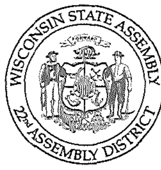

JANEL BRANDTJEN

STATE REPRESENTATIVE • 22ND ASSEMBLY DISTRICT

Chairman Moses and Members,

AB 125 requires hospitals to implement and enforce a policy mandating written and verbal informed consent before a pelvic examination is performed on a patient who is under general anesthesia or otherwise unconscious. I firmly believe that this bill represents a critical step in upholding patient rights, ensuring ethical medical practice, and promoting transparency within our healthcare system.

Pelvic examinations are essential medical procedures, often performed for diagnostic or educational purposes. However, when conducted without the patient's explicit consent, particularly when the patient is unconscious or under anesthesia, it raises significant ethical and legal concerns. Patients should have the fundamental right to make informed decisions about their medical care, including the right to provide or withhold consent for any procedure performed on their bodies.

The key provisions of AB 125 are commendable and necessary for the following reasons:

1. **Patient Autonomy:** The bill upholds patients' right to make informed decisions about their medical care, even when they cannot provide consent at the moment.
2. **Protection Against Unwanted Procedures:** It guards against unauthorized pelvic examinations, preventing invasive procedures without explicit patient consent.
3. **Education and Accountability:** The bill promotes education on informed consent and establishes a framework for disciplinary actions against violators, fostering accountability within healthcare institutions.
4. **Enhancing Trust:** It reinforces trust between patients and healthcare providers, ensuring patients' dignity and consent are respected.
5. **Ethical Medical Practice:** AB 125 aligns with ethical medical principles, emphasizing patient-centered care and informed decision-making.

In conclusion, I believe that AB 125 is a crucial piece of legislation that will help protect patients' rights, uphold ethical standards in medicine, and strengthen the trust between patients and healthcare providers. I urge you to support and pass this bill, as it represents a significant step toward a more transparent, respectful, and patient-centered healthcare system.

Thank you for your attention to this important matter, and I hope to see this bill enacted into law for the benefit of all patients in our state.

State Representative Janel Brandtjen

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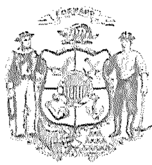

ANDRÉ JACQUE

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Testimony before the Assembly Committee on Health, Aging and Long-Term Care

Senator André Jacque
February 14, 2024

Chairman Moses and Committee Members,

Thank you for the opportunity to testify as the Senate co-author of Assembly Bill 125, the *Patient Privacy Protection Act*, which would require informed consent before performing a pelvic exam on a patient who is under general anesthesia or 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, has often failed to obtain the specific, informed consent of the sedated patient.

Unfortunately, this practice continues at some hospitals, as detailed in a 2018 article in *Bioethics* and reports from 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. 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.

Studies document the persistent nature of unauthorized pelvic examinations. A 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. 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."

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.

Under Assembly Bill 125 and its substitute amendment, hospitals must have and enforce a policy requiring written informed consent 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.

This legislation passed the Senate Health Committee unanimously earlier this session, and the full Senate by voice vote, and the Assembly Committee on Health unanimously passed very it last session as 2021 SB 127/AB 128 with strong bi-partisan co-sponsorship and the formal support of the Wisconsin Nurses Association, Wisconsin Coalition Against Sexual Assault, Wisconsin Alliance for Women's Health and End Domestic Abuse Wisconsin. It also reflects the stated consensus of professional medical organizations that healthcare providers should obtain explicit consent for intimate teaching exams, including the American Association of Medical Colleges and the American College of Obstetricians and Gynecologists.

Wisconsin should join the list of 25 states that already require explicit consent for pelvic examinations on unconscious patients for medical teaching purposes. Female patients deserve to have their bodily integrity respected when they are unconscious and vulnerable during a medical procedure. Foregoing consent before educational intimate examinations leads to moral distress in medical students, and 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.

Thank you for your consideration of Assembly Bill 125. I'd be happy to answer any questions.

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Robin Fretwell Wilson

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

February 14, 2024

BY EMAIL

Assembly Committee on Health, Aging and Long-Term Care
2 E Main Street
Madison, WI 53703

Re: SENATE BILL 127

Dear Assembly Committee on Health, Aging and Long-Term Care

We write to support Senate Bill 127 which would require "hospitals to have and enforce a policy requiring written and verbal informed consent" before any authorized individual may "preform a pelvic examination on a patient who is under general anesthesia or otherwise unconscious".[1]

The passage of Senate Bill 127 will ensure that norms of autonomy for patients are honored and that patients are not treated as a means to an end. As we explain below, requiring written informed consent for pelvic exams done for teaching purposes guarantees the dignity and respect that patients deserve *without* jeopardizing the quality of patient care or medical education in Wisconsin.

Part A of this letter applauds this important bill, which if signed into law, would place Wisconsin as the 27th state in the nation to give patients the right to decide whether medical trainees will perform pelvic exams on them for the students' learning. Part B addresses the claim that unconsented exams simply *no longer* occur in Wisconsin.[2] If unconsented exams occur, asking for specific consent gives patients the dignity and autonomy all patients deserve—and if teaching exams never occur without consent, Senate Bill 127 still reinforces the norm that all patients should be respected in deciding what happens with their bodies. Part C details the extent of pelvic examinations for medical training without the patient's consent. Part D documents the strong consensus of medical ethics groups is that such pelvic exams should not occur without explicit consent. Parts E, F, and G refute common justifications for performing such pelvic 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 teaching exams in overwhelming numbers and consequently, should be enlisted as "respected partners"[3] in medical teaching. Part H remarks on the thoughtful construction of the bill's text.

A. Senate Bill 127 Would Provide Crucial Protections

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[1] Senate Bill 127.

[2] Emma Goldberg, *She Didn't Want a Pelvic Exam. She Received One Anyway*, N.Y. TIMES (Feb. 17, 2020), https://www.nytimes.com/2020/02/17/health/pelvic-medical-exam-unconscious.html.

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

To be clear, "the pelvic examination is a critical tool to aid in the diagnosis of women's health conditions and remains an important skill necessary for students to master before becoming physicians."[4] The only question is: Should patients have the ability to consent to such critical medical teaching?

Passage of Senate Bill 127 would place Wisconsin within an emerging legislative trend to require healthcare providers to ask permission before using patients as tools for teaching pelvic exams. Arizona, Arkansas, California, Connecticut, Colorado, Delaware, Florida, Hawaii, Illinois, Iowa, Louisiana, Maine, Maryland, Missouri, Montana, New Hampshire, New Jersey, New York, Oregon, Utah, Virginia, Washington, Texas, Rhode Island, Nevada, and most recently, Pennsylvania all require explicit consent for pelvic examinations performed on unconscious patients for teaching purposes.[5] Nineteen of these states enacted laws in the last fifty-six months. See Table 1.

Table 1
Features of Enacted Pelvic Exam Legislation

Table 1. Features of *Proposed* and *Enacted Intimate Exam Legislation*

	Gender Neutral Language	Types of Exams Covered		Patients Protected		Regulates Educational Exams			Actors Regulated			Regulated Actions		
Enacted Laws		Pelvic Exams Only	Pelvic Exams and Others	Anesthetized or Unconscious	Conscious	Educational Only	Educational and Others	Other Exams Only	Trainees	Healthcare Professionals	Healthcare Systems*	Perform	Supervise**	Observe
MT HB 417 (2023)	✓		✓	✓			✓		✓	✓		✓	✓	
CO HB 1077 (2023)	✓		✓	✓			✓		✓	✓		✓		
MO SB 106 (2023)	✓		✓	✓			✓		✓	✓		✓	✓	
CT HB 5278 (2022)	✓		✓	✓			✓		✓	✓		✓		
NJ S1771 (2022)	✓		✓	✓			✓			✓	✓	✓		
RI HB5544 (2021)		✓		✓			✓			✓		✓	✓	
NV SB 196 (2021)	✓	✓		✓			✓		✓	✓	✓	✓	✓	
TX HB 1434 (2021)	✓		✓	✓			✓		✓	✓		✓		✓
AZ SB 1017 (2021)	✓	✓		✓			✓			✓		✓	✓	
AR HB 1137 (2021)	✓	✓		✓			✓		✓	✓		✓		
NH HB 1639 (2020)	✓		✓	✓			✓		✓	✓		✓		
WA SB 5282 (2020)	✓	✓		✓			✓		✓	✓	✓	✓	✓	
ME LD 1946 (2020)	✓		✓	✓			✓			✓		✓	✓	
LA HB 435 (2020)	✓		✓	✓			✓			✓	✓	✓		
FL SB 698 (2020)	✓	✓			✓		✓		✓	✓		✓		
NY SB 1092 (2019)	✓	✓		✓			✓		✓	✓	✓	✓	✓	
DE HB 239 (2019)	✓		✓	✓			✓			✓		✓	✓	
MD SB 909 (2019)	✓		✓	✓			✓		✓	✓		✓		
UT SB 188 (2019)	✓		✓	✓			✓		✓	✓	✓	✓		✓
IL HB 313 (2017)	✓		✓	✓			✓		✓	✓		✓		
IA HF 653 (2017)	✓	✓		✓			✓		✓	✓	✓	✓		
HI HB 2232 (2012)		✓		✓			✓		✓	✓		✓		
OR HB 2908 (2011)		✓		✓			✓		✓	✓	✓	✓		
VA HB 2989 (2006)		✓		✓		✓			✓			✓		
CA AB 663 (2003)		✓		✓			✓		✓	✓		✓		

* "Healthcare System" refers to hospitals and institutions.

** Even if trainees are not explicitly mentioned in the language of the bill, the bill applies to them if there is mention of a health care professional "supervising" an exam.

[4] Maya M. Hammoud et al., *Consent for the Pelvic Examination Under Anesthesia by Medical Students*, 134 Obstetrics & Gynecology 1303 (2019).

Like the laws of those states, Senate Bill 127 would ensure that every hospital will have a policy requiring requires written consent of a patient before a trainee performs a pelvic examination on the unconscious or anesthetized patient for the student's benefit.

This duty can be fulfilled with no added cost. Hospitals already facilitate the duty by physicians to obtain informed consent to medical procedures.[6] Thus, hospitals can facilitate informed consent to medical teaching.

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."[7]

B. Answering the Claim that it "Does Not Happen Here" and "If It Does, We Transparently Ask"

Some medical educators and hospital administrators reflexively assume that unconsented medical teaching exams never occur. As we show below, pelvic teaching exams without consent have persisted for more than the two decades that one of us has 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.[8]

A 2022 survey of 1,169 people within the United States drawn from a nationally representative sample found that "1.4 percent of respondents reported having received a pelvic or prostate exam within the past five years without their explicit prior consent."[9] The authors extrapolated from that figure to estimate that "potentially 3.6 million U.S. residents may have received an unconsented rectal, prostate or pelvic exam.

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]

In the recent years, patients have come forward after discovering that they have been used for medical teaching without permission, as we show below. The patients say they were never asked. Without disclosure, how would they have ever known? By their very nature, pelvic exams for the purpose of teaching abnormal anatomy 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

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[6] 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).
[7] Lorelei Laird, *Pelvic exams performed without patients' permission spur new legislation,* ABA J. (Sept. 1, 2019), https://www.abajournal.com/magazine/article/examined-while-unconscious.
[8] 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.
[9] Lori Bruce, Ivar Hannikainen, & Brian Earp, *New Findings on Unconsented Intimate Exams Suggest Racial Bias and Gender Parity*, 52 HASTINGS CENTER REPORT 7 (2022).
[10] Julia Cron & Shefaly Pathy, *2 Ob-Gyns, on Pelvic Exams and Patients' Consent*, N.Y. TIMES (Feb. 24, 2020), https://www.nytimes.com/2020/02/24/opinion/letters/pelvic-exams-consent.html.

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.

Take as an example the stock disclosure given at one time by a significant teaching hospital elsewhere, Yale University Hospital. Yale's hospital admission form shows that the educational nature of exams is anything but transparent. The form vaguely provides:

> "I understand that some of the system hospitals are teaching hospitals. Doctors or other health practitioners who are members of the care team and are in trainingmay **help** my practitioner with the procedure."[9]

Helping care for the patient and training by using the patient are two different things. This sentence does not alert the patient that a pelvic or prostate examination may be performed for somebody else's educational benefit. Senate Bill 127 asks that the involvement of medical trainees be explicitly explained.

Similarly, UnityPoint Health-Meriter's 2017 Consent Form indicates that it:

> offers educational experiences to medical/surgical residents, medical students, and other health care students. These residents/students may observe and if appropriate, may **participate in the procedure(s)**. I understand that these residents/students are not employees or agents of UnityPoint Health-Meriter. The acts or omissions of such residents/students are the responsibility of their sponsoring institutions and not UnityPoint Health Meriter.[12]

UnityPoint Health-Meriter's 2017 Consent Form further asks patients to agree that:

> I agree that resident(s), physician assistant(s), nurse practitioner(s), 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) as noted above, perform and assist with **important parts of the procedure(s).** Important parts of the procedure may include but is not limited to, harvesting of grafts, dissecting tissue, removing tissue, implanting devices, altering tissues, suturing and the use of approved medication(s).[13]

Neither disclosure indicates that an exam may be performed solely **for the student-learner's benefit.** Instead, the words "important part of the procedure" suggest that the patient requires the teaching exam **for the patient's benefit.** Likewise, telling patients that "residents/students may observe and if appropriate, may participate in the procedure(s)" suggests that the educational exam is **needed for the patient's care.**

Other states have explained the need for these laws as responding to concerns by medical students that they may be asked to act unethically, by not candidly and forthrightly securing informed consent to their training. Maryland recognized that while the state's teaching hospitals have informed consent policies, an explicit state law would not only protect patients but assure students that they would not be asked to do something unethical.[14] Maine lawmakers enacted a specific consent law precisely so that "medical students asked to

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[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).

[12] Consent for Surgery and Invasive Procedures, Mr-FORM-0212 100022, UnityHealth Meriter (08/17) (emphasis added).

[13] Consent for Surgery and Invasive Procedures, Mr-FORM-0212 100022, UnityHealth Meriter (08/17) (emphasis added).

[14] 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/.

perform the procedure know they are acting ethically."[15] 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."[16]

In her interview on Wisconsin Public Radio on April 25, 2023, Chief Executive Officer of the Wisconsin Nurses Association Gina Dennik-Champion succinctly captured how consent and voluntary participation forms the essence of medical ethical principles:

> [W]e have our code, and no one should be coerced into number one, performing an exam where they're not comfortable. Secondly, not having the permission of that individual. It smacks us right into our code of ethics….[17]

Trust in the health care system and professions is vital as it affects patient satisfaction, willingness to seek care, and treatment compliance.[18] Moreover, trust is essential to the physician-patient relationship because of the inherent risk and uncertainty of medical care.[19] In 2018, only 34% of Americans reported a positive view of the healthcare industry.[20] This is a staggering decrease from 1975, when 80% reported a positive view.

More fundamentally, Senate Bill 127 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, Senate Bill 127 will reinforce the norm that all patients should be respected in deciding what happens with their bodies. And it will teach students that consent is non-negotiable.

Wisconsin hospitals have already shown leadership in building patient trust and modelling respect. For example, in 2019 UW Health embraced a policy requiring informed consent for "educational sensitive exams."[21]

Senate Bill 127 is a no-harm-no-foul proposition, even as to facilities that have already instituted policies that respect patient autonomy. It will ensure that specific consent is afforded to patients.

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,"[22] experience

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[15] 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.

[16] 2019 New York S. 3353.

[17] Trevor Hook, *Renewed bipartisan legislation pushes for consent for pelvic exams on unconscious patients*, WISCONSIN PUBLIC RADIO (April 25, 2023), https://www.wpr.org/renewed-bipartisan-legislation-pushes-consent-pelvic-exams-unconscious-patients.

[18] *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).

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

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

[21] Jessie Opoien, *Wisconsin lawmakers renew effort to require informed consent for pelvic exams under anesthesia*, The Cap Times (July 29, 2021), https://captimes.com/news/local/govt-and-politics/election-matters/wisconsin-lawmakers-renew-effort-to-require-informed-consent-for-pelvic-exams-under-anesthesia/article_fffd891f-8369-5772-86b0-271b18b7eed0.html.

