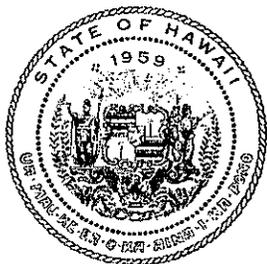


HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



Chair
LESLIE WILKINS

COMMISSIONERS:

ELENA CABATU
ADRIENNE KING
CARMILLE LIM
AMY MONK
LISA ELLEN SMITH
CAROL ANNE PHILIPS

Executive Director
Catherine Betts, Esq.

Email:
DHS.HSCSW@hawaii.gov
Web:
www.hawaii.gov/dhs/women/
HSCSW

235 S. Beretania #407
Honolulu, HI 96813
Phone: 808-586-5758
FAX: 808-586-5756

February 15, 2012

Testimony in Support of HB 2232, HD 1, Relating to Health

To: Representative Gilbert S.C. Keith-Agaran., Chair
Representative Karl Rhoads., Vice Chair
Members of the House Committee on Judiciary

From: Catherine Betts, Esq., Executive Director, Hawaii State Commission on the Status of Women

Re: Testimony in Support, HB 2232, HD 1

On behalf of the Hawaii State Commission on the Status of Women, I would like to thank the committee for hearing this important bill. I would like to express my strong support of HB 2232, HD 1, which would require that female patients provide specific informed consent prior to a pelvic examination, specifically if the female patient is to be anesthetized or unconscious during the examination.

The medical community nationwide has recognized the need for specific informed consent prior to conducting a pelvic examination on an unconscious female patient. In fact, the American Association of Medical Colleges, which represents 125 accredited U.S. medical schools and over 400 teaching schools, has labeled the performance of pelvic examinations on women under anesthesia as "unethical and unacceptable."¹ California has even recognized unauthorized examinations as a misdemeanor and grounds for the loss of a physician's license.² Even under our own criminal statutes, specifically HRS § 707-731, sexual penetration of another person who is mentally incapacitated constitutes a sexual assault in the 2nd degree.³

I sincerely believe that more women would report these examinations as potentially criminal violations *had they known* that this clandestine and paternalistic practice was still occurring. Most women do not know that this practice occurs because they are never given any information nor are they given any opportunity to give consent. This is tantamount to medically endorsed sexual assault.

Justification for this continued practice ranges from paternalistic (i.e. patients give implied consent when they seek services at a teaching facility) to without basis (i.e. if consent is requested, the patient will not agree with the examination). Not surprisingly, many women are willing to give consent if asked, thereby indicating that the continued secrecy of this practice is completely unnecessary.

The Commission respectfully urges this Committee to pass HB 2232, HD 1. The Commission additionally supports the amendments as drafted.

Thank you for this opportunity to testify.

Catherine Betts, Esq.
Executive Director, Hawaii State Commission on the Status of Women

¹ American Association of Medical Colleges, AAMC Statement on Patient Rights and Medical Training (June 12, 2003).

² Cal. Bus. & Prof. Code, § 2281 (West 2004, Supp. 2005).

³ Haw. Rev. Stat. § 707-731.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Written Testimony Presented Before the
House Committee on Judiciary
Thursday, February 16, 2:40 p.m. Room 325

By

Virginia Hinshaw, Chancellor

And

Jerris R. Hedges, MD

Dean, John A. Burns School of Medicine

University of Hawai'i at Mānoa

HB 2232 HD1 RELATING TO HEALTH

Chair Keith-Agaran, Vice Chair Rhoads and members of the House Committee on Judiciary. Aloha.

The John A. Burns School of Medicine (JABSOM) at University of Hawai'i trains medical students and MD graduates in obstetrics, gynecology and women's health, and supports the intent of your bill. However, we respectfully request that some of the language in the bill be amended in the interest of accuracy, to reflect what we know to be actual practice.

JABSOM's Department of Obstetrics and Gynecology (OB-GYN) and Women's Health has a policy regarding the pelvic exams under anesthesia, and medical students introduce themselves to patients requesting permission to be involved in their care. If a pelvic exam under anesthesia is planned, they request permission to perform the examination.

All compensated and non-compensated faculty have been oriented to the policy. All medical students receive training regarding the policy on the first day of their rotation on the clinical service. The policy is included with their orientation paperwork. Kapi'olani Medical Center for Women and Children and The Queen's Medical Center, where our physicians conduct training, have both received the policy and it has been reviewed by their administrative and executive medical groups to ensure hospital and medical school policies are concordant.

This year a randomly selected group of women were questioned post-operatively and asked if a medical student was involved in their care. If they answered affirmatively, they were questioned regarding this policy. In all cases the patient stated the medical student had approached the patient, and informed the patient they would be participating in the patients care including performing a pelvic exam, if such an exam was required for diagnostic purposes or clinical care.

On page 2, line 10, we suggest that "The patient gives prior informed consent to the pelvic examination" be modified to enhance clarity, to the following: "The patient gives prior verbal or written informed consent to the pelvic examination".

The concept of informed consent ensures that patients understand the procedure, the risks and benefits of such a procedure, and that they agree to the procedure being performed. It suggests a dialogue has occurred between the patient and the provider. In general, *a written consent document is signed by the patient as verification that such a discussion took place*. The policy and procedures in effect at this time do require informed consent for the performance of a pelvic exam by a medical student.

We are concerned the current language in the bill is likely to be interpreted in its most conservative form, requiring written consent (versus our suggested "verbal or written informed consent.") This paperwork requirement, in addition to already extensive pre-operative hospital documentation needs, may reduce the medical students' ability to participate in operative procedures.

The OB-GYN rotation may be the only time medical students are exposed to women's health, and it may be their only opportunity to perform pelvic exams. Many will go on to other disciplines in medicine. Being able to perform a pelvic exam is necessary for a physician. Performing a pelvic exam while a patient is anesthetized is a superb learning experience, as the patient is fully relaxed and the intra-abdominal organs are easier to palpate. We know that many of our JABSOM graduates practice medicine in Hawai'i after they complete their training. It is important that we train the best physicians possible for our state and optimize their opportunities to perform pelvic exam.

Thank you for this opportunity to testify.

