." Significantly, the feelings of distress are heightened for victims of sexual assault. [33] Pelvic examinations are especially sensitive experiences.

As the next Parts of this letter demonstrate, however, some teaching faculty offer a number of falsifiable justifications for dispensing with the simple step of asking for permission.[34]

E. Patients Have Not Implicitly Consented to Intimate Educational Exams

The first justification that teaching faculty advance is that patients have implicitly consented by accepting care at a teaching hospital. Empirical evidence suggests that many patients do not consciously choose teaching facilities or even know they are in one.[35]

Indeed, in the U.S., a large number of facilities give little indication to prospective patients of the hospital's teaching status. Public disclosure of hospitals' teaching status varies drastically. Some hospitals, like Duke University Medical Center and The Johns Hopkins Hospital, indicate their medical school affiliation in their name.

Of the approximately 400 members of the Association of American Medical Colleges Hospital/Health System Members, only 94 —less than 25%—contain the word "college" or "university" in their name.[36]

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[31] Eli Y. Adashi, *Teaching Pelvic Examination Under Anesthesia Without Patient Consent*, JAMA F. (Jan. 16, 2019), https://newsatjama.jama.com/2019/01/16/jama-forum-teaching-pelvic-examination-under-anesthesia-without-patient-consent/.

[32] Phoebe Friesen, *Why Are Pelvic Exams on Unconscious, Unconsenting Women Still Part of Medical Training?*, SLATE (Oct. 30, 2018), https://slate.com/technology/2018/10/pelvic-exams-unconscious-women-medical-training-consent.html.

[33] *Id*.; Robin Fretwell Wilson et al., #JustAsk: Stop treating unconscious female patients like cadavers, CHI. TRIB. (Nov. 29, 2018, 3:25PM), https://www.chicagotribune.com/opinion/commentary/ct-perspec-pelvic-nonconsensual-exam-medical-students-vagina-medical-1203-story.html.

[34] Robin Fretwell Wilson, *Unauthorized Practice: Regulating the Use of Anesthetized Recently Deceased, and Conscious Patients in Medical Training*, 44 IDAHO L.REV. 423, 427 (2008) (presenting comments by faculty at George Washington University Hospital, UCLA Medical Center, and the Medical University of South Carolina).

[35] D. King et al., *Attitudes of Elderly Patients to Medical Students*, 26 MED. EDUC. 360 (1992) (reporting on results of survey, prior to discharge, of patients whose average age was 80 years old).

[36] *AAMC Hospital/Health System Members*, ASSOCIATION OF AMERICAN MEDICAL COLLEGES, https://members.aamc.org/eweb/DynamicPage.aspx?site=AAMC&webcode=AAMCOrgSearchResult&orgtype=Hospital/Health%20System.

University of Texas Southwestern Medical Center partners with multiple healthcare facilities, including Dallas Veterans Affairs Medical Center and Terrell State Hospital.[37] Many of these institutions' names do not suggest any affiliation with UT Southwestern or otherwise tip patients off to their status as a teaching hospital.

Consider the hospital affiliations of the School of Medicine and Public Health at the University of Wisconsin-Madison. While some names suggest an affiliation with the School of Medicine and Public Health—such as the University of Wisconsin Hospitals and Clinics—others, like Unity Point Health-Meriter would be harder to recognize.[38]
While a hospital's name or website may not relay its teaching mission to patients, physical proximity to a medical school can, arguably, give patients constructive notice of a hospital's teaching status. Reasonably, a patient may know that NewYork-Presbyterian Hospital, located less than sixty feet from the Columbia Medical University College of Physicians & Surgeons, is a teaching hospital.[39] However, patients at the 11 facilities associated with Columbia's medical school throughout New York, Connecticut, and New Jersey cannot possibly know on constructive notice without doing their own research online.[40]
The same holds true in Texas. Consider the A.T. Still School of Osteopathic Medicine in Arizona. By partnering with the National Association of Community Health Centers, service-minded "students invest three of their four years of training in community health centers located in underserved communities across the country"; examples include Bullhead City, Flagstaff, Phoenix, and Tucson."[41]

F. Patients Have Not Expressly Consented to Intimate Educational Exams

Many teaching faculty assert that the patient has consented to educational exams upon admission.[42] This claim takes two forms: In the stronger form, teaching faculty assert that the student's pelvic

[37] *Affiliated Hospitals*, UT SOUTHWESTERN MEDICAL CTR., https://www.utsouthwestern.edu/education/graduate-medical-education/about/affiliated-hospitals.html (last visited Mar. 19, 2021).

[38] *UW Health and Affiliates*, SCHOOL OF MEDICINE AND PUBLIC HEALTH UNIVERSITY OF WISCONSIN-MADISON, https://www.med.wisc.edu/education/graduate-medical-education/uw-health-and-affiliates/ (last visited July 28, 2021).

[39] Google Maps gives the distance from Columbia's location at 630 W. 168th Street to New York Presbyterian's location at 622 W. 168th Street as less than 0.01 miles, maps.google.com.

[40] *Affiliated Hospitals and Institutions*, COLUMBIA VAGELOS COLLEGE OF PHYSICIANS AND SURGEONS, https://www.ps.columbia.edu/about-us/explore-vp-s/affiliated-hospitals-and-institutions (last visited Mar. 15, 2021).

[41] SCHOOL OF OSTEOPATHIC MEDICINE ARIZONA, https://www.atsu.edu/school-of-osteopathic-medicine-arizona/academics/clinical-rotations-and-facilities.

[42] AM. COLL. OF OBSTETRICIANS AND GYNECOLOGISTS (ACOG), COMM. OPINION 181: ETHICAL ISSUES IN OBSTETRIC-GYNECOLOGICAL EDUCATION 2 (1997).

exam is an ordinary component of the surgery to which the patient has consented.[43]A variant on this claim holds that if consent was obtained for one procedure, it encompasses consent for additional, educational procedures.[44]

This is just not so as a matter of contract interpretation. In a typical consent form, patients will:

> [A]gree and give consent to [teaching hospital], its employees, agents, the treating physician ... medical residents and Housestaff to diagnose and treat the patient named on this consent to any and all treatment which includes, but might not be limited to ... examinations and other procedures related to the routine diagnosis and treatment of the patient.[45]

The typical admission form authorizes care for the patient's benefit, not for student educational purposes.

Some teaching faculty and residents believe that additional exams by students are, in fact, for the patient's benefit because the student might detect something missed by others. Yet, a patient would not receive multiple exams in a non-teaching facility context and the better practice would be to ask for permission for all exams—both those needed to reconfirm a diagnosis before surgery and any additional educational exam.

G. Exaggerated Fears of Widespread Refusal

Some members of the medical education community argue that performing educational exams without specific consent is necessary. Their argument is essentially that "we can't ask you, because if we ask, you won't consent."

However, studies have shown that women will consent to pelvic examinations for educational purposes. These include not only "hypothetical" studies—asking patients how they would respond if asked to do a variety of things—but also studies of actual women giving consent to real exams.

A 2010 Canadian study found that 62% of women surveyed said they would consent to medical students doing pelvic examinations, 5% would consent for female students only, and only 14%

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[43] Liv Osby, *MUSC May Change Pelvic Exam Practice*, GREENVILLE NEWS (S.C.), Mar. 13, 2003 (quoting the OB/GYN clerkship director at the Medical University of South Carolina, who indicated that "no specific permission" is sought for educational pelvic exams and acknowledged, "maybe this is something we need to revisit").

[44] *See e.g.*, Michael Ardagh, *May We Practise Endotracheal Intubation on the Newly Dead?*, 23 J. MED. ETHICS 289, 292 (1997) (making this observation with respect to practicing resuscitation procedures on the recently deceased); A.D. Goldblatt, *Don't Ask, Don't Tell: Practicing Minimally Invasive Resuscitation Techniques on the Newly Dead*, 25 ANNALS EMERGENCY MED. 86, 87 (1995) (analogizing to "construed consent," which authorizes related tests or diagnostic procedures).

[45] *About Prisma Health*, PALMETTO HEALTH RICHLAND, https://www.palmettohealth.org/patients-guests/about-prisma-health.

would refuse.[46] In a private practice setting, another study found refusal rates of approximately 5% to perform educational pelvic exams.[47] In yet another study, 61% of outpatients reported that they would definitely allow, probably allow, or were unsure whether they would allow a pelvic examination.[48]

Even more women consent to examinations before surgery. In one study in the U.K., 85% of patients awaiting surgery consented to educational exams by students while the patient was under anesthesia.[49] These studies involved *actual patients* giving *actual consent* to *real exams* by *real students*. Responding to hypothetical questions, more than half of the patients surveyed in another study (53%) would consent or were unsure if they would consent to pelvic exams, if asked prior to surgery.[50]

H. Thoughtful Construction of AB 128

The sponsors of this bill have put much thought into constructing the language of Assembly Bill 128 so that its implementation does not become a burden.

The bill was tailored so it would be feasible in practice and not hinder the medical processes.