[22] AMERICAN ASSOCIATION OF MEDICAL COLLEGES, AAMC Statement on Patient Rights and Medical Training (June 12, 2003).

shows that unauthorized exams continue across the U.S. One of us wrote about a woman in Arizona who discovered she received an unauthorized pelvic exam after ***stomach***, not gynecological surgery.[23] In testimony to the Utah Senate Health and Human Services Committee, Ms. Ashley Weitz testified that she had an unauthorized pelvic exam while sedated in the emergency room.[24] Medical students spanning the country from North Carolina to Ohio to Texas report that they have been asked to do exams without consent.[25]

Empirical studies document the persistent nature of unauthorized pelvic examinations. A recent 2020 survey accepted by 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.[26] 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 alone 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.[27] 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.[28] In 1992, Charles Beckmann reported that 37.3% of United States and Canadian medical schools reported using anesthetized patients to teach pelvic exams.[29]

As Table 1 above shows, the latest iteration of laws across the country also extends protection to men, for rectal and prostate exams. Yet the overwhelming evidence is that the widespread practice of teaching intimate exams without consent is a practice of using women to teach pelvic exams.[30]

D. The Legislative and Professional Response

[23] Robin Fretwell Wilson & Anthony Michael Kreis, *#JustAsk: Stop Treating Unconscious Female Patients Like Cadavers*, CHICAGO TRIBUNE (Nov. 30, 2018), https://www.chicagotribune.com/news/opinion/commentary/ct-perspec-pelvic-nonconsensual-exam- medical- students-vagina-medical-1203-story.html.

[24] Lorelei Laird, *Pelvic exams performed without patients' permission spur new legislation*, ABA J., Sept. 1, 2019, http://www.abajournal.com/magaine/article/examined-while-unconscious.

[25] ASSOCIATED PRESS, *Bills seek special consent for pelvic exams under anesthesia*, SAVANNAH MORNING NEWS, May 12, 2019, https://www.savannahnow.com/zz/news/20190512/bills-seek-special-consent-for-pelvic-exams-under- anesthesia/1; Interview with Krithika Shamanna Symone on MSNBC, https://drive.google.com/file/d/14bwqysIJUVzlVtoxQnI1MFIcKpuz9Gpl/view; Lisa Desjardins, *Why more states are requiring consent for pelvic exams on unconscious patients*, PBS NEWSHOUR, Feb. 11, 2023, https://www.pbs.org/newshour/show/why-more-states-are-requiring-consent-for-pelvic-exams-on-unconscious-patients (quoting medical student Alexandra Fontaine).

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

[27] S. Schniederjan & G.K. Donovan, *Ethics versus education: pelvic exams on anesthetized women*, 98 J. OKLA. ST. MED. ASS'N 386 (2005).

[28] 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 & GYNCOLOGY 575, 579 (2003).

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

[30] *But see* Lori Bruce, Ivar Hannikainen, & Brian Earp, *New Findings on Unconsented Intimate Exams Suggest Racial Bias and Gender Parity*, 52 HASTINGS CENTER REP'T 7 (2022) (reporting that "1.4 percent of male and 1.3 percent of female respondents answer[ed] "yes" to having received a [unconsented intimate teaching exam] within the past five years").

In response to the unauthorized use of patients, twenty-five states across the U.S. by legislation now require explicit consent for pelvic examinations on unconscious patients for medical teaching purposes.[31] This legislation reflects the consensus of professional medical organizations that healthcare providers should obtain explicit for pelvic teaching exams.[32] 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."[33]

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."[34] 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."[35] An American Medical Association Forum in January 2019, authored by Professor of Medical Science Eli Y. Adashi at Brown University's Warren Alpert Medical School, called unconsented exams "a lingering stain on the history of medical education."[36]

A growing chorus of bioethicists challenge the need for unconsented exams. Pelvic examinations have a "different moral significance than suturing a wound."[37] 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.[38] 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.[39]

E. Patients Have Not Implicitly Consented to Pelvic Educational Exams

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[31] *See* https://robinfretwellwilson.com/human-rights-for-all.

[32] *See, e.g.*, AMERICAN ASSOCIATION OF MEDICAL COLLEGES., 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) (hereinafter ACOG Ruling No. 500), https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2011/08/professional-responsibilities-in-obstetric-gynecologic-medical-education-and-training; 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").

[33] AMERICAN ASSOCIATION OF MEDICAL COLLEGES, *supra* n. 19.

[34] ACOG Ruling No. 500, *supra* n. 29.

[35] *Id.*

[36] 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/.

[37] 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.

[38] *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.

[39] 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).

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.[40]

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.[41]

To make this concrete, consider the University of Pennsylvania Hospital. Its webpage notes that the Penn Medicine has "several hospitals and hundreds of outpatient centers throughout the region."[42] While some of them are clearly identified as part of the University of Pennsylvania, other names do not suggest an affiliation with the University of Pennsylvania or otherwise tip patients off to their statuses as teaching facilities. This example is used only to make the point that patients are unaware of the educational nature of many patient encounters.

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 New York-Presbyterian Hospital, located less than sixty feet from the Columbia Medical University College of Physicians & Surgeons, is a teaching hospital.[43] 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.[44]

F. Patients Have Not Expressly Consented to Pelvic Educational Exams

Many teaching faculty assert that the patient has consented to educational exams upon admission.[45] This claim takes two forms: In the stronger form, teaching faculty assert that the student's pelvic exam is an ordinary component of the surgery to which the patient has consented.[46]A variant on this claim holds that if consent was obtained for one procedure, it encompasses consent for additional, educational procedures.[47]

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

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[40] 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).
[41] PENN MEDICINE, https://www.pennmedicine.org/practices.
[42] *Id.*
[43] 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, https://www.google.com/maps.
[44] *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).
[45] AM. COLL. OF OBSTETRICIANS AND GYNECOLOGISTS (ACOG), COMM. OPINION 181: ETHICAL ISSUES IN OBSTETRIC-GYNECOLOGICAL EDUCATION 2 (1997).
[46] 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").
[47] *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).

> [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.[48]

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. 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.

For example, in 2021 Julie Chor found that after asking for explicit consent in a family planning clinic, 89.6 percent of surgical patients agreed an additional exam for the medical training of the next generation of providers.[49]

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% would refuse.[50] In a private practice setting, another study found refusal rates of approximately 5% to perform educational pelvic exams.[51] 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.[52]

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.[53] 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.[54]

Operationalizing consent so that it is not a barrier to teaching requires nothing more than planning and common-sense devices. Maya and colleagues suggest, as one example, "[s]tickers on the main consent

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[48] *About Prisma Health*, PALMETTO HEALTH RICHLAND, https://www.palmettohealth.org/patients-guests/about-prisma-health.
[49] J. Chor, "Consenting for Pelvic Exams under Anesthesia with Learners," paper presented at the 33rd Annual MacLean Center Conference, Chicago, IL, November 13, 2021, https://www.youtube.com/ watch?v=wbFWn0K1lVI.
[50] S. Wainberg et al., *Teaching pelvic examinations under anaesthesia: what do women think?*, 32 J. OBSTET. GYNAECOL CAN 49 (2010), https://pubmed.ncbi.nlm.nih.gov/20370981/.
[51] Lawton et al., *Patient Consent for Gynaecological Examination*, 44 BRIT. J. HOSP. MED. 326, 329 (1990).
[52] Peter A. Ubel & Ari Silver-Isenstadt, *Are Patients Willing to Participate in Medical Education?*, 11 J. CLINICAL ETHICS 230, 232-33 (2000).
[53] Lawton, *supra* n. 46, at 329.
[54] Ubel & Silver-Isenstadt, *supra* note 47, at 234.

form attesting that discussion of examination under anesthesia was done and consent obtained (similar to "time out" documentation stickers)." [55]

H. Thoughtful Construction of Senate Bill 127 and the Need for Regulation

Self-regulation in the medical field is prized.[56] But states, in fact, regulate healthcare and transparency in particular when important societal values are at stake. Consider medical records. Federal Law regulates and protects medical records, as one example.[57]

The sponsor of this bill has put much thought into constructing the language of Senate Bill 127 so that its implementation does not become a burden.

Some have rightly raised concerns that, if badly constructed, an explicit consent statute might inadvertently impede the care of patients who have experienced a sexual assault or who need emergency care.[58] Note that the test in Senate Bill 127 does ***not impede care*** for patients who present in an emergency or who present unconscious but may have experienced a sexual assault. Senate Bill 127 is tailored so it would be feasible in practice and not hinder these vital medical processes.

Importantly, Senate Bill 127 promotes accountability by establishing a rule that requires hospitals to maintain and enforce written policies regarding the duty to secure the written and verbal consent of patients to educational exams.[59] Healthcare facilities play a primary oversight role in medicine and have tremendous resources to ensure compliance with regulation. They are subject to audits and they are especially well suited to ensure compliance with Senate Bill 127's basic norm of respect for patients.

I. Conclusion

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

Senate Bill 127 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 and accountability in the healthcare system.

We welcome any opportunity to provide further information or analysis or testimony to the State of Wisconsin Legislature.