University of Hawaii Department of Obstetrics, Gynecology and Women's Health
Policy

Pelvic Exams on the Anesthetized Patient

American College of Obstetricians and Gynecologists (ACOG) Opinion (2007):
"Physicians must learn new skills and techniques in a manner consistent with the ethical obligations to benefit the patient, to do no harm, and to respect a patient's right to make informed decisions about health matters. These obligations must not be unjustifiably subordinated to the need and desire to learn new skills." Some procedures, such as pelvic examinations, require specific consent. If any examination planned for an anesthetized woman undergoing surgery offers her no personal benefit and is performed solely for teaching purposes, it should be performed only with her specific informed consent, obtained when she has full decision-making capacity."

The goal of this document is to establish guidelines around the performance of the exam under anesthesia (EUA)

- 1) Pelvic EUA will be performed for clinical or diagnostic purposes. Exams will not be performed solely for educational purposes.
- 2) Medical students will introduce themselves to patients undergoing abdominal or gynecologic surgery and will request permission to perform an abdominal or pelvic EUA, if such an exam is indicated for clinical or diagnostic reasons.
- 3) Medical students can "opt out" of performing an abdominal or pelvic EUA
- 4) Medical students are responsible to become competent in the performance of the pelvic examination during their rotation on obstetrics and gynecology, regardless of whether or not they perform abdominal or pelvic EUA.



Committee: Committee on Judiciary
Hearing Date/Time: Thursday, February 16, 2011, 2:40 p.m.
Place: Conference Room 325
Re: Testimony of the ACLU of Hawaii in Support of H.B 2232, Relating to Health

Dear Chair Keith-Agaran and Members of the Committee on Judiciary:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in support of H.B. 2232, HD1 which would regulate the practice of performing pelvic examinations performed on anesthetized or unconscious female patients.

The ACLU has a deep commitment to individual privacy and decision-making, based on the right to control the confidentiality of one's own medical and other private information and how that information is used, and the right to make one's own informed decisions about medical testing and treatment. Breaches of privacy in the form of unauthorized and unnecessary medical treatment, particularly pelvic examinations of anesthetized or unconscious women, may constitute criminal and civil offenses and must not be tolerated.

Informed consent is both morally and ethically necessary. The American Association of Medical Colleges, which represents 125 accredited U.S. medical schools and over 400 teaching hospitals labeled performance of pelvic exams on women under anesthesia as unethical and unacceptable. Hawaii's women must be able to trust that our medical professionals are held to the highest standards of care.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 45 years.

Thank you for this opportunity to testify.

Sincerely,
Laurie Temple
Staff Attorney
ACLU of Hawaii

American Civil Liberties Union of Hawaii
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org



DEMOCRATIC PARTY OF HAWAII

February 16, 2012

To: Rep. Gilbert Keith-Agaran, Chair
Rep. Karl Rhoads, Vice Chair and
Members of the Committee on Judiciary

From: Jeanne Ohta, Co-Chair

RE: HB 2232 HD1 Relating to Health
Hearing: February 16, 2012, 2:40 p.m., Room 325

Position: Support

The Hawai'i State Democratic Women's Caucus writes in support of HB 2232 HD1 Relating to Health. This measure would prohibit a physician, osteopath, surgeon, or medical student from performing a pelvic exam on an anesthetized or unconscious female patient unless specific informed consent was obtained.

Medical students and physicians may be liable for performing pelvic exams on unconscious women without consent. Many leading medical schools have abandoned this practice and recognized the moral and ethical need for consent.

American Association of Medical Colleges, which represents 125 accredited U.S. medical schools and over 400 teaching hospitals labeled performance of pelvic exams on women under anesthesia as unethical and unacceptable. Teaching institutions are more likely to use uninsured "public patients" over insured "private patients." Some physicians use this economic status as justification for not obtaining consent.

California has recognized unauthorized examinations as a misdemeanor and grounds for loss of a physician's license.

The Hawai'i State Democratic Women's Caucus is a catalyst for progressive, social, economic, and political change through action on critical issues facing Hawai'i's women and girls. It is because of this mission, the Women's Caucus supports this measure. We respectfully ask the committee to pass it out.

**PRESENTATION OF THE
HAWAII MEDICAL BOARD**

TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-SIXTH LEGISLATURE
Regular Session of 2012

Thursday, February 16, 2012
2:40 p.m.

WRITTEN TESTIMONY ONLY

TESTIMONY ON HOUSE BILL NO. 2232, H.D. 1, RELATING TO HEALTH.

TO THE HONORABLE GILBERT S. C. KEITH-AGARAN, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Constance Cabral and I am the Executive Officer of the
Hawaii Medical Board ("Board"). The Board supports this bill.

Please be advised that the companion bill, S.B. No. 2578, was heard by
the Senate Committee on Health on February 10 and passed with amendments.

Thank you for the opportunity to provide written testimony on H.B.
No. 2232, H.D. 1.



February 15, 2012

TO: Rep Gilbert S.C. Keith-Agaran, Chair, Rep. Karl Rhoads, Vice Chair, and Members of the Committee on Judiciary
FROM: Jackie Berry, Executive Director
RE: **HB 2232, HD1 Relating to Health**
Hearing: Friday, February 16, 2012 at 2:40pm

Honorable Chairperson Keith-Agaran, Vice Chairperson Rhoads, and Members of the Committee on Judiciary

HMHB is a statewide coalition of public and private agencies and individuals committed to the improvement of maternal and infant health status in Hawaii through education, coordination and advocacy. **HMHB is testifying today in support of HB 2232, HD1 which prohibits a physician, osteopathic physician, surgeon, or medical students from performing a pelvic exam on an anesthetized or unconscious female patient unless specific informed consent was obtained, the pelvic examination is within the specified scope of care, or the pelvic exam is required for diagnostic purposes on an unconscious patient.**

Support of this bill is obvious. Performing any procedure outside the parameters of the above is obviously inappropriate. California has recognized unauthorized examinations as a misdemeanor and grounds for loss of physicians license,, thereby recognizing the moral and ethical necessity of informed consent.

We urge you support of this bill.

Mahalo for your consideration of this bill and our testimony.

845 22nd Avenue, Honolulu, Hawaii 96816
Phone # (808) 737-5805

E-mail: jackieb@hmhb-hawaii.org website: www.hmhb-hawaii.org



1350 S. King Street • Suite 309 • Honolulu, Hawaii 96814 • www.pphi.org • Phone: 808-589-1156 • Fax: 808-589-1404

February 15, 2012

Testimony in Support: HB 2232 HD1

To: Chair Gilbert Keith-Agaran, Vice Chair Karl Rhoads, and Members of the House Committee on Judiciary

From: Katie Reardon Polidoro, Director of Government Relations & Public Affairs

Re: Testimony in Support of HB 2232 HD1, Relating to Health

Thank you for hearing HB 2232 HD1. Planned Parenthood of Hawaii (PPHI) strongly supports this bill, which would require medical professionals and students to obtain informed consent before performing pelvic examinations on patients for training purposes, when patients are incapacitated due to anesthesia or otherwise unconscious.

For many women, pelvic examinations are intimate medical screenings that require privacy and trust between a patient and her doctor. Making sure that patients have a clear understanding and explanation of what the examination will entail is an important part of care. The performance of pelvic exams on patients without their knowledge is unethical and an unacceptable violation of a patient's right to privacy. In fact, the American College of Obstetricians and Gynecologists has condemned the practice.¹

While it is important that medical students learn how to correctly perform pelvic exams, the ability to obtain informed consent and to practice respect for patients is an equally important lesson for students. Further, exams on unconscious, uninformed patients are not necessary in Hawaii. Willing and trained women currently participate in the John A. Burns School of Medicine's Professional Patient Program. That program provides third year medical students studying obstetrics and gynecology the opportunity to practice pelvic exams in a safe environment.

Because we believe that performing intimate exams on unconscious, uninformed patients is unethical, a violation of patients' rights, and is harmful to women, we support HB 2232 HD1. Please pass this bill.

¹ American College of Obstetrics and Gynecologists, Committee On Ethics, *Professional Responsibilities in Obstetric-Gynecological Medical Education and Training*, August 2011, http://www.acog.org/Resources_And_Publications/Committee_Opinions/Committee_on_Ethics/Professional_Responsibilities_in_Obstetric-Gynecologic_Medical_Education_and_Training

Honolulu Health Center

1350 S. King Street, Suite 310
Honolulu, HI 96814
808-589-1149

Kailua Kona Health Center

75-184 Hualalai Road, Suite 205
Kailua Kona, HI 96740
808-329-8211

Kahului (Maui) Health Center

140 Iio'ohana Street, Suite 303
Kahului, HI 96732
808-871-1176
(A Maui United Way Agency)

UNIVERSITY OF HAWAII AT MĀNOA

The William S. Richardson School of Law

Hazel Glenn Beh

Professor of Law and Co-Director, Health Law Policy Center

February 15, 2012

Hawai'i State House of Representatives,
The Twenty-Sixth Legislature
Regular Session of 2012
Judiciary Committee

TESTIMONY IN STRONG SUPPORT OF HB 2232

Dear Rep. Gilbert S.C. Keith-Agaran, Chair and Rep. Karl Rhoads, Vice Chair:

My name is Hazel Beh. I am a professor of law and co-director of the Health Policy Center at the William S. Richardson School of Law. I strongly support House Bill 2232. My familiarity with the practice of medical students performing pelvic examinations on anesthetized women for teaching purposes comes from discussions with students, researchers, and by reviewing the current national medical literature. I have been told that the school's official policy does not endorse this practice and that the school is working diligently to strengthen policies that discourage it. In fact, I believe a law will assist the medical school and empower its medical students to curtail such practices that are artifacts of outdated teaching methods.

The easy answer in this case is that it is good medical practice and good medical education to require a medical student to identify him or herself as a student and explicitly obtain informed consent before performing a pelvic examination for teaching and learning purposes when a woman is about to undergo a procedure under anesthesia. Although now discouraged by professional organizations, the routine practice of allowing medical students to perform pelvic examinations on anesthetized women without informed consent remains entrenched in national medical education. The AMA and the American Academy of Obstetrics and Gynecology, among other professional organizations, have adopted policies against it.

Let me summarize the results of repeated studies on the attitudes of women undergoing gynecological surgery to the prospect of receiving a pelvic exam for teaching purposes while under anesthesia. A 2010 study at a major teaching hospital reports, "most patients are willing to allow medical students to perform such examinations, but the patients feel strongly that someone must seek out their permission beforehand." It is obvious that a pelvic exam that is not diagnostic and without consent degrades the dignity and autonomy of women patients. Should a woman learn that the procedure took place, she will most certainly and most justifiably feel violated, and her trust in her physicians diminished.

While learning to perform pelvic examinations is important, to do so without permission is bad medical education. A study published in the American Journal of Obstetrics recently revealed that following the medical rotation in obstetrics, where students were required to perform pelvic exams on anesthetized patients without consent, the practice was linked to an overall decline in attitude about the importance of informed consent. If we do not require students to obtain

consent, we squander an opportunity for medical students to learn how to establish a positive and respectful interaction with their female patients.

No one disputes the educational value of conducting pelvic examinations on anesthetized patients. There is less discomfort for the patient; medical students have a better opportunity to palpate internal organs when muscles are relaxed; and it allows patients to participate in a meaningful teaching and learning opportunity that will benefit future patients. Without explicit consent, however, the risk of harm to the dignity of the woman and the ethical development of the student outweighs any clinical practice benefit.

This law is modeled after a California law that has been on the books since 2003. I hope that Hawai'i will join California, Virginia, and Oregon by enacting a law to expressly require informed consent before these examinations.

Thank you for your consideration of this important matter.

Sincerely,

/s/ Hazel Beh
Co-Director
Health Law Policy Center

Hawai'i State Senate
The Twenty-Sixth Legislature
Regular Session of 2012
Committee on the Judiciary

February 15, 2012

TESTIMONY IN STRONG SUPPORT OF HB 2232 HD1.

Dear Chair Keith-Agaran and Vice Chair Rhoads:

My name is Fran Miller. I have been a Visiting Professor of Law at the William S. Richardson School of Law at the University of Hawaii at Manoa for the past 5 years, and am Professor of Law Emerita at Boston University School of Law. I strongly support House Bill 2232 HD1.

My familiarity with the practice of medical students performing pelvic examinations on women for teaching purposes comes from discussions of informed consent with students and faculty at Boston University's Schools of Medicine, Law and Public Health, from interviews with midwives and medical researchers, and from reading the medical and legal literature. Although almost all physicians and medical students understand that they are required to get a patient's informed consent before delivering medical treatment, they often misunderstand the meaning of an "informed" consent and think the legal requirement means only that they need to get the patient's signature on a consent form. Much more is of course required; the patient must truly understand what the physician – or medical student - intends to do, and must freely acquiesce in that action. Unfortunately, that does not always happen when it comes to medical training.

Medical training requires that students "practice" their diagnostic and treatment skills under supervision, and patients in training environments generally understand that medical students will often be associated with their treatment teams. But good medical education teaches students that patient permission will *always* be asked before students participate in their care. Nowhere is that more important than when it comes to performing pelvic examinations on anesthetized women. My colleague Professor Hazel Beh's testimony makes that point in graphic fashion, and I would like to incorporate her testimony and its rationale here. Although reportedly The John A. Burns Medical School has policies to discourage the practice, it will further their efforts to have a statute specifically reminding physicians and medical students of their responsibility to secure their anesthetized patients' knowing consent to pelvic examination. Specific statutory language makes an impression on physician thought, and thought influences physician behavior.

With House Bill 2232 HD1 Hawaii has the opportunity to join the modern legislative trend affirming the privacy rights of anesthetized women, who are in no position to protest about unconsented invasions of the most intimate sort imaginable.

Thank you for your consideration.

Frances H. Miller
Visiting Professor of Law

Testimony for HB2232 on 2/16/2012 2:40:00 PM

Testimony for HB2232 on 2/16/2012 2:40:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Wednesday, February 15, 2012 6:06 PM

To: JUDtestimony

Cc: thorson@hawaii.edu

Attachments: TESTIMONY IN SUPPORT OF SB~1.pdf (33 KB)

Testimony for JUD 2/16/2012 2:40:00 PM HB2232

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: Peter Thorson

Organization: Individual

E-mail: thorson@hawaii.edu

Submitted on: 2/15/2012

Comments:

TESTIMONY IN SUPPORT OF SB 2578

To whom it may concern,

My name is Peter Thorson and I am a 4th-year medical student at the University of Hawaii at Manoa's John A Burns School of Medicine. I am writing in support of SB 2578 to require informed consent for pelvic exams under anesthesia by medical students and in cases where such exams are not medically necessary. As a 3rd year medical student on my 7-week Obstetrics and Gynecology clerkship I participated in many aspects of women's health in a learning capacity. During the gynecologic surgery component of the clerkship I participated in a wide range of gynecologic surgical procedures, which frequently began with a bimanual pelvic exam being performed by the surgeon, the resident on the case, and myself. The majority of pelvic exams under anesthesia are unlikely to be affected by this bill as they fall under the exemptions from the consent requirement. There were many cases, however, for which the exam was procedural rather than educational in my opinion. This may very well be due to my inexperience in such exams and the difficulty I had in appreciating subtle findings but there were certainly cases where the pelvic exam was extraneous to the case. To give an example of such, I recall a case in which a woman in her early 30's came in for the placement of a pair of contraceptive devices in her fallopian tubes. I had reviewed the patient's chart and spoken with her so I knew there was no chance she was pregnant and there was no concern for a tumor or other abnormality. After the patient was under anesthesia the attending doctor instructed the resident and myself to do pelvic exams. It was not the only case in which I could see no medical reason for a pelvic exam but it sticks out in my memory because I recall feeling very uncomfortable about doing it and I almost spoke up against it. Medical students, like patients are in a position of perceived subordination, which makes voicing an objection difficult. In my case I was conflicted but lacked the necessary courage to object. I must make it clear that I never witnessed any patient treated without respect while under anesthesia and only individuals involved in the case participated in exams but I feel that those advocating for educational exemptions to the right of self-determination granted to all patients will find themselves on the wrong side of history.

I have discussed the practice with my fellow students since this bill was introduced and some have pointed out that pelvic exams are an important skill to learn and that in cases where a tumor is to be removed it is very important to know the size and location of the tumor. I agree that training is important but so is the indoctrination into an ethical medical culture where patient's rights are respected. In discussing the issue with my wife she asked, "Does every guy that goes in for surgery in his abdomen get a prostate exam?". I explained that this was an issue pertaining only to surgeries involving female reproductive organs and that I was unaware of the practices for male reproductive surgeries where a prostate exam was not clearly indicated but her question certainly brought the issue home to me in a visceral way. I am not saying that students should not try to appreciate the difference between normal and abnormal exams but I am saying that if an exam is purely for training reasons, then the patient's consent should absolutely be required.

Peter Thorson MS, MS4
John A Burns School of Medicine
University of Hawaii at Manoa

February 15, 2012

BY EMAIL

Representative Gilbert S.C. Keith-Agaran, Chair
Hawaii State Legislature
House Committee on Judiciary
Hawaii State Capitol, Room 325
Honolulu, Hawaii

Re: House Bill 2232 HD 1 Prohibiting Unauthorized Educational Pelvic Examinations

Dear Chairman Keith-Agaran:

We write to urge the members of House Committee on Health to support House Bill 2232 HD 1, which prohibits intimate pelvic examinations¹ on female patients *without the patient's consent* for medical teaching purposes. The passage of House Bill 2232 HD 1 will ensure that norms of autonomy and respect for all persons are honored — so that patients who are capable of consenting are not treated as a means to an end. As we explain below, requiring explicit consent for intimate exams guarantees the dignity and respect that female patients deserve *without* jeopardizing the quality of medical education.

Part A of this letter applauds this important legislation – which would place Hawaii at the forefront of an emerging trend among states to disclose forthrightly the educational nature of practice procedures and ask permission. Part B details the extent of intimate examinations for medical training without the patient's consent. Part C describes legislation in four states that proscribes unauthorized educational pelvic examinations. The consensus of medical ethics groups is that such intimate exams should not occur without consent. Parts D, E, and F refute a number of common justifications for performing such intimate exams without permission. Specifically, Parts D and E rebut the unfounded justification that women have impliedly or expressly consented upon admission to the hospital. Part F shows empirically that when asked, patients consent in overwhelming numbers to practice exams and consequently should be enlisted as “respected partners”² in medical teaching.

A. Tightening the Protections Contained in House Bill 2232 HD 1

Passage of Health Bill 2232 HD 1 would place Hawaii at the forefront of an emerging trend among states to ask permission before using a person for the medical teaching of intimate exams. Virginia, California, Illinois, and Oregon all now require explicit consent for student executed pelvic examinations on unconscious patients.³

Like the laws of those states, House Bill 2232 HD 1 prohibits “a pelvic examination on an anesthetized patient” unless she gives prior informed consent or the attending physician or student has the patient's permission *and* the exam “is within the scope of [her] care.” In addition, it would prohibit exams on

¹ See generally Georgia Health Sciences University, Pelvic Exam, <http://www.georgiahealth.edu/shs/sexualhealth/pelvic.html> (last visited Jan 9, 2012) (detailing the basic elements of a standard pelvic examination).

² Jennifer Goedken, *Pelvic Examinations Under Anesthesia: An Important Teaching Tool*, 8 J.HEALTH CARE L.& POL'Y 234, 235 (2005).

³ See *infra* Part C.

unconscious patients unless “the exam is required for diagnostic purposes.”⁴ By its terms, however, House Bill 2232 HD 1’s requirement for a woman’s consent is triggered only when “a physician, osteopathic physician, surgeon, or student who is participating in a course of instruction, residency program, or clinical training program....perform[s] a pelvic examination.”⁵ This covers *some but not all* medical professionals who may train on patients without their permission.⁶ Although much rarer, anesthetized patients present practice opportunities not only for medical students but other aspiring professionals as well, such as certified nurse anesthetists, paramedics, and others.⁷

Contrast House Bill 2232 HD 1 with Illinois’ more expansive law, which encompasses unauthorized educational exams by

[a]ny physician, medical student, resident, advanced practice nurse, registered nurse, or physician assistant who provides treatment or care to a patient.⁸

House Bill 2232 HD 1 should be amended to mirror more closely the scope of protections enacted in Illinois law.

B. The Extent of the Practice

Despite widespread ethical condemnation recognizing that “the practice of performing pelvic examinations on women under anesthesia, without their knowledge and approval [is] unethical and unacceptable,”⁹ experience shows that unauthorized exams continue both in Hawaii and elsewhere across the US. In his testimony, Mr. Sean Barnes, a medical student at the John A. Burns School of Medicine, University of Hawaii, explains that “for three weeks, 4-5 times/day, [he] was asked to, and did, perform pelvic examinations on anesthetized women, without specific consent, solely for the purpose of my

⁴ House Bill 2232 HD 1, § 2 Compare Cal. Bus. & Prof. Code § 2281 (2010) (“A physician and surgeon or a student undertaking a course of professional instruction or a clinical training program, may not perform a pelvic examination on an anesthetized or unconscious female patient unless the patient gave informed consent to the pelvic examination, or the performance of a pelvic examination is within the scope of care for the surgical procedure or diagnostic examination to be performed on the patient or, in the case of an unconscious patient, the pelvic examination is required for diagnostic purposes”).

⁵ House Bill 2232 HD 1 § 2.

⁶ VA HOSPITAL, REQUEST FOR ADMINISTRATION OF ANESTHESIA AND FOR PERFORMANCE OF OPERATIONS AND OTHER PROCEDURES, OPTIONAL FORM 522 (1994) (acknowledging “the presence of other persons during the surgical procedure, such as medical students, nursing students, other healthcare students or healthcare providers, and/or healthcare company representatives.”).

⁷ 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) *citing* an email from Dr. Steve Boggs, Anesthesiologist, Spartanburg Regional Medical Center).

⁸ 410 ILCS 50/7 (2010).

⁹ Press Release, Am. Ass’n of Med. Colls., AAMC Statement on Patient Rights and Medical Training (June 12, 2003), <http://www.aamc.org/newsroom/pressrel/2003/030612.htm>.

education.”¹⁰ Mr. Barnes’ experience is not unique. Staunch defenses in the media of unauthorized practice by teaching faculty confirm that patient consent is “not a pre-requisite” for many institutions.¹¹

Empirical studies document the widespread nature of unauthorized pelvic examinations. In 2003, Peter Ubel and colleagues 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.¹² In 1992, Charles Beckmann reported that 37.3% of United States and Canadian medical schools reported using anesthetized patients to teach pelvic exams.¹³ A study from the United Kingdom found that 53% of students at a single English medical school performed approximately 700 intimate examinations on anesthetized patients.¹⁴ Students acted without any written or oral consent in 24% of the exams.¹⁵

C. The Legislative and Professional Response

In response to this widespread use of patients, four U.S. jurisdictions by legislation now require explicit consent for pelvic examinations on unconscious patients for medical teaching purposes.¹⁶

¹⁰ See Shawn S. Barnes, Practice Pelvic Exams by Medical Students on Women Under Anesthesia: Why Not Ask First?, Testimony to the Hawaii State Legislature, at p. 1 (Jan. 12, 2012).

¹¹ 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).

¹² 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, 188 AM. J. OBSTETRICS & GYNECOLOGY 575, 579 (2003).

¹³ Charles R. B. Beckmann et al., Gynaecological Teaching Associates in the 1990s, 26 MED. EDUC. 105, 106 (1992).

¹⁴ Yvette Coldicott et al., The Ethics of Intimate Examinations -- Teaching Tomorrow's Doctors, 326 BRIT. MED. J. 97, 98 tbl. 2 (2003).

¹⁵ *Id.* at 98.

¹⁶ Va. Code Ann. § 54.1-2959 (2010) (“Students participating in a course of professional instruction or clinical training program shall not perform a pelvic examination on an anesthetized or unconscious female patient unless the patient or her authorized agent gives informed consent to such examination, the performance of such examination is within the scope of care ordered for the patient, or in the case of a patient incapable of giving informed consent, the examination is necessary for diagnosis or treatment of such patient”); 410 ILCS 50/7 (2010) (“Any physician, medical student, resident, advanced practice nurse, registered nurse, or physician assistant who provides treatment or care to a patient shall inform the patient of his or her profession upon providing the treatment or care, which includes but is not limited to any physical examination, such as a pelvic examination. In the case of an unconscious patient, any care or treatment must be related to the patient’s illness, condition, or disease”); Cal Bus & Prof Code § 2281 (2010) (“A physician and surgeon or a student undertaking a course of professional instruction or a clinical training program, may not perform a pelvic examination on an anesthetized or unconscious female patient unless the patient gave informed consent to the pelvic examination, or the performance of a pelvic examination is within the scope of care for the surgical procedure or diagnostic examination to be performed on the patient or, in the case of an unconscious patient, the pelvic examination is required for diagnostic purposes”); Oregon H.B. No. 2908 (passed Jun 1, 2011) (effective Jan 1, 2012) (“(1) A person may not knowingly perform a pelvic examination on a woman

This legislation reflects the consensus of American professional medical organizations that healthcare providers should obtain explicit for intimate teaching exams.¹⁷ In the “Statement on Patient Rights and Medical Training” in 2003, the American Association of Medical Colleges, which represents 125 accredited U.S. medical schools and over 400 teaching hospitals, described “pelvic examinations on women under anesthesia, without their knowledge and approval ... [as] unethical and unacceptable.”¹⁸

In August 2011 Committee on Ethics ruling, the American College of Obstetricians and Gynecologists affirmed 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.”¹⁹ 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 should be performed only with her specific informed consent before surgery.”²⁰

who is anesthetized or unconscious in a hospital or medical clinic unless: (a) The woman or a person authorized to make health care decisions for the woman has given specific informed consent to the examination; (b) The examination is necessary for diagnostic or treatment purposes; or (c) A court orders the performance of the examination for the collection of evidence (2) A person who violates subsection (1) of this section is subject to discipline by any licensing board that licenses the person”).

¹⁷ Like these professional organizations, individual medical schools disallow unauthorized pelvic examinations. *See, e.g.*, University of Minnesota Medical School, University of Minnesota Medical School Policy for Medical Students’ Performance of Pelvic Examinations on Anesthetized Patients, http://www.obgyn.umn.edu/prod/groups/med/@pub/@med/documents/asset/med_61625.pdf (last visited Jan 10, 2011) (“The medical student is an integral part of the health care team, and if the student is participating in the patient’s care, it is appropriate that (s)he perform this exam. It is the policy of the University of Minnesota Medical School and the Department of Obstetrics, Gynecology, and Women’s Health that informed consent must be obtained for breast and pelvic examinations under anesthesia to be done by medical students. Any student who feels that (s)he has been placed in a situation in which (s)he has been asked to perform or has performed a breast or pelvic examination on a patient without the patient’s consent should immediately notify the Medical Student Coordinator”). Medical associations outside America have also condemned the practice. *See, e.g.*, 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), http://www.sogc.org/guidelines/documents/gui246PS1009E_000.pdf (last visited Jan 12, 2012) (“[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”).

¹⁸ Press Release, Am. Ass’n of Med. Colls., AAMC Statement on Patient Rights and Medical Training (June 12, 2003), <http://www.aamc.org/newsroom/pressrel/2003/030612.htm> (last visited March 16, 2005).

¹⁹ American College of Obstetricians and Gynecologists Committee on Ethics, Professional Responsibilities in Obstetric-Gynecologic Medical Education and Training, Ruling No. 500 (August 2011), <http://www.acog.org/~media/Committee%20Opinions/Committee%20on%20Ethics/co500.ashx?dmc=1&ts=20120112T1021153539>.

²⁰ *Id.*

Teaching faculty offer a number of justifications for dispensing with the simple step of asking for permission²¹ — justifications that simply do not withstand scrutiny, as the next Parts of this letter demonstrate.

D. Patients Have Not Implicitly Consented to Intimate Educational Exams.

The first justification that teaching faculty advance for not obtaining specific consent for educational pelvic exams is that patients have implicitly consented by accepting care at a teaching hospital. Empirical evidence suggests that many patients do not consciously chose teaching facilities or even know they are in one.

One study, for example, found that 60% of patients at a teaching hospital in Great Britain were unaware that they were at a teaching hospital until they encountered students for the first time.²² Indeed in the U.S., an overwhelming number of facilities in the United States give little indication to prospective patients of the hospital's teaching status.²³ Public disclosure of hospitals' teaching status varies drastically. Some hospitals, like Duke University Medical Center²⁴ and New York-Presbyterian —The University Hospital of Columbia and Cornell,²⁵ indicate their medical school affiliation in their name. These two examples are exceptions to the rule, however. Of the approximately 400 members of the Council of Teaching Hospitals and Health Systems, only 106 -- slightly more than 25% -- contain the word "college" or "university" in their name.²⁶

²¹ 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).

²² 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).

²³ Wilson, *supra* n. 21.

²⁴ See, e.g., Duke University Medical Center website, at <http://www.dukehealth.org> (last visited Jan, 10 2012). See also The University Hospital, University of Medicine & Dentistry of New Jersey website, at <http://www.theuniversityhospital.com> (last visited Jan 10, 2012); Johns Hopkins Hospital & Health System website, at <http://www.hopkinsmedicine.org> (last visited Jan 10, 2012).

²⁵ New York-Presbyterian, The University Hospital of Columbia and Cornell is the primary teaching hospital of Columbia University College of Physicians & Surgeons and the Weill Medical College of Cornell University. See New York-Presbyterian, The University Hospital of Columbia and Cornell website at <http://www.nyp.org> (last visited Jan 10, 2012) This full title appears on the exterior building and on all hospital publications. Personal communication with Cathy Thompson, Office of Public Affairs & Media, Columbia-Presbyterian Medical Center. (Oct. 29, 2003) (on file with Robin Fretwell Wilson).

²⁶ Member Teaching Hospitals and Health Systems, Council of Teaching Hospitals and Health Systems, http://services.aamc.org/memberlistings/index.cfm?fuseaction=home.search&search_type=TH&state_criteria=ALL (last visited Jan 10, 2012).

The University of Hawaii's medical school partners with 19 health care facilities.²⁷ None of these institutions' names suggest any affiliation with the Medical School or their status as a teaching hospital.²⁸

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. It is reasonable, to assume that a patient at New York-Presbyterian, located less than sixty feet from the Columbia Medical University College of Physicians & Surgeons, knows the facility is a teaching hospital.²⁹ But, patients at the 50 different facilities associated with Columbia's medical school located throughout New York, New Jersey, and Connecticut,³⁰ cannot possibly be on constructive notice.

Like the rest of the United States, Hawaii has considerable geographical space separating affiliated educational institutions and healthcare facilities, in Hawaii. The Pacific Ocean separates healthcare facilities affiliated with the University of Hawaii School of Medicine.³¹

E. Patients Have Not Expressly Consented to Intimate Educational Exams

Many teaching faculty assert that the patient has consented upon admission to a teaching facility.³² 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.³³ A variant on this claim holds that if consent was obtained for one procedure, it encompasses consent for additional, related procedures.³⁴

²⁷ University of Hawaii School of Medicine, <http://www.catalog.hawaii.edu/schoolscolleges/medicine/general.htm> (last visited Jan 10, 2012).

²⁸ *Id.*

²⁹ 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. Mapquest, maps.google.com (last visited Jan 10, 2012).

³⁰ NEW YORK PRESBYTERIAN HEALTH SYS. (noting that "Most System members are academic affiliates of either Weill Medical College of Cornell University or Columbia University College of Physicians & Surgeons"), at <http://www.nypsystem.org/about.html> (last visited Jan. 11, 2012).

³¹ See, e.g., University of Hawaii School of Medicine Catalog, <http://www.catalog.hawaii.edu/schoolscolleges/medicine/general.htm> (last visited Jan 10, 2012) (noting the affiliation between the University of Hawaii School of Medicine, located on Oahu Island, and Maui Memorial Medical Center located on Maui Island).

³² AM. COLL. OF OBSTETRICIANS AND GYNECOLOGISTS (ACOG), COMM. OPINION 181: ETHICAL ISSUES IN OBSTETRIC-GYNECOLOGICAL EDUCATION 2 (1997).

³³ 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"), <http://greenvilleonline.com/news/2003/03/12/200303122797.htm> (last visited Mar. 16, 2005).

³⁴ 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,

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

[A]gree and give consent to [teaching hospital], its employees, agents, the treating physician ... medical residents and Housestaff to diagnose and treat the patient named on this consent to any and all treatment which includes, but might not be limited to ... examinations and other procedures related to the routine diagnosis and treatment of the patient.³⁵

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

This authorization should encompass only the treatment that a patient would reasonably expect to receive when checking into a health care facility— treatment that provides the patient with a direct benefit to her.

F. 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, you won't consent.”

These fears are wholly misplaced. Study after study has shown that women will consent to pelvic examinations for educational purposes. These include not only “hypothetical” studies -- studies asking patients how they would respond if asked to do a variety of things -- but also studies of actual women giving actual consent to real exams.

A 2010 Canadian study found that 62% of women surveyed said they would consent to medical students doing pelvic examinations, 5% would consent for female students only, and only 14% would refuse.³⁶ A study in the United Kingdom found that 46% of women in outpatient care did not object to having students perform pelvic exams on them.³⁷ In a private practice setting, another study found refusal rates of approximately 5% to perform educational pelvic exams.³⁸ In yet another study, 61% of outpatients

25 ANNALS EMERGENCY MED. 86, 87 (1995) (analogizing to “construed consent,” which authorizes related tests or diagnostic procedures).

³⁵ PALMETTO RICHLAND MEMORIAL HOSPITAL, INFORMED CONSENT. Palmetto Richland Memorial Hospital is a teaching hospital for the Medical University of South Carolina. OUR AFFILIATIONS, PALMETTO HEALTH SYSTEM, <http://www.palmettohealth.org/body.cfm?id=3124&oTopID=0>.

³⁶ S. Wainberg et al., Teaching pelvic examinations under anaesthesia: what do women think?, 32 J OBSTET. GYNAECOL CAN 49 (2010).

³⁷ J. Bibby et al., Consent for Vaginal Examination by Students on Anaesthetised Patients, 2 LANCET 1150, 1150 (1988). Lawton et al., Patient Consent for Gynaecological Examination, 44 BRIT. J. HOSP. MED. 326, 326 (1990) (discussing study by J. Bibby et al).

³⁸ Lawton, *supra* n. 35 at 329.

reported that they would definitely allow, probably allow, or were unsure whether they would allow a pelvic examination.³⁹

Even more women consent to examinations before surgery. In one study in the United Kingdom, 85% of patients awaiting surgery consented to educational exams by students while the patient was under anesthesia.⁴⁰ 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.⁴¹

G. Conclusion

Without adequate safeguards to protect the autonomy of women to consent to medical teaching, many will be reduced into acting as “medical practice dummies” without their permission. You should simply not allow such disrespectful treatment of patients who would gladly consent if only asked.

We welcome any opportunity to provide further information, analysis, or testimony to the Hawaii State Legislature.

Respectfully Yours,⁴²

Robin Fretwell Wilson
Class of 1958 Professor of Law
*Washington and Lee University School of
Law*
Lexington, Virginia

Anthony Michael Kreis
Ph.D Candidate, Political Science and
Public Policy
*University of Georgia School of Public and
International Affairs*
Athens, Georgia

³⁹ Peter A. Ubel & Ari Silver-Isenstadt, Are Patients Willing to Participate in Medical Education?, 11 J. CLINICAL ETHICS 230, 232-33 (2000)

⁴⁰ Lawton et al. at 329.

⁴¹ Ubel & Silver-Isenstadt at 234.

⁴² Academic affiliation is for identification purposes only. The universities that employ the signers take no position on this or any other bill.

In support of HB 2232

Shawn S. Barnes, M.A.
4th year medical student
University of Hawaii John A. Burns School of Medicine

My name is Shawn Barnes, a 4th year medical student at the University of Hawaii John A. Burns School of Medicine, and I submit this testimony in strong support of HB 2232. I am a 4th year medical student having recently completed my 3rd year OB/GYN clerkship. During my third year, I have had the chance to actively participate in various aspects of medical training, which have spanned the emotional spectrum from fascinating to mundane to exhilarating to heartbreaking. However, in OB/GYN I encountered the first act of medical training that left me ashamed. For three weeks, 4-5 times/day, I was asked to, and did, perform pelvic examinations on anesthetized women, without specific consent, solely for the purpose of my education. Typically this would unfold as follows. I would be assigned a gynecologic surgery case to scrub in on. I would be required to go meet the patient beforehand and introduce myself as “the medical student on the team” or some such vague statement of my role in the procedure, without mentioning a pelvic exam. I would then follow the patient into surgery. Once anesthesia was administered and the patient was asleep, the attending or resident would ask me to perform a pelvic exam on the patient for educational purposes. To my shame, I obeyed. This experience is not limited to my own medical training. A report in 2003, found that over 90% of medical students in Philadelphia were asked to perform unconsented pelvic exams on anesthetized women for educational purposes.¹

When I voiced my concern over these unconsented practice pelvic exams, I found that it was considered standard practice by attending physicians and residents. In fact, I was told I was the first medical student or resident in institutional memory to express concern over the practice. This reaction stood in stark contrast to that of female friends, outside the medical field, to whom I related the story. These women were shocked and horrified that such a practice goes on and considered it an egregious violation of doctor-patient trust. A strange dichotomy seemed to exist between a culture of medicine that considered unconsented pelvic exams a non-issue, and those outside the world of medicine that seemed to have no idea the practice existed and were repulsed by the thought of it.

My concerns and my shame over this practice and my own participation in it, begged me to ask what seemed to be a basic question; Why not require the medical student involved in the case to simply ask specific consent to do a practice pelvic exam on a woman under anesthesia?

In conversations with attendings, residents, and other medical students, along with a review of the literature, I have identified 5 basic arguments used to defend unconsented practice pelvic exams. Here I attempt to refute these.