Most importantly, Assembly Bill 128promotes accountability by requiring that "[e]very hospital shall . . . take appropriate action to discipline any individual who violates the policy or instructs a medical student, a nursing student, any person providing nursing care, or any other person authorized to perform pelvic examinations to conduct an examination in violation of the policy."[51]

I. Conclusion

Without adequate safeguards to protect the autonomy of women to consent to medical teaching, many will be reduced into acting as "medical practice dummies" without their permission. Patients would gladly consent if only asked.

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[46] S. Wainberg et al., *Teaching pelvic examinations under anaesthesia: what do women think?*, 32 J OBSTET. GYNAECOL CAN 49 (2010).

[47] Lawton et al., *Patient Consent for Gynaecological Examination*, 44 BRIT. J. HOSP. MED. 326, 329 (1990)

[48] Peter A. Ubel & Ari Silver-Isenstadt, *Are Patients Willing to Participate in Medical Education?*, 11 J. CLINICAL ETHICS 230, 232-33 (2000)

[49] Lawton, *supra* n. 46, at 329.

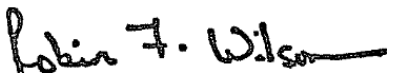
[50] Ubel & Silver-Isenstadt, *supra* note 47, at 234.

[51] Assembly Bill 128.

Assembly Bill 128 would bring Wisconsin into line with other states that give women the autonomy to decide to participate in medical teaching. It would affirm the dignity of persons at a time of great vulnerability, building trust in the healthcare system.

I welcome any opportunity to provide further information or analysis.

Respectfully Yours,[52]



Robin Fretwell Wilson
Mildred Van Voorhis Jones Chair in Law
University of Illinois College of Law

[52] Academic affiliation is for identification purposes only. I write in my individual capacity and my employer takes no position on this or any other bill.

July 27, 2021

Members of the Wisconsin Assembly Committee on Health

Re: Assembly Bill 128 - An act to create 50.373 of the statutes; relating to: requiring informed consent before performing a pelvic exam on a patient who is under general anesthesia or unconscious

Dear Members of the Assembly Committee on Health:

I am writing in support of Bill 128, which requires hospitals in Wisconsin to have a policy requiring written and verbal informed consent before a medical student, a nursing student, or any person providing nursing care, can perform a pelvic or prostate examination on a patient who is under general anesthesia or otherwise unconscious. While these examinations are an important teaching tool, performing them without the consent of patients is a violation of patient rights and is a remnant of medicine's paternalistic past. It is time to follow the rest of the world and the country in requiring consent before educational intimate examinations are performed on unconscious patients.

Below, I speak to three topics that I have considered within my research in medical ethics: I. Medical Student Experiences and Moral Distress, II. Non-consensual Exams as Violations of Autonomy, Bodily Rights, and Trust, III. Objections to a Legal Consent Requirement. While I mainly reference studies and experiences relating to pelvic examinations, unconsented prostate examinations require attention as well.

I. Medical Student Experiences and Moral Distress

I first learned of this practice while teaching ethics to medical students in New York. The students were asked to write summaries of ethical dilemmas they had encountered in their training so that I could help them engage in ethical analyses of these cases. Countless students wrote about their experiences of performing pelvic examinations on anesthetized patients who had not consented to the examination. Many of these students reported considerable moral distress accompanying the experience, reporting that it felt wrong and inappropriate, and that they wouldn't want the same to be done to them. Importantly, because the teaching faculty that were asking them to perform the examinations were also the ones that were evaluating them within medical school, and often writing their reference letters for residency, very few students felt comfortable raising their concerns with their instructors. Beyond the discomfort of medical students, engaging in this practice without consent teaches a problematic lesson to our future doctors: using an unconscious person's body as a teaching tool, without his or her consent, is

permissible. Today's students are aware that medicine has moved beyond the paternalism that has characterized its past and that practices like this need to be made into history [1].

In the years since I learned of this practice, I have spoken to medical students across the country and have heard the same concerns expressed from coast to coast. The evidence is limited, but the data that does exist suggests that the practice is widespread. In 2019, ELLE magazine polled students from across the United States and found that 61% of students had performed a pelvic examination on a female patient under anesthetic without her explicit consent. Of these students, 49% had never met the patient and 47% of these students felt uncomfortable with how their schools had handled these exams [2]. In 2005, a survey of medical students at the University of Oklahoma found that a large majority of the sample had given pelvic examinations to patients under anesthesia, and that consent had not been obtained in nearly three quarters of the cases [3]. Similarly, a survey from 2003 reported that the majority of medical students at five medical schools in Philadelphia has performed pelvic examinations on patients who were anesthetized before a gynecological surgery and it was unclear how many of them had consented [4]. Research has also shown that educational pelvic examinations under anesthesia have been common in the United Kingdom, Canada, and New Zealand, each of which is taking, or has already taken, measures to ensure that specific consent for these examinations is always obtained [5]. While I am unaware of any empirical data related to educational prostate exams taking place on anesthetized patients, medical professionals and students assure me that this practice also occurs.

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[1] Barnes, S. S. (2012). Practicing pelvic examinations by medical students on women under anesthesia: why not ask first? *Obstet Gynecol, 120*(4), 941-943. Tsai, J., June 24, 2019). Medical Students Regularly Practice Pelvic Exams On Unconscious Patients. Should They? *ELLE*. Retrieved from https://www.elle.com/life-love/a28125604/nonconsensual-pelvic-exams-teaching-hospitals/

[2] Tsai, J. (2019, June 24, 2019). Medical Students Regularly Practice Pelvic Exams On Unconscious Patients. Should They? *ELLE*. Retrieved from https://www.elle.com/life-love/a28125604/nonconsensual-pelvic-exams-teaching-hospitals/

[3] Schniederjan, S., & Donovan, G. K. (2005). Ethics versus education: pelvic exams on anesthetized women. *J Okla State Med Assoc, 98*(8), 386-388.

[4] Ubel, P. A., Jepson, C., & Silver-Isenstadt, A. (2003). Don't ask, don't tell: a change in medical student attitudes after obstetrics/gynecology clerkships toward seeking consent for pelvic examinations on an anesthetized patient. *American journal of obstetrics and gynecology, 188*(2), 575.

[5] Coldicott, Y., Pope, C., & Roberts, C. (2003). The ethics of intimate examinations--teaching tomorrow's doctors. (Education and debate). *British Medical Journal, 326*(7380), 97. Gibson, E., & Downie, J. (2012). Consent requirements for pelvic examinations performed for training purposes. *CMAJ : Canadian Medical Association Journal, 184*(10), 1159-1161. Malpas, P. J., Bagg, W., Yielder, J., & Merry, A. F. (2018). Medical students, sensitive examinations and patient consent: a qualitative review. *The New Zealand Medical Journal (Online), 131*(1482), 29-37. General Medical Council. *Intimate examinations and chaperones*. Retrieved from https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/intimate-examinations-and-chaperones/intimate-examinations-and-chaperones Liu, K. E., Dunn, J. S., Robertson, D., Chamberlain, S., Shapiro, J., Akhtar, S. S., . . . Simmonds, A. H. (2010). Pelvic Examinations by Medical Students. *Journal of Obstetrics and Gynaecology Canada, 32*(9), 872-874. Bagg, W., Adams, J., Anderson, L., Malpas, P., Pidgeon, G., Thorn, M., . . . Merry, A. F. (2015). Medical Students and informed consent: A consensus statement prepared by the Faculties of Medical and Health Science of the Universities of Auckland and Otago, Chief Medical Officers of District Health Boards, New Zealand Medical Students' Association and the Medical Council of New Zealand. *N Z Med J, 128*(1414), 27-35.

Within the United States, consent already has become a legal requirement for educational pelvic examinations in California, Delaware, Florida, Hawaii, Illinois, Iowa, Louisiana, Maine, Maryland, New Hampshire, New York, Oregon, Texas, Virginia, Utah, and Washington. In 2021, there are already 9 bills under consideration [6]. It is time that Wisconsin joins them in putting patient rights first.

II. Non-consensual Exams as Violations of Autonomy, Bodily Rights, and Trust

Teaching medical students to perform pelvic or prostate examinations on unconscious patients who have not consented constitutes a significant violation of the autonomy, the bodily rights, and the trust of those who are subjected to these examinations [7]. Autonomy refers to one's ability to self-govern, to act in accord with one's values, goals, and desires [8]. This ability is not afforded to anesthetized patients on whom educational intimate examinations are performed and who have not been given an opportunity to consent. Consent allows patients to exercise their autonomy, to make choices aligned with their goals and values, about their bodies. Crucially, the vast majority of patients do consent to medical students performing pelvic examinations on them when asked [9]. However, 100% wish to be specifically consented for such examinations beforehand [10]. This shows how consent is not merely an instrumental act of gaining permission, but is an intrinsically valuable one, which respects the rationality and values of those being asked [11].

Within medicine, consent also operates as a waiver of one's bodily rights; such waivers displace the usual boundaries around one's body, temporarily and in a limited way. The waiver that is given in a consent form before a surgery permits the surgical team to perform several acts on a body in order to promote the patient's wellbeing, some of which may be unanticipated and risky. In a teaching hospital, the surgical team may include the medical students, although this is not often understood by patients [12]. In the case of pelvic examinations performed at the start of a gynecological surgery, however, medical students are not contributing to the care of the patient, but are merely using her body as an educational tool. This constitutes a clear violation of her bodily rights, rights that are not waived within the consent form.