Respectfully Yours,[60]

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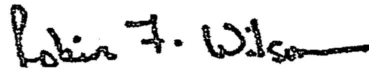
[55] Maya M. Hammoud et al., *Consent for the Pelvic Examination Under Anesthesia by Medical Students*, 134 Obstetrics & Gynecology 1303 (2019).
[56] Roger Collier, *Professionalism: The Privilege and Burden of Self-regulation*, 184 CAN. MED. ASS'N J. 1559(2012).
[57] 45 C.F.R. § 164.508 Uses and disclosures for which an authorization is required.
[58] Trevor Hook, *Renewed bipartisan legislation pushes for consent for pelvic exams on unconscious patients*, Wisconsin Public Radio (April 25, 2023), https://www.wpr.org/renewed-bipartisan-legislation-pushes-consent-pelvic-exams-unconscious-patients (quoting Gina Dennik-Champion, Chief Executive Officer, Wisconsin Nurses Association).
[59] Senate Bill 127, lines 4-5
[60] Academic affiliation is for identification purposes only. We write in our individual capacities and our universities take no position on this or any other bill.



Robin Fretwell Wilson
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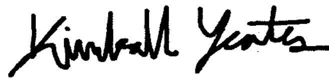

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Testimony in support of Assembly Bill 125
Sarah Wright
2.14.24

Dear Rep. Moses and Members of the Committee on Health:

I intend to deliver oral remarks at the hearing. Two of my previous *three* testimonies follow. I am not going anywhere until we get this across the finish line.

My first trauma was when people I entrusted with my care penetrated my vagina without my knowledge or permission.

My second trauma was that when I approached people in positions of power in our medical system, hoping to prevent this from happening to others, they treated me as an enemy. I approached legislators when no one else would listen, which was the origin of this bill.

I know that many of you are supporters of this bill, and it is my hope that all of you will become so. This is about basic human dignity and decency, and the power of legislators to make a difference in people's lives.

Thank you to Sen. Andre Jacque and Rep. Brandtjen for keeping this bill alive since it was first written by my former Rep., Chris Taylor. Thank you to my current Rep., Jimmy Anderson, and the many co-authors and co-sponsors who have supported this pivotal legislation. I urge you to pass this bill in next week's executive session, without delay.

Sincerely,

Sarah Wright
(resident of Fitchburg, Dane County)
sdwright79@gmail.com
608.509.5936

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.

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 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.

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A Personal Perspective on Senate Bill 635/Assembly Bill 694
Testimony by Sarah Wright
1/30/2020

Picture this: A woman lies unconscious on a table. She has placed her trust in a surgeon to help her—perhaps to remove a tumor from an ovary or assess a problem with fertility. She is at her most vulnerable, sedated and unclothed save for a hospital gown; she has signed a form to document that she is entrusting the surgical team to respect her bodily autonomy when she is unable to speak for herself. Should she have done so? The answer is, it depends. How do I know? Because I have been this woman, twice, and had two radically different experiences.

After she is under anesthesia and her muscles are relaxed, she will be subjected to pelvic exams. A pelvic exam requires penetration of the vagina with a gloved hand in order to palpate organs and feel for positioning and possible abnormalities. Does the woman know that the surgeon needs to do this exam to prepare for surgery? Perhaps, and perhaps not; it depends on whether the surgeon remembers or thinks it is important to inform her. What she almost certainly would not know, if she is at a teaching hospital, is that in addition to the attending surgeon, a resident and a medical student will perform the exam as well. The attending and the resident need to do the exam in order to perform the surgery. As for the medical student? Performing the pelvic exam is done solely for his or her own education, to get practice in how exactly to insert their fingers through the vagina, and what to feel for and observe.

How does this affect the woman under anesthesia? Perhaps she will never know. As she recovers from surgery, perhaps she will have some unsettling feeling that something is wrong, but not know why. If she is truly unfortunate, she may awake in the midst of the exam (yes, this has happened), utterly confused about what is happening. If she is like me, she may try to get answers about what happened to her while she was under anesthesia, and never get them. If she is like me, not getting any clear answers is as traumatic as the physical pain she experiences.

You may be wondering, what about that form that she signed? Didn't the form specify how medical students would be involved? The answer is no. The consent form I was required to sign simply states that "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)." 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. While adding a line to such forms to require explicit, specific written consent for educational pelvic exams may seem like a small matter, I am here to tell you how this one act can avert suffering like what I have experienced, and why it is imperative to support this bill.

The recovery from my surgery in 2009 was difficult in many ways, but the most troubling and lasting effect was an extreme sensitivity of the vulva, the folds of skin that make up the entrance to the vagina. I was dumbfounded: the surgeon had accessed my ovaries through my abdomen, not through the vagina. So what could explain the obvious trauma to my sexual organs? The attending surgeon I had in 2009 did not inform me that HE would do a pelvic exam, much less that a resident and medical student would as well. Neither a pelvic exam nor any instruments used to penetrate the vagina were documented in the sparse, 2-page record of my 2009 surgery; it simply states that "the vagina was prepped in the usual way."

Because I happen to have a sister who has worked in ORs for two decades and because of my second surgery, I know that in addition to several pelvic exams being performed, an instrument called a uterine manipulator was very likely to have been used in my 2009 surgery. This tool penetrates the vagina and is left in place for the duration of the surgery, so it is most likely responsible for the enduring pain I experienced. Someday, I would love to see the expectations for informed consent apply to uterine manipulators and to pelvic exams performed by all practitioners. But I believe that requiring explicit written consent for pelvic exams done solely for educational purposes is an especially urgent need, both to protect patients and medical students. Having consistent expectations for informed consent will protect everyone involved, and raise awareness so that more patients will at least have a better idea what questions to ask.

I used to think of medical students as complicit in causing harm to patients who are subjected to pelvic exams without their consent. But as I talk to more medical professionals and read more studies, it is clear to me that medical students are often victims as well. The current system of medical training is intensely hierarchical; a student who objects to the instructions of a superior risks their future career. While a medical student at the University of Hawaii, Dr. Shawn Barnes wrote an opinion article in the medical journal *Obstetrics and Gynecology* in 2012 in which he described the shame he felt after being instructed to practice pelvic exams on anesthetized women. His article and activism helped to pass legislation to ban unauthorized pelvic exams in the state of Hawaii; the consequence was that Barnes was unable to obtain a medical license there

Back in 2003, the "whistle was blown," so to speak, about pelvic exams being performed on unconsenting women, by Dr. Ari Silver-Isenstadt. As a medical student, Silver-Isenstadt took the courageous—and lonely—position of refusing to conduct any procedure on a patient without explicit informed consent. He ended up taking a leave of absence from medical school for a year to study medical ethics and published his work several years later in the *American Journal of Obstetrics and Gynecology*. His study, entitled, "Don't Ask, Don't Tell," found the troubling result that "students who had completed an obstetrics/gynecology clerkship thought that consent was significantly less important than did those students who had not completed a clerkship." In other words, as medical trainees are repeatedly exposed to cavalier attitudes toward patient autonomy, they are less able to see unethical practices for what they are.

I believe that this system of training, in which students are coerced into doing things they find questionable and lose their own ethical bearings as a result, is profoundly sad for both patients and budding doctors. We must do better by everyone involved. Moreover, this ethical erosion is completely avoidable without compromising training opportunities. Phoebe Friesen's 2018 article in the journal *Bioethics* states, "studies show that as many as 62% of women would consent to an exam for educational purposes if they were asked for permission. To do such exams without explicit consent, figuring that the patient will never know, is beyond reprehensible, and not even necessary."

There is clear evidence documenting that this problem persists, and that performing pelvic exams without consent is damaging to women and medical students alike. So what is the way forward? Can we rely upon medical schools and hospitals to revise their policies and self-regulate? I argue that we cannot. The Medical College of Wisconsin updated their policy on educational pelvic exams back in 2003, partly in response to news coverage of the study by Ari Silver-Isenstadt and his colleagues. But it is unclear whether updating a policy results in a change in practice, and I am skeptical that it has. Currently, much is left up to individual discretion of the surgeon, and it is clear that institutional inertia has stood in the way of meaningful change.

Prior to my surgery in 2018, I was determined to be fully informed, and to help protect the rights of all women undergoing pelvic surgery. I even drafted my own "informed consent contract" that I intended to use with my surgeon and shared it with officials at UW in the hope that it could be useful to others. However, I was told that if having the opportunity to withhold consent for an educational pelvic exam was "a dealbreaker," I should have my surgery at a private clinic.

I went through with the surgery as scheduled with a UW surgeon, who was receptive to my concerns and held herself to the highest ethical standards. Her 12-page record of my surgery carefully documented the pelvic exam she performed, as well as every part of the procedure and every instrument used, and she personally informed me that while she attempted surgery without a uterine manipulator, she needed to use the tool. My recovery was much faster and I experienced none of the vaginal pain that I had in 2009. I believe that being fully informed resulted in a completely different experience, even in the same hospital and undergoing a similar procedure. For me, this compassionate surgeon made all the difference.

