

CHAPTER 389

AN ACT concerning the practice of medicine and supplementing Title 45 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.45:1-74 Restrictions on invasive examination; informed written consent.

1. a. Except as provided in subsection b. of this section, no individual licensed or certified to practice health care pursuant to Title 45 of the Revised Statutes shall conduct an invasive examination of any patient while the patient is under general anesthesia or otherwise unconscious without the patient's informed written consent to the invasive examination. If a health care practitioner authorized to perform an invasive examination of a patient while the patient is under general anesthesia or otherwise unconscious determines that an additional invasive examination is required that is different in nature from the invasive examination to which the patient previously consented, the health care practitioner shall obtain a separate informed written consent prior to performing the additional invasive examination.

b. The requirements of subsection a. of this section shall not apply in the case of emergency in which the patient is unconscious or unresponsive and it reasonably appears that immediate medical treatment is necessary to prevent severe or worsening injury to the patient or to save the patient's life, in which case a health care practitioner may render any appropriate emergency treatment services as are necessary, including performing any invasive examinