

March 4, 2020

Public Health Committee
Legislative Office Building, Room 3000
Hartford, CT
06106

Re: Senate Bill 243 An Act Prohibiting an Unauthorized Pelvic Examination on a Female Patient who is Under Deep Sedation or Anesthesia or Unconscious

Dear Public Health Committee:

I am writing in support of Bill 243, which prohibits physicians, medical students, and residents from performing pelvic examinations on unconscious patients without first obtaining informed consent, except in cases in which the examination is medically indicated. 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 join the rest of the world and much of the country in requiring consent before educational pelvic examinations are performed on unconscious patients.

Below, I speak to three topics that I have considered within my research in medical ethics: I. Medical Student Experiences and Moral Distress, II. Non-consensual Exams as Violations of Autonomy, Bodily Rights, and Trust, III. Objections to a Legal Consent Requirement.

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.

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

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. Last year in 2019, ELLE magazine polled students from across the United States and found that 61% of students had performed a pelvic examination on a female patient under anesthetic without her explicit consent. Of these students, 49% had never met the patient and 47% of these students felt uncomfortable with how their schools had handled these exams ². In 2005, a survey of medical students at the University of Oklahoma found that a large majority of the sample had given pelvic examinations to patients under anesthesia, and that consent had not been obtained in nearly three quarters of the cases ³. Similarly, a survey from 2003 reported that the majority of medical students at five medical schools in Philadelphia has performed pelvic examinations on patients who were anesthetized before a gynecological surgery and it was unclear how many of them had consented ⁴. Research has also shown that educational pelvic examinations under anesthesia have been common in the United Kingdom, Canada, and New Zealand, each of which is taking, or has already taken, measures to ensure that specific consent for these examinations is always obtained ⁵. Within the United States, consent has become a legal requirement for educational pelvic examinations in California, Hawaii, Illinois, Oregon, Virginia, Utah, Maryland, and New York. At least 13 more states have bills under consideration ⁶. It is time that Wisconsin joins them in putting patient rights first.

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

Teaching medical students to perform pelvic examinations on unconscious patients who have not consented constitutes a significant violation of the autonomy, the bodily rights, and the trust of

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

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

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

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

⁶ Wilson, R. F. (2019). Bioethics & Health Law. Retrieved from <https://robinfretwellwilson.com/legal-bioethics-health-law>

those who are subjected to these examinations⁷. Autonomy refers to one's ability to self-govern, to act in accord with one's values, goals, and desires⁸. This ability is not afforded to those on whom pelvic examinations are performed while 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 asked⁹. However, 100% wish to be specifically consented for such examinations beforehand¹⁰. 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 asked¹¹.

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 patients¹². 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 why¹³. 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 it¹⁴. Performing pelvic 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 practice¹⁵. I have received countless

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

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

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

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

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

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

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

¹⁴ Ibid.

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

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 been raped¹⁶. Pelvic examinations can be very distressing to those with a history of sexual trauma, even when performed while patients are conscious and have consented¹⁷. To learn that a sensitive examination has occurred, or may have occurred, while one was unconscious and without consent, can amplify this trauma, leading to significant harm and disengagement from clinical care.

III. Objections to a Legal Consent Requirement

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

Others insist that consent to pelvic examinations by medical students is already implied when a patient signs a consent form before a surgery¹⁸. 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 patient¹⁹. Furthermore, the consent that is obtained before surgery is a legal one, but often not an informed one²⁰.

Others, including representatives from the Yale University School of Medicine in Connecticut, argue that the law is not the appropriate tool for changing this practice and that medical professionals should be responsible²¹. 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

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

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

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

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

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

²¹ Yale University School of Medicine. (2019). *Statement of Yale University School of Medicine Concerning SB 16, An Act Prohibiting an Unauthorized Pelvic Exam on a Woman Who is Under Deep Sedation or Anesthesia*. Retrieved from <https://www.cga.ct.gov/2019/PHdata/Tmy/2019SB-00016-R000204-Yale%20University%20School%20of%20Medicine-TMY.PDF>; Cron, J., & Pathy, S. (2020, Feb 24, 2020). 2 Ob-Gyns, on Pelvic Exams and Patients' Consent, Letter to the Editor. *New York Times*. Retrieved from <https://www.nytimes.com/2020/02/24/opinion/letters/pelvic-exams-consent.html>

Judicial Affairs, a press release by the Association of American Medical Colleges in 2003, as well as an opinion from the American College of Obstetricians and Gynecologists in 2011, all asserted that explicit consent ought to be obtained for educational pelvic examinations on patients who are anesthetized²². Given that the practice is still common, we can conclude that recommendations from professional bodies are not sufficient, and a more effective tool, such as a legal one, is needed.

Others have suggested that the practice itself is trivial and that patients do not need to be consented because, in the eyes of medical professionals, these examinations are not sensitive or sexual at all; they involve parts of the body that are just like any other²³. 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 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,

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

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

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