But patients' bodily autonomy must be respected, no matter who performs their surgery or where it takes place. Standardizing the expectation for informed consent prior to a pelvic exam on an unconscious patient and requiring written documentation will ensure that every woman's rights are respected.

Perhaps what upsets me most is how the notion of informed consent has devolved in recent years. The origin of informed consent is simple: its intent was to protect the autonomy of patients, especially when they are at their most vulnerable. Today, the "consent forms" that patients must sign are there primarily to protect the legal and financial interests of hospitals. We need to get back to the true meaning of informed consent: First do no harm. Ask for permission. Treat the unconscious patient as though they can see what you are doing. Document actions taken and instruments used in the medical record. These are simple steps that should be required and not left up to individual interpretation.

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 forever grateful to my Representative, Chris Taylor, for listening to me, taking this issue seriously, and bringing this bill into existence. I am grateful to Rep. Brandtjen and Sens. Jacques and Lena Taylor for co-sponsoring this bill, and to the many legislators from throughout Wisconsin who have signed on. You help to restore my faith that most of us want to do what's right, and that there are more Ari Silver-Isenstadts out there than we think. 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 Senate Bill 635.

At Your Cervix Testimony, Assembly Committee on Health, Aging, and Long Term Care
Bill: Assembly Bill 125

February 14, 2024

Dear Representative Moses (Chair), Representative Rozar (Vice-Chair), and members of the committee:

My name is A'magine Goddard. I am the director and producer of ***At Your Cervix,*** an award-winning documentary film and the only film about the issue of non-consensual intimate examinations on patients under anesthesia. Please accept my testimony in support of Assembly Bill 125, with some suggestions that will strengthen the protections it can provide to all of Wisconsin's residents. The suggested amendments are based upon my two decades of experience researching this issue, working closely with medical students, physicians, and patients who have been impacted by non-consensual intimate exams, and my experience as a Gynecological Teaching Associate.

I taught medical students for 10 years, and I have researched this issue for the past two decades. During that time, I have interviewed hundreds of people, including medical students, patients, doctors, midwives, lawyers and legislators. I have learned a great deal about the kinds of situations in which non-consensual intimate exams happen,the reasons why, their impact on the students and patients involved, and - most importantly - how to prevent them.

RESEARCH

It was reported in a 2019 survey conducted by Dr. Jennifer Tsai, MD, a Yale physician, that a disturbing 92% of students had done exams on anesthetized patients, and 61% without consent.

In 2022, The Journal of Surgical Education published new data showing that 84% of students surveyed had done at least one intimate exam on an anesthetized patient, and that 67% of the time those exams were conducted without the knowledge or consent of the patient. .

What does this data, taken from across many states, tell us? It tells us this is a systemic issue – this is "the way this is done." Moreover, a 2021 Hastings Report revealed that Black patients are four times more likely to experience non-consensual exams under all circumstances - one of the many racial disparities we see in healthcare provision today.

PROFESSIONAL STANDARDS
The practice of non-consensual intimate examinations has been condemned by leading professional organizations, including the American College of Obstetricians and Gynecologists, the American Medical Association, and the American Association of Medical Colleges.

For reference, you can find those statements linked below:
American College of Obstetricians and Gynecologists
American Medical Association
American Association of Medical Colleges

In ACOG's policy statement, they are clear that these exams should only be done with *specific* informed consent, and only in situations (typically surgeries) that relate to the sexual/reproductive organs - two important things to include in any law about this issue.

Despite condemnation of the practice by leading professional organizations, the practice of non-consensual intimate exams persists at the institutional level. This demonstrates that, regrettably, healthcare institutions and medical schools cannot be trusted to hold themselves accountable - or even to hold themselves to the standards set by their own profession's leaders. The public needs - and deserves - their elected legislators to step in and provide the protections that healthcare institutions won't. They are relying on you to pass a strong law so that they can access needed healthcare without fear that they will be violated while unable to speak for themselves.

VULNERABILITY OF PATIENTS DURING "INTIMATE EXAMS"
To entrust your life to a doctor while you are under anesthesia is the biggest trust you can put in someone. No one should be afraid of being assaulted when they have entrusted their surgeon to care for them. People who wake up from anesthesia, or a coma, to find they have been assaulted may experience PTSD and/or tremendous emotional and psychological pain. Every patient I have interviewed who has experienced one of these non-consensual exams has experienced PTSD and has had their life disrupted by this experience. This is not acceptable. I hope you will agree with me that we cannot afford to entertain the possibility that people will be harmed, even assaulted, as part of their medical care.

This practice has now been named "medical sexual assault" in the academic literature. This is due to the fact that in any other circumstance when a person was under the influence of a drug and their body was penetrated by implements or hands and they had not consented, it would be defined as "sexual assault" or "rape."

Indeed, many of the patients I have interviewed who have experienced this have the same PTSD symptoms as someone who has been sexually assaulted. Moreover, they learn not to trust their medical providers and sometimes avoid accessing needed care because of their fears.

One such patient is Janine. Janine was a nurse who found out she had been given medically unnecessary pelvic exams while she was under anesthesia for a non-gynecological surgery in the very facility where she worked. A resident had performed a pelvic examination for the purpose of practicing - there was no benefit to Janine whatsoever. Both the resident who performed the educational exam without her consent and her surgeon freely admitted to it. Yet, when she went to speak to three different attorneys, she was told all three times that she had no legal case because there was not a law in her home state of Arizona at the time specifically banning the practice and so nothing was done that was illegal and she had no recourse whatsoever for the harm that had been done to her. Most people are shocked to find out they have no recourse for such a clear violation if they live in a state without a law specifically banning non-consensual intimate exams.

HARM TO STUDENTS & THE HIDDEN CURRICULUM

Not only are patients being harmed by this practice - students are too. Students are told – and expected – to perform non-consensual exams on anesthetized patients and can face retribution if they question it or say "no."

This is what is known as the "hidden curriculum" in medicine (which we discuss in At Your Cervix). We are teaching students that not only is consent not important, but that they can "do to patients whatever they can get away with" as Elizabeth Lorde-Rollins, MD - an OBGYN states. This leaves them unable to properly relate to or care for future patients.

Students are also traumatized by this practice. I have spoken with many who report gaslighting, bullying, and tangible threats of failing grades or denial of a residency placement if they refuse to perform examinations without first obtaining the patient's consent. Those who are pressured into performing non-consensual exams report extreme guilt and moral injury as they are forced to reckon with the fact that they succumbed to pressure and intimidation from authority figures and ultimately engaged in actions that harmed patients - the very people they entered medical school to one day help. The toll this is taking is invisible, yet widespread.

Furthermore, students are denied a real educational opportunity when they are barred from taking part in a robust consent process with patients. As future physicians, they will one day be responsible for obtaining patient consent to examinations and surgeries, but they are not being permitted to learn how to do so during their clinical rotations. This will hinder their ability to care for their patients effectively when they do become physicians and does them a real disservice as learners.

STATE-BY-STATE

Thus far, 25 states have passed laws banning non-consensual intimate exams. **To pass this law in Wisconsin would bring medical practices and policies into line with what the general public overwhelmingly already expects from healthcare providers, and make Wisconsin a leader in passing a new wave of laws that cover all intimate exams - not just pelvic exams - and include robust protections for students as well as patients as well as real accountability mechanisms for those who violate the law.**

We know that Wisconsin residents are at risk without robust policies and laws banning these harmful exams. Medical providers and educators need to be held to the same high standard of consent that we expect in any other situation. It is an egregious violation of patient trust and a misuse of medical authority to perform intimate exams on patients in this manner.

In *At Your Cervix,* we calculate the numbers of patients and students affected with the example of one former student who did approximately 144 of these nonconsensual exams during his 3-4 week OB/GYN rotation. Even one per student is too many, but we know that this is often a repeated act, and for some, it is multiple-times-a-day during their OB/GYN surgical rotations. This means that literally thousands of these exams happen every year in communities where these antiquated exams are still a regular part of medical education.

Amendments we would hope you will consider:

Based upon my extensive experience educating medical students and interviewing hundreds of patients, students, and physicians, I am putting forth suggestions for amendments to this bill that would strengthen its protections for patients and implement protections for medical students, ensuring they are not penalized for refusing to perform and/or reporting non-consensual intimate exams.