1. Unconsented medical student pelvic exams on anesthetized women is standard practice. Specific consent is a non-issue.

Some may believe that these exams are within accepted guidelines, and therefore a non-issue. However, the American College of Obstetrics and Gynecology (ACOG),

American Medical Association (AMA), and the Association of American Medical Colleges (AAMC) have all released official statements condemning the practice. These are the organizations that make guidelines. A 2007 opinion from the American College of Obstetricians and Gynecologists (ACOG) is worth quoting at length:

*"Physicians must learn new skills and techniques in a manner consistent with the ethical obligations to benefit the patient, to do no harm, and to respect a patient's right to make informed decisions about health matters. These obligations must not be unjustifiably subordinated to the need and desire to learn new skills...Some procedures, such as pelvic examinations, require specific consent. If any examination planned for an anesthetized woman undergoing surgery offers her no personal benefit and is performed solely for teaching purposes, it should be performed only with her specific informed consent, obtained when she has full decision-making capacity."*²

The American Medical Association (AMA) has issued a similarly worded call for consent.³ In perhaps the strongest rebuke of the practice, the Association of American Medical Colleges (AAMC) has issued this 2003 statement:

*"To become effective physicians, medical students and residents not only must acquire clinical skills, they must also learn to treat their patients always with respect and dignity. Recent reports have suggested that medical students are performing pelvic examinations on women under anesthesia, without their knowledge and approval. AAMC believes that such practice is unethical and unacceptable."*⁴

The position of these organizations seems clear. The ACOG, AMA, and AAMC all call for mandatory and specific consent before pelvic exams for educational purposes. As the AAMC states, to do otherwise is "unethical and unacceptable." In addition, the practice is currently illegal in California, Illinois, and Virginia.

2. Patients accepting care at a teaching hospital give implicit consent for such exams.

Leaving aside the requirement for specific and explicit consent stated by the AMA, ACOG, and AAMC, some may believe that accepting care at a teaching hospital is tantamount to consent to a practice pelvic exam under anesthesia. We must first remember that patients tend to seek care at facilities that are geographical nearby, where their regular physician has privileges, or where their insurance is accepted. Consent forms at teaching hospitals tend to use language stating that medical students and residents may be involved in that case. That involvement is not specified. Also, consent forms tend to authorize care for the benefit of the patient, and not solely for educational purposes.⁵

3. A medical student does not need to ask specific consent for every minor activity they may perform during surgery, such as cutting sutures, closing an incision, or retracting tissue. A practice pelvic exam is no different.

Medical students are often called upon to perform any number of minor activities to learn technique and assist the surgery team. Clearly, a medical student is not expected to seek specific consent for a laundry list of minor actions during surgery ("Mrs. X., is it OK if I cut your sutures...how about retract your tissue...etc"). However, the pelvic exam is intrinsically different. The pelvic exam is a much more personal and intimate act, very different from suturing a wound. As a male medical student, I am required to have a chaperone when performing a pelvic exam on a conscious patient, but I do not need one to remove staples. Clearly, medical professionals understand that the pelvic exam is not analogous. In a study of women's attitudes on the subject, one study found that 100%

(69/69) of women surveyed expected to be specifically consented for pelvic exams by students for educational purposes when under anesthesia.⁶ Several of the respondents said they would feel "physically assaulted" if this were not done. Clearly, both patients and doctors understand the unique nature of the pelvic exam.

4. There is no such thing as a “practice” pelvic exam in gynecologic surgery, so the point is moot.

Some may argue that any pelvic exam before gynecological surgery is medically warranted and is intrinsically part of the procedure and/or care. Therefore, by definition, there can never be a “practice” pelvic exam for “educational purposes”. Such thinking would render the ACOG, AMA, and AAMC recommendations moot, as they apply to pelvic exams for “educational purposes”. Indeed, such a view would posit the impossibility of pelvic exams for educational purposes in the O.R. However, this point can be easily refuted. While the attending and resident use the pelvic exam for purposes of diagnosis, trocar placement, anatomical layout, surgical procedure, etc, the medical student is not in the O.R. to diagnose, plan care, or decide on treatment. In fact, the medical student is often legally prohibited from doing so. He or she is inherently there to learn. Therefore, a medical student pelvic exam under anesthesia is clearly done for educational purposes.

5. If medical students were required to seek specific consent, no women would give it, and students would miss out on a valuable learning experience, jeopardizing the competence of future physicians.

There is no doubt that a pelvic exam under anesthesia offers a valuable learning experience for students. Anesthesia promotes relaxation of the pelvic musculature, which allows for an easier and more detailed exam, while sparing the patient discomfort. In addition, a pelvic exam in the operating room allows the student to immediately correlate findings from the exam with actual anatomy and pathology revealed during surgery.⁷ The question is whether seeking consent would effectively eliminate this opportunity for students. The literature suggests otherwise. The two studies that have investigated this question in the U.S. and Canada found the percentage of women who would agree to a medical student pelvic exam under anesthesia for educational purposes, if asked first, to be 53% and 62%, respectively.^{8,9} If these numbers are to be believed, we need not fear the loss of the educational opportunity by asking permission for it.

A final thought: Not asking for consent shortchanges medical students as well as patients

Asking for consent for pelvic exams is important not only because it respects the rights of the patient, but also because it re-affirms the value doctors in training should place in such rights. A statement by Ubel *et al* bears repeating: “An ethical medical education should teach the precedence of patients' rights.”⁸ What are students taught when consent for an intimate examination is bypassed? One answer to this question is suggested by a disturbing 2003 report. In a survey of over 2,000 American medical students, those students that had completed a 3rd year OB/GYN clerkship thought that consent was significantly less important than those students who had not yet completed a

3rd year OB/GYN clerkship.¹ This effect was specific to the OB/GYN clerkship, as the total number of other clerkships completed was not associated with any significant change in attitude toward consent. Perhaps it should not come as a surprise that obtaining medical education unethically, through an unconsented and intensely personal exam, creates doctors with a significantly lower valuation of the idea of consent, doctors who become residents and attendings who assume unconsented pelvic exams are standard practice, and pass that attitude on to the next generation of medical students.

Conclusion

The practice of unconsented practice pelvic exams by medical students on women under anesthesia has been condemned by national organizations such as the American College of Obstetricians and Gynecologists (ACOG), American Medical Association (AMA), and Association of American Medical Colleges (AAMC). Specific consent for such educational exams is necessary. Research has shown that over half of women would likely consent to such exams, if asked. The act of asking allows medical students to learn the value of patient autonomy and reinforces doctor-patient trust. Why not ask first?

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