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[6] Wilson, R. F. (2019). Bioethics & Health Law. Retrieved from https://robinfretwellwilson.com/legal-bioethics-health-law. *See* 2021 AR H.B. 1137; 2021 AZ H.B. 2106; 2021 AZ S.B. 1017; 2021 CT H.B. 5067; 2021 FL H.B. 361; 2021 IN H.B. 1012; 2021 MA S.D. 612; 2021 MO H.B. 459; 2021 TX H.B. 1434.

[7] Friesen, P. (2018). Educational pelvic exams on anesthetized women: Why consent matters. *Bioethics, 32*(5), 298-307.

[8] Dworkin, G. (1988). *The Theory and Practice of Autonomy* (Vol. 102): Cambridge University Press.

[9] Wainberg, S., Wrigley, H., Fair, J., & Ross, S. (2010). Teaching pelvic examinations under anaesthesia: what do women think? *J Obstet Gynaecol Can, 32*(1), 49-53. Martyn, F., & O'Connor, R. (2009). Written consent for intimate examinations undertaken by medical students in the operating theatre--time for national guidelines? *Irish medical journal, 102*(10), 336-337.

[10] Bibby, J., Boyd, N., Redman, C., & Luesley, D. (1988). Consent for vaginal examination by students on anaesthetized patients. *Lancet, 2*, 115

[11] Dworkin, G. (1988). *The Theory and Practice of Autonomy* (Vol. 102): Cambridge University Press.

[12] Goedken, J. (2005). Pelvic Examinations Under Anesthesia: An Important Teaching Tool. *Journal of Health Care Law and Policy, 8*(2), 232-239.

Finally, this practice violates trust, the foundation of medicine. When seeking care, patients are required to make themselves extremely vulnerable in order to access treatment; they admit to engaging in unhealthy or stigmatized behaviors, remove their clothing, and allow themselves to be poked and prodded, often with little understanding of why [13]. It is only physicians who have been given the power and privilege to treat patients who are vulnerable in this way. Such power and privilege combined with such vulnerability creates a strong obligation for doctors to seek trust and be deserving of it [14]. Performing educational pelvic or prostate examinations on unconscious patients without their consent significantly jeopardizes this foundation of trust, as can be demonstrated by the shock and outrage of many who have learned about this practice [15]. I have received countless emails and messages from patients who are horrified that this is still occurring within medical schools. It is important to consider these responses in light of the prevalence of sexual assault. One in three women in the United States have experienced sexual violence, but this jumps to nearly one in two for American Indian / Alaska Native women or women who are multiracial. One in five women have been raped [16]. Pelvic examinations can be very distressing to those with a history of sexual trauma, even when performed while patients are conscious and have consented [17]. To learn that a sensitive examination has occurred, or may have occurred, while one was unconscious and without consent, can amplify this trauma, leading to significant harm and disengagement from clinical care.

III. Objections to a Legal Consent Requirement

Some argue that a legal requirement for specific consent for educational pelvic examinations under anesthesia will stand in the way of medical education and prevent future clinicians from learning the skills they need. Because the majority of patients consent to these examinations when asked, this is very unlikely to be the case. There are also no reports of issues related to student training in those states, and other countries, where consent is legally required.

Others insist that consent to educational examinations by medical students is already implied when a patient signs a consent form before a surgery [18]. As has been argued, this is only the case for aspects of the surgery that are part of the clinical care and contribute to the wellbeing of the patient. As these examinations are purely educational, they serve to benefit the medical trainees

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[13] Rhodes, R. (2001). Understanding the Trusted Doctor and Constructing a Theory of Bioethics. *Theoretical Medicine and Bioethics, 22*(6), 493-504.

[14] Ibid.

[15] See the comments section of: Friesen, P. (2018, October 30, 2018). Why Are Pelvic Exams on Unconscious, Unconsenting Women Still Part of Medical Training? *Slate*. Retrieved from https://slate.com/technology/2018/10/pelvic-exams-unconscious-women-medical-training-consent.html

[16] National Sexual Violence Resource Center. (2020). Statistics. Accessed Jan 28, 2020. Retrieved from https://www.nsvrc.org/node/4737

[17] Larsen, M., Oldeide, C. C., & Malterud, K. (1997). Not so bad after all..., Women's experiences of pelvic examinations. *Family Practice, 14*(2), 148-152.

[18] See interview with William Dignam, head of OB-GYN clerkships at UCLA in: Warren, A. (2003). Using the Unconscious to Train Medical Students Faces Scrutiny. *The Wall Street Journal,* (March 12). Retrieved from http://www.wsj.com/articles/SB104743137253942000

and not the patient [19]. Furthermore, the consent that is obtained before surgery is a legal one, but often not an informed one [20].

Others argue that the law is not the appropriate tool for changing this practice and that medical professionals should be responsible [21]. However, a long history of medical professionals speaking out about this practice has led to little traction in terms of changing practice. An opinion published in 2001 by the American Medical Association's Council on Ethical and Judicial Affairs, a press release by the Association of American Medical Colleges in 2003, as well as an opinion from the American College of Obstetricians and Gynecologists in 2011, all asserted that explicit consent ought to be obtained for educational pelvic examinations on patients who are anesthetized [22]. Given that the practice is still common, we can conclude that recommendations from professional bodies are not sufficient, and a more effective tool, such as a legal one, is needed.

Others have suggested that the practice itself is trivial and that patients do not need to be consented because, in the eyes of medical professionals, these examinations are not sensitive or sexual at all; they involve parts of the body that are just like any other [23]. This objection is a paternalistic one that has no place in medicine today. It is not the perspective of the clinician that matters, but that of patients, who have the right to decide what they deem sensitive and what happens to their bodies while they are unconscious.

IV. Closing

It is overwhelmingly clear that foregoing consent before educational intimate examinations leads to moral distress in medical students, violates the autonomy and bodily rights of patients, and jeopardizes the foundation of trust on which the health care system rests. Embedding explicit consent requirements into law will not threaten educational goals, as the majority of patients will consent to these examinations, and will improve the system of medical education, as students will leave their training with more respect for patient's bodies and knowledge of the importance of informed consent.

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[19] Barnes, S. S. (2012). Practicing pelvic examinations by medical students on women under anesthesia: why not ask first? *Obstet Gynecol, 120*(4), 941-943.

[20] Wilson, R. F. (2005). Autonomy suspended: using female patients to teach intimate exams without their knowledge or consent. *J. Health Care L. & Pol'y, 8*, 240.

[21] Yale University School of Medicine. (2019). *Statement of Yale University School of Medicine Concerning SB 16, An Act Prohibiting an Unauthorized Pelvic Exam on a Woman Who is Under Deep Sedation or Anesthesia*. Retrieved from https://www.cga.ct.gov/2019/PHdata/Tmy/2019SB-00016-R000204-Yale%20University%20School%20of%20Medicine-TMY.PDF

[22] American Medical Association, *Medical Student Involvement in Patient Care: Report of the Council on Ethical and Judicial Affairs.* Virtual Mentor, 2001. **3**(3). Association of American Medical Colleges. (2003). Statement on Patient Rights and Medical Training. *Committee opinion no. 500: Professional responsibilities in obstetric-gynecologic medical education and training.* Obstet Gynecol, 2011. **118**(2 Pt 1): p. 400-4.

[23] Carugno, J. A. (2012). Practicing pelvic examinations by medical students on women under anesthesia: why not ask first? *Obstet Gynecol, 120*(6), 1479-1480.

Respectfully yours,

Phoebe Friesen
Assistant Professor
Biomedical Ethics Unit
McGill University[24]

[24] Academic affiliation is for identification purposes only. I write in my individual capacity and my university takes no position on this or any other bill.

Wisconsin Alliance for Women's Health
www.supportwomenshealth.org

TO: Assembly Committee on Health
FROM: Katrina Morrison, Health Equity Director, Wisconsin Alliance for Women's Health
RE: Testimony in Support of AB 128
DATE: July 29, 2021

Dear Chairman Sanfileppo and Members of the Health Committee:

Thank you for the opportunity to provide testimony in support of Assembly Bill 128. My name is Katrina Morrison, and I am here on behalf of the Wisconsin Alliance for Women's Health. Our vision is that every Wisconsin woman -- at every age and every stage of life -- is able to reach her optimal health, safety, and economic security. In the spirit of our vision, we support legislation that will positively impact women's health and well-being in Wisconsin.

It seems obvious that if a woman is under anesthesia in a hospital, she should not have to worry about having a pelvic exam performed on her by a student learner without her explicit consent. However, the unsettling reality is that cases of unconsented pelvic exams continue to surface. Across the nation, this unethical practice has already been condemned by the American College of Obstetricians and Gynecologists, the American Medical Association, the Association of American Medical College, legal scholars, and ethicists, and banned in seventeen states and counting.

While we appreciate that some hospitals in Wisconsin have strengthened their internal policies, patient consent forms and procedures, without statewide legislation there is no guarantee that a patient seeking care at any hospital in the state couldn't potentially undergo an unnecessary invasive, intimate exam without explicit consent. No matter where you seek care in Wisconsin, we believe all patients should never undergo a pelvic or rectal exam without explicit and informed consent.

Under AB 128, all Wisconsin hospitals require written and verbal informed consent prior to performing a pelvic exam on a patient prior to surgery. While existing consent procedures from some Wisconsin hospitals request permission for a student learner to be involved in the patient's care, it does not specify that a pelvic exam may be performed. In addition, if a patient wishes to report a non-consensual intimate exam, the structure of the current reporting system is complex and difficult to navigate, and in certain cases may lead to further traumatization.

At the national level, ACOG's Committee on Ethics published an Opinion addressing this very issue. The Opinion states, "Pelvic examinations on an anesthetized woman that offer her no personal benefit and are performed solely for teaching purposes should be performed only with her specific informed consent obtained before her surgery." This clarifies that the physician-patient relationship is underpinned by the ethical responsibility to prioritize patient welfare; and when teaching experiences are placed above patient care and patient bodily autonomy, the physician-patient relationship loses its integrity.

For the past 17 years, our organization has relied on the expertise and experiences of medical professionals, especially those on the front lines of women's healthcare, and we have the utmost respect for their dedication and work. The development of the next generation of healthcare professionals is an imperative we all share. This legislation aims to strike that balance between medical education and patient bodily autonomy.

P.O. Box 1726, Madison, WI 53701-1726 608-251-0139 toll free: 866-399-9294 fax: 608-256-3004 info@wiawh.org

Wisconsin Alliance for Women's Health
www.supportwomenshealth.org

AB 128 ends the unethical practice of performing pelvic exams on women under anesthesia without their explicit consent. It brings Wisconsin in line with the evidence-based practice and trauma-informed approach of receiving a patient's explicit consent before intimate and invasive exams. It protects survivors of sexual assault from enduring further violation of their bodies unnecessarily. It reinforces clinicians' ethical responsibilities by ensuring shared decision-making between patients and providers. And it honors patient preferences by safeguarding bodily autonomy. AB 128 is a critical intervention that showcases our elected leaders' commitment to the health and safety of all Wisconsin women.

As you consider this pressing legislation, we encourage you to expand the bill to include all intimate invasive exams, including rectal. While non-consensual pelvic exams have captured the attention of many, all non-consensual invasive and intimate procedures are equally as disturbing and should be prohibited.

Thank you, State Representative Cabral-Guevara and Senator Jacque, for your important leadership on this issue. We ask that this Committee support this bipartisan effort and move AB 128 forward to ensure Wisconsin's consent requirements are crystal clear.

Testimony Contact:
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WISCONSIN COALITION AGAINST SEXUAL ASSAULT

Wisconsin Alliance for Women's Health
www.supportwomenshealth.org

TO: All Wisconsin State Legislators
FROM: Wisconsin Alliance for Women's Health
Wisconsin Coalition Against Sexual Assault
RE: Support of AB 128
DATE: July 29, 2021

On behalf of Wisconsin's leading advocates for women and sexual assault survivors, we are urging your support for Assembly Bill 128 and commend its authors for safeguarding patient bodily autonomy.

Current law does not prohibit performing pelvic exams for on anesthetized women without their specific informed consent, even in cases where it may be unnecessary for the patient's treatment. As a result, an unknown number of Wisconsin women have been unknowingly subjected to this invasive, intimate exam. The American College of Obstetricians and Gynecologists (ACOG), the American Medical Association, the Association of American Medical Colleges, and legal scholars and ethicists have criticized the practice; yet, cases of unconsented pelvic exams continue to surface. As such, 17 states have enacted laws that ban this unethical practice.

AB 128 stipulates that all Wisconsin hospitals require written and verbal informed consent prior to performing a pelvic exam on a patient in the hospital. While the existing consent procedure requests permission for a student learner to be involved in the patient's care, it does not specify that a pelvic exam may be performed. In addition, if a patient wishes to report a non-consensual intimate exam, the structure of the current reporting system is complex and difficult to navigate, and in certain cases may lead to further traumatization.

Many patients experience anxiety, shame, and embarrassment during an intimate exam. These feelings may be compounded when the patient is a survivor of sexual violence, a person of color, is clinically obese, has a disability, or is a member of the LGBTQ community. By emphasizing consent and bodily autonomy, this legislation reflects the values of the anti-sexual violence movement and is extremely important for survivors seeking trauma-informed health care. Sexual assault survivors have already experienced a violation of their bodily autonomy, and performing a pelvic exam without their specific informed consent represents another violation; this time, however, when they are seeking critical health care services. **Some clinicians fear that requiring specific informed consent may damage the physician-patient relationship or the patient's relationship with the health care team, however, the opposite is true: transparency builds trust and demonstrates the health care team's commitment to patient welfare.**

At the national level, ACOG's Committee on Ethics has addressed this very issue. The Committee's Opinion, reaffirmed in 2020, states, "Pelvic examinations on an anesthetized woman that offer her no personal benefit and are performed solely for teaching purposes should be *performed only with her specific informed consent* obtained before her surgery." This opinion clarifies that the physician-patient relationship is underpinned by the responsibility to prioritize patient welfare. Additionally, because of the potential for trauma to the patient, members of the health care team who care for the patient during and after the non-consensual exam face ethical and moral challenges. **When teaching experiences are placed above patient care and bodily autonomy, health care's relationship with the patients loses its integrity.**

We ask that our elected leaders support the application of evidence-based practices and trauma-informed principles as identified in this bill throughout Wisconsin's hospital systems. By requiring specific informed consent prior to performing a pelvic exam on an anesthetized or otherwise unconscious patient, AB 128 provides a necessary intervention that honors patient preferences and body autonomy, protects the health care team from moral distress, and supports shared decision-making between patients and their providers. **We respectfully request that you support AB 128.**

From: Olivia Chasteen <mrsoliviachasteen@gmail.com>
Sent: Wednesday, July 14, 2021, 3:53 PM
To: Joshua.Hoisington@legis.wisconsin.gov
Subject: Upcoming Health Committee Public Hearing

Hello Mr. Hoisington,

I would like to pass along a comment for the upcoming public hearing for the health committee as I am not able to attend in person.

I would like to ask the committee members to please support AB128 which would require hospitals to receive written and verbal consent from patients before allowing medical students to perform pelvic exams while the patient is under general anesthesia or otherwise unconscious. This should be common practice and the fact that pelvic exams are performed without this type of consent is both appalling and terrifying. Under any other circumstance, this would be considered assault. Many women have come forward in recent years with horrifying stories of waking up to discover a pelvic exam was done without their consent. As a mother and as a woman, I am asking that you please support this commonsense bill to help protect Wisconsinites.

Thank you,

Olivia Chasteen
6725 Polish Rd
Pittsville, WI 54466

From: Rachel McCardle <rachelmccardle@gmail.com>
Sent: Thursday, July 29, 2021, 7:43 AM
To: "Joshua.Hoisington@legis.wisconsin.gov" <Joshua.Hoisington@legis.wisconsin.gov>
Cc: "Rep.Zimmerman" <Rep.Zimmerman@legis.wisconsin.gov>;
"Sen.Stafsholt@legis.wisconsin" <Sen.Stafsholt@legis.wisconsin>
Subject: Support for AB128

Dear members of the Assembly Health Committee,

My name is Rachel McCardle and I live in River Falls with my husband and two children. I am unable to attend the public hearing today in person, but wanted to ensure my voice was heard by the full committee.

I am writing to share my strong support of AB128. It is stunning to me, that this type of policy is not already law, and I sincerely hope hospitals in Wisconsin have implemented informed consent policies such as this into their standard procedures.

This bill is common sense, and should already be law. I cannot for one minute comprehend why anyone would advocate against this policy. It is actually frightening to me that the American College of Obstetricians and Gynecologists, as well as the Medical College of Wisconsin and the Wisconsin Hospital Association are all registered as "undisclosed" for this bill.

This bill requires hospitals to have and enforce a policy requiring written and verbal informed consent to be obtained from a patient before a medical student, or anyone authorized to perform pelvic exams may do so on a patient who is under general anesthesia or unconscious.

Why is this not already standard procedure? The fact that there is the possibility and likelihood women in Wisconsin have been victims of pelvic exams being performed on them without their consent or knowledge while under general anesthesia for something else is quite horrifying to me as a woman, mother, and human being. I certainly hope, though I may never know for sure, that this has never happened to me, and I surely expect that my four daughters never have to wonder about this very thing themselves once they are adults. We need to have trust with our medical providers, and this bill reinforces trust by making sure consent is obtained.

If anyone on this committee is truly considering voting "no", I would seriously request an explanation. If you vote no on this bill, in my view, you are essentially advocating for the unauthorized penetration of unconscious women, which in any other scenario, is called rape.

This is a common sense bill, that supports transparency in medical decision making, and frankly, I believe that the number of cosponsors on this bill should be triple what is currently listed. I encourage the full health committee to add their names to this bill in cosponsorship, vote yes in this committee, as well as push to have this heard and voted on by the full assembly.

Thank you for your time.

Rachel McCardle
N7694 County Rd W
River Falls WI