This summer, when I spoke at the American Medical Student Association National Conference, I spoke to many students who had been told to perform non-consensual

intimate exams on patients under anesthesia in states that DO have laws on the books. Disturbed by this revelation, my team and I did a deep dive into how that could be possible. What we found is that **without specific whistleblower protections for students and support staff, anybody who could possibly report these exams does not do so out of fear of retribution**. And **without specific enforcement mechanisms, the laws themselves are not enough of a deterrent to prevent non-consensual intimate exams**. Wisconsin has the opportunity now to avoid these issues going forward by making some simple changes now.

1. Who does the bill apply to? Non-consensual exams happen to everyone. That is why we are asking you to broaden the bill to include rectal and prostate exams in addition to pelvic exams.

We also ask that you make a distinction between examinations performed as a part of a patient's care - in other words, those that are medically necessary and benefit the patient - and those that are done specifically for educational purposes and benefit only students or trainees. Exams conducted solely for educational or training purposes should be voluntary and transparent.

2. Explicit description of the consent process, which needs to be separate and discrete (as stated by ACOG and AMA), making it clear who is doing the exams and why. It should include both its own consent form, and a verbal discussion with the surgeon. We see you have stated it should be in writing. Here are a few more details that should be included in order to make this a robust and clear consent process. Include on the form a question about how many exams the patient is willing to undergo. The patient should be able to say how many people/exams they consent to, they should have the opportunity to meet students/trainees before undergoing educational exams (just as patients have the opportunity to meet their surgeon prior to an operation), and the student names should be added to the consent form to ensure the patient is only being examined by the specific people they have consented to (just as patients consent to being operated on by a specific surgeon, and an alternate physician cannot be swapped in or included without the patient's knowledge and permission). We also recommend there be a limit to how many exams any patient is asked to submit to so as not to overburden any one altruistic patient and put them at more risk of harm, which can happen. We suggest you limit this to 3 exams maximum for any one patient. The risk of coercion could place a greater burden on one person's body if there are no parameters.

3. When? Intimate examinations for educational purposes should be limited to surgeries related to such exams (i.e. gynecological surgeries for pelvic exams and colorectal surgeries for prostate and rectal exams). The American College of Obstetricians and Gynecologists takes this position regarding pelvic examinations, and as a researcher and educator I strongly agree. Allowing them in the context of unrelated surgeries (i.e. knee surgeries, stomach surgeries, etc.) places patients at increased risk of coercion and fosters an environment in which non-consensual examinations are more likely to occur.

4. Liability/accountability/oversight. Who is liable? To whom? If the enforceability is strictly internal within the hospital or institution, this issue will not change, as we have seen in other states with weaker laws. **Providers and institutions need to be accountable to an external body, such as the Department of Public Health**. There must be clear liability for the institution and doctors/preceptors who engage in non-consensual exams.

5. Whistleblower protections. We need to protect students/residents/nurses/etc who speak out when they witness or are instructed to do non-consensual intimate exams. Students particularly face significant retribution if they choose to speak up when instructed to perform non-consensual exams, ranging from a failing grade to the inability to secure a residency and other consequences that pose a significant threat to their education and future career. Existing whistleblower laws do not protect students. They only apply to licensed providers or employees. Since students are not licensed nor are they employees, it is critical that this is included in this bill.

6. Exceptions. I suggest including a line specifying that informed consent is not required for intimate examinations (pelvic, prostate, and rectal) **ONLY** in the event that such examinations are necessary to the provision of emergency care, the patient is incapacitated, **AND** the exam is only being performed by a licensed physician or other healthcare provider qualified to perform the exam and make a diagnosis and not for educational or training purposes. Such a provision will preserve access to needed emergency care while protecting patients in such situations from being used for teaching purposes/undergoing extra medically unnecessary exams without their consent.

CLOSING

These improvements will make this a strong model law that will protect both patients and students in Wisconsin. Wisconsin has the opportunity to pass one of the strongest laws in the country with these changes.

I will include some helpful resources below including a 10-minute legislative cut of our film. If you wish to see the whole film, we are happy to provide a private screener to you. If there is anything else you may need, please do ask and we will be happy to get it to you if we can.

You can reach me directly at the number and email below.

Respectfully,
A'magine Goddard
Director/Producer, At Your Cervix
718.974.6554
aj@atyourcervixmovie.com

Additional Resources:
Non-consensual Intimate Exams Fact Sheet

AYC Map of states and standing

10-minute Video: We have made a 10 minute legislative cut of our film for you that we hope will be informative and supportive for this process. Feel free to watch and share with whomever you wish to share it with. It will help you get some of the key aspects of the issue and hear from some patients. This can be shared with legislators/committee members at will.

Feb 9th, 2024

Re: Assembly Bill 125 An Act to create 50.373 of the statutes; Relating to: requiring informed consent before performing a pelvic examination on a patient who is under general anesthesia or unconscious.

Dear Committee on Health, Aging and Long-Term Care:

I am writing in support of Bill 125, which requires hospitals in Wisconsin to have a policy requiring written and verbal informed consent before a medical student can perform a pelvic 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 these examinations are performed on anesthetized patients.

I am an Assistant Professor of Medical Ethics at McGill University and have been researching and writing about this topic for several years. Below, I speak to three topics that I have considered within my scholarship: 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.

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 woman's body as a teaching tool, without 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].

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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). Cundall, H. L., MacPhedran, S. E., & Arora, K. S. (2019). Consent for pelvic examinations under anesthesia by medical students: historical arguments and steps forward. Obstetrics and gynecology, 134(6), 1298. 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/

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 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].Within the United States, consent has become a legal requirement for educational pelvic examinations in more than 25 states [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, prostate, or rectal 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 those on whom pelvic, prostate, or rectal examinations are performed while

[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. 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 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), 27-3.

[6] NBC Nightly News "More than 3.5 million patients given pelvic exams without consent, study estimates" Retrieved at: https://www.nbcnews.com/nightly-news/video/more-than-3-5-million-patients-given-pelvic-exams-without-consent-study-estimates-193321541876 ; Friesen, P., Wilson, R. F., Kim, S., & Goedken, J. (2022). Consent for Intimate Exams on Unconscious Patients: Sharpening Legislative Efforts. Hastings Center Report, 52(1), 28-31.

[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.

they are anesthetized and who have not been given an opportunity to consent. Consent allows patients to exercise their autonomy, to choose what is aligned with their goals and values within their medical care. 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.

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. It 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 [13]. Performing pelvic, prostate, or rectal 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[14]. I have received countless emails and messages from women 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 experienced completed or attempted rape[15]. Pelvic examinations can be very distressing to those with a

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[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.

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

[14] 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

[15] National Sexual Violence Resource Center. (2023). Statistics in Depth. Accessed Sept 19, 2023. Retrieved from https://www.nsvrc.org/node/4737

history of sexual trauma, even when performed while patients are conscious and have consented [16]. 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, prostate, or rectal 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 jurisdictions where consent is legally required.

Others insist that consent to pelvic, prostate, or rectal examinations by medical students is already implied when a patient signs a consent form before a surgery [17]. 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 and not the patient [18]. Furthermore, the consent that is obtained before surgery may be a legal one, but is often not an informed one [19].

Others argue that the law is not the appropriate tool for changing this practice and that medical professionals should be responsible [20]. 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, an opinion from the American College of Obstetricians and Gynecologists in 2011, as well as a statement from the Association of Professors of Gynecology and Obstetrics in 2019, all asserted that explicit consent ought to be obtained for educational pelvic examinations on patients who are anesthetized [21]. 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

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[16] 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.

[17] 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

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

[19] 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.

[20] 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

[21] 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. Association of Professors of Gynecology and Obstetrics (APGO) (2019) "APGO Statement on Teaching Pelvic Exams to Medical Students" Retrieved from: https://apgo.org/page/teachingpelvicexamstomedstudents

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 [22]. 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 pelvic, prostate, or rectal examinations leads to moral distress in medical students, violates the autonomy and bodily rights of women, 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 women 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.

Respectfully yours,

Phoebe Friesen
Assistant Professor
Department of Equity, Ethics, and Policy
McGill University[23]

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

[23] 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.

Alexandra Fountaine
2/12/24

Hello Senator Jacque and the Assembly Committee on Health, Aging, and Long Term Care,

My name is Alexandra Fountaine, and I am a fourth year medical student in Ohio, and I am writing in support of Assembly Bill 125/Senate Bill 127. On my very first day of my first rotation in medical school, I was faced with an ethical dilemma that no lecture could prepare me for. I was asked by my superior to perform a bimanual pelvic exam on an already anesthetized patient. I had never met the patient while she was awake, nor had I asked her permission to perform such an intimate exam. She didn't even know I would be in the room during her surgery. This exam was not required for the successful completion of her surgery. In short, there was no medical indication for me, who was essentially a stranger to this woman, to perform a pelvic exam on her. There was, however, an indication for me to uphold the oath I took to protect her autonomy -- to ensure that I did not violate her privacy for the sake of my learning.

In what other institution in society is the value of one's education upheld by the justification that these egregious acts are "good for learning"? There is no other profession where asking professional learners to complete educational tasks tantamount to sexual violation is acceptable. Others' autonomy and well-being is more important than my education.

The irony of this practice is that unconsented pelvic exams are not even beneficial learning experiences for medical students. Understanding the anatomy of these exams is not too difficult. The real learning is performing these intimate exams while ensuring the patients are comfortable and cared for and do not feel violated. There is no opportunity to do this if patients are anesthetized, rendering the practice nearly useless. I speak frequently about pelvic exams in particular, as people with vaginas are most often targeted in this way. However, non-consensual exams happen to everyone, and I urge you to broaden the bill to include rectal and prostate exams in addition to pelvic exams.

Unconsented intimate exams are happening, here, right now, in the hospitals we all rely on for health care. People with the most power in the healthcare hierarchy are asking the people with the least power to carry out these exams, rendering students almost incapable of saying "no". We need the law to support us as medical students and protect us from harm and retribution for speaking out. I have experienced retribution within the medical community for speaking out against unconsented pelvic exams, including, but not limited to, poor treatment and verbal abuse. The lack of protection as a medical student is unequivocally one of the greatest fears of myself and my classmates. We need to protect students who speak out when we witness or are asked to do non-consensual intimate exams. Students particularly face significant retribution if we choose to speak up when instructed to perform non-consensual exams, ranging from a failing grade to the inability to secure a residency and other consequences that pose a significant threat to our education and future career. Existing whistleblower laws do not protect us. They only apply to licensed providers or employees. Since we students are not licensed nor are we employees, it is critical that this is included in this bill. Both individual medical students and the American Medical Student Association are staunch advocates for these whistleblower protections.

Alexandra Fountaine
2/12/24

Medicine has been unable to self-govern this practice, and we need the government to step in and help us protect our patients. I am asking you, as a woman, as a medical student and soon-to-be pediatrician, to help me protect my patients and restore the value of consent in our profession. The integrity of the medical community in Wisconsin relies on your support of Assembly Bill 125/Senate Bill 127.

Testimony of Katja Brutus

Support AB 125

Dear Committee on Health, Aging, and Long-Term Care,

As a current medical student and future health professional, I believe consent is a necessity in healthcare. At the start of medical school, students recite the Hippocratic oath, promising to protect future patients. Performing a pelvic exam without the patient's knowledge and consent goes against this very oath. Patients are at their most vulnerable state when they undergo treatment at a hospital and are placing their trust in the physician and medical team. The practice of unconsented pelvic exams violates this trust. A patient has the right to know what procedures they will undergo while under anesthesia and who will be performing them. Some patients may be survivors of sexual assault, therefore, undergoing an unconsented exam will be an extremely triggering experience for them. Transparency is the most important aspect of medical care and will only increase the quality of care. Performing an unconsented pelvic exam violates a patient's bodily autonomy, their liberty, and infringes the concept of informed consent.

I am supporting AB 125 because I believe consent is essential for medical treatment. This bill will protect patients and increase trust within teaching hospitals and the healthcare system.

Thank you for the opportunity to submit testimony on this bill.

Sincerely,
Katja Brutus
Student National Medical Association Secretary
University of Florida College of Medicine | M.D. Candidate Class of 2027

Testimony in Support of Assembly Bill 125: An Act to create 50.373 of the statutes; Relating to: requiring informed consent before performing a pelvic examination on a patient who is under general anesthesia or unconscious.
February 14, 2024
Submitted by Livia Fry

Dear Representative Moses (Chair), Representative Rozar (Vice-Chair), and Members of the Committee,

Please accept this testimony in support of **Assembly Bill 125: An Act to create 50.373 of the statutes; Relating to: requiring informed consent before performing a pelvic examination on a patient who is under general anesthesia or unconscious** and proposed amendments that will close loopholes that have made enforcing existing legislation in other states difficult and afford protections to ~~the~~ medical students who also suffer as a result of non-consensual intimate exams.

I give this testimony as a survivor of non-consensual medical educational practices in a teaching hospital. It began when I was about nine years old, and lasted several years until I was thirteen or fourteen. It happened at the hands of an attending physician, in the name of educating the next generation of doctors. It was justified, much the same way unauthorized pelvic, prostate, and rectal examinations are, as a necessary component of medical education and an "invaluable" experience for the physicians-in-training who participated in it. It was allowed because there were no laws in place to protect me. And it has left me with PTSD and a lifetime of pain. I hope that by sharing my story, I can convince you of the need for this legislation and the amendments I am requesting that you consider adopting before voting for its passage. A robust informed consent law will protect Wisconsin residents from the humiliation and degradation of having one's body reduced to a teaching tool without their explicit and informed consent, and from the short and long-term trauma and distress that accompanies such an experience.

When I was a young child, my family was referred to a physician who practiced out of a teaching hospital to get me treatment for a skin condition called vitiligo. We were given the impression that because of my age, we needed someone who specialized in treating the condition in children. We were told this teaching hospital was the only option - whether we wanted a teaching institution or not, this was where we had to go. And when students entered with the attending physician, my family was under the impression we had to let them stay. Nobody asked her if their presence made us uncomfortable - certainly nobody asked me. The language allowing them to be there was vague and buried in the middle of consent forms - much the same way language allowing intimate exams under anesthesia or sedation or while unconscious often is currently. We didn't understand what we were signing up for - much the same way many of today's victims of unconscious intimate examinations do not. That was the first time I was forced to show my naked body to strangers for the purpose of furthering their education. The first time I was reduced from a human being to a teaching tool - an object, or an exhibition. The first time I learned what it felt like to be violated.

A typical appointment went like this: after being taken back to an exam room, I was told to remove all of my clothes, except for my underwear, and put on a paper gown. Then, the doctor would walk in with whatever doctors-in-training would be viewing my naked, prepubescent body that day. They were oftentimes men - whether someone of the opposite sex staring at the naked body of a little girl was humiliating or scary for me was never considered. At each examination, the doctor looked at my full body, to see if any new patches of skin showed signs of having lost their pigment, which is how my condition manifests. By itself, an examination is innocuous - a necessary part of providing healthcare. But during these examinations he put my full, naked body on display for his students - like an exhibit or a sideshow. And when I say my full body, I mean exactly that. I was forced to lie on a table while he pulled back the flimsy paper gown I was wearing to expose my chest, my back, my belly - and everything else one typically does not show publicly. The part I hated most was when he would pull down my underwear. To this day I feel his hands on me, pulling down the thin piece of cloth that protected me from the strange eyes standing behind him, staring at my most private areas. I was so acutely aware of those eyes - gaping at me like someone usually gawks at an animal in a zoo - that I could physically feel them on my skin. They had no regard for my dignity, my privacy, or my feelings. They only cared about how they could use me - how the use of my body was furthering their education. On one or two occasions, they photographed me. To this day, I live with the fact that naked photos of my body have been viewed by who knows how many students, interns, and residents. I was made to feel lower than an animal every time I stepped into that institution's exam rooms, and I have been left with a lifetime of pain and anxiety - and even Post Traumatic Stress Disorder - because of what was done to me.

Because of what happened - because I learned at such a young age how it feels to have one's bodily autonomy taken away and one's body used for the benefit of others - I am terrified of healthcare settings and healthcare professionals. I have flashbacks, nightmares, and panic attacks. I have struggled with physical intimacy since becoming an adult, as I cannot stand the feeling of eyes or hands on my exposed body. And do you remember the story I told earlier, about my least favorite part of examinations being when the doctor would pull down my underwear and allow his students to view my buttocks and genitalia? Because of that, I can't allow anyone to touch my belly - it is excruciating to me, under any circumstances. His hands would always graze my lower belly when he would move to pull my underwear down - and I still feel them there. The mere sensation of fingertips on the skin triggers a flashback and causes me to involuntarily recoil - at times even to scream involuntarily.

If that is the impact that photographs and examinations that were not physically invasive can have, imagine the suffering someone subjected to an unauthorized pelvic, prostate, or rectal examination for the purpose of student or trainee practice must endure. Even if someone is unconscious, the body remembers. And - horrifyingly enough - some people wake up during these exams, or learn about them later from providers who let the information slip in the course of follow up conversations. What must it feel like to enter a hospital for, let's say, a stomach surgery, only to wake up and learn that you were digitally penetrated without your consent - without knowing that this was even a possibility - so that a student (or even multiple students,

several in a row) could tick a box on the list of their required clinical experiences. What must it feel like to learn, after this sickening revelation, that because there is no legislation in place to protect you, a loophole and overly broad and vague language in one of the many consent forms you had to sign in order to access critical treatment means that you have no legal recourse? Worse yet - you have no way to ensure it won't happen again.

Some medical practitioners and healthcare institutions have tried to argue that by seeking treatment at a teaching hospital, patients are giving "implied consent." The fact is, that argument does not hold up, even under the most superficial scrutiny. Patients often do not have a choice regarding the hospital they are brought to for care. In emergency situations when patients are unconscious or otherwise cannot speak for themselves they cannot choose where they are brought. In such situations consent to lifesaving treatment is implied - but consent to the use of their bodies for practice by medical students or trainees is not. Neither, for that matter, is consent implied for any intimate examination that is not urgently necessary to preserve the patient's life or immediate health. And then there are the cases like mine. The cases in which patients or caregivers are told a particular specialist is the only one that can help them or their loved ones, and that specialist happens to practice exclusively out of a teaching institution. Should we be denied the opportunity to receive care just because we do not want our bodies used as specimens or teaching tools? Medical care exists to serve the needs of patients - not students, not trainees, and not the licensed professionals providing treatment. We should not be required to pay for the services we need with our bodies.

Until the legislature adopts a robust informed consent law, every Wisconsin resident runs the risk of undergoing a forced pelvic, prostate, or rectal examination. And these non-consensual exams do happen in Wisconsin - recent peer-reviewed research suggests that they happen in every state without an informed consent law, and disturbingly enough, in some states with laws that lack enforcement mechanisms or a thorough template of what an informed consent process must look like.

Current laws and policies dealing with consent to intimate examinations are not sufficient. Wisconsin residents need their elected legislators to step in - to adopt amendments to strengthen this bill, pass this legislation, and provide them with certainty that they can safely seek medical care without fear or risk of being violated.

PROPOSED AMENDMENTS

1. Who does the bill apply to? Non-consensual exams happen to everyone. That is why we are asking you to broaden the bill to include rectal and prostate exams in addition to pelvic exams.

We also ask that you make a distinction between examinations performed as a part of a patient's care - in other words, those that are medically necessary and benefit the patient - and those that are done specifically for educational purposes and benefit only

students or trainees. Exams conducted solely for educational or training purposes should be voluntary and transparent.

2. Explicit description of the consent process, which needs to be separate and discrete (as stated by ACOG and AMA), making it clear who is doing the exams and why. It should include both its own consent form, and a verbal discussion with the surgeon. Any consent form should include on the form a question about how many exams the patient is willing to undergo. The patient should be able to say how many people/exams they consent to, they should have the opportunity to meet students/trainees before undergoing educational exams (just as patients have the opportunity to meet their surgeon prior to an operation), and the student names should be added to the consent form to ensure the patient is only being examined by the specific people they have consented to (just as patients consent to being operated on by a specific surgeon, and an alternate physician cannot be swapped in or included without the patient's knowledge and permission). We also recommend there be a limit to how many educational exams any patient is asked to submit to so as not to overburden any one altruistic patient and put them at more risk of harm, which can happen. We suggest you limit this to 3 exams maximum for any one patient. The risk of coercion could place a greater burden on one person's body if there are no parameters.

3. When? Intimate examinations for educational purposes should be limited to surgeries related to such exams (i.e. gynecological surgeries for pelvic exams and colorectal surgeries for prostate and rectal exams). Allowing them in the context of unrelated surgeries (i.e. knee surgeries, stomach surgeries, etc.) places patients at increased risk of coercion and fosters an environment in which non-consensual examinations are more likely to occur.

4. Liability/accountability/oversight. Who is liable? To whom? If the enforceability is strictly internal within the hospital or institution, this issue will not change, as we have seen in other states with weaker laws. **Providers and institutions need to be accountable to an external body, such as the state's Department of Public Health**. There must be clear liability for the institution and doctors/preceptors who engage in non-consensual exams.

5. Whistleblower protections. We need to protect students/residents/nurses/etc who speak out when they witness or are asked to do non-consensual intimate exams. Students particularly face significant retribution if they choose to speak up when instructed to perform non-consensual exams, ranging from a failing grade to the inability to secure a residency and other consequences that pose a significant threat to their education and future career. Existing whistleblower laws do not protect students. They

only apply to licensed providers or employees. Since students are not licensed nor are they employees, it is critical that this is included in this bill. Both individual medical students and the American Medical Student Association are staunch advocates for these whistleblower protections.

6. Exceptions. I suggest including a line specifying that informed consent is not required for intimate examinations (pelvic, prostate, and rectal) **ONLY** in the event that such examinations are necessary to the provision of emergency care, the patient is incapacitated, **AND** the exam is only being performed by a licensed physician or other healthcare provider qualified to perform the exam and make a diagnosis and not for educational or training purposes. Such a provision will preserve access to needed emergency care while protecting patients in such situations from being used for teaching purposes/undergoing extra medically unnecessary exams without their consent.

February 14, 2024

Assembly Committee on Health, Aging and Long-Term Care

Re: Assembly Bill 125: An Act to create 50.373 of the statutes; relating to: requiring consent before a pelvic examination on a patient who is under general anesthesia or unconscious

Dear Assembly Committee on Health, Aging and Long-Term Care:

My name is Ari Silver-Isenstadt and I support Assembly Bill 125. I am a pediatrician based in Baltimore, Maryland, and I co-authored one of the significant studies about consent practices for educational pelvic exams in the United States. This research has been highlighted in At Your Cervix, a new award-winning documentary.

I am asking for your help—for my patients, my students, and my profession.

30 years ago—when I was in medical school during my gynecology rotation, I was expected to hone my pelvic exam skills on already anesthetized women. It was clear to me that these women did not know that I was there for my own educational needs and that my teachers expected me to use the patients' intimate parts as my classroom without their knowledge or permission. I was not expected to provide useful information for the care of the patient based on the pelvic exam I performed. Shortly after this experience, I published a study that showed that 90% of the surveyed medical students in Philadelphia had practiced pelvic examinations on anesthetized patients for educational purposes.

Often, doctors and hospitals provide the following excuse for not obtaining explicit consent for the educational intimate (pelvic and rectal) exam; they say that students are part of the care team. This is very misleading. While students may help support the healthcare team, they are paying for the opportunity to learn, to have access to people receiving medical care so that, as students, they may learn. Students pay for access to patients' bodies. Patients have the right to provide their explicit consent to participate in the student's education.

This practice of using patients without their explicit consent for educational examinations hurts medical students. I published another study that demonstrated that the importance medical students place on informed consent erodes as they progress through their education. I found this with many of my own classmates.

For the last 20 years, I have taught medical students. Students have cried in my office, worried about how the patients would feel if they found out that the student used their body for their own education without having given explicit consent.

People outside of medicine see this problem more clearly. It seems obvious that people be able to explicitly authorize how their bodies are going to be used and by whom. Medical professionals and hospital defend this outdated practice. They use arguments similar to those used in the past defending the lack of required consent for participation in medical research.

We need you, as legislators, to help put an end to this offensive and embarrassing training practice. As a medical profession, we have been unable to do this ourselves.

Arguments against getting explicit informed consent fall flat under scrutiny. And research shows that patients are willing to provide consent to these examinations, but they want to be asked.

Patients' trust in physicians is crucial for successful health outcomes. Without it, patients may delay seeking care or avoid it completely.

Don't we want our physicians to value truth-telling and to respect our bodily autonomy? Why do we accept a training model that indoctrinates the opposite? I want my profession to stop training practices that hurt both patients and students. I hope you will help ALL of us and vote favorably on this bill.

I believe this bill will be even stronger with the addition of the following protections:

- Broaden the bill to include all pelvic and rectal exams. Once under anesthesia, everyone is vulnerable to non-consensual educational examinations.
- Clarify the role of the medical student by requiring explicit consent for educational pelvic and rectal examinations. Student do not do these examinations as part of the care team; they do them to learn. And they pay tuition for that access.
- Require patients to explicitly provide consent to student pelvic and rectal examinations. Require that patients who do not give consent able to receive care without consequences.
- Provide medical students specific whistleblower protections. Students are not employees, nor are they licensed. They are in a vulnerable position and need protection from consequences if they witness, report, or refuse to participate in non-consensual exams.

Thank you for your consideration and time.

I write in my individual capacity.

Very Truly Yours,

Ari Silver-Isenstadt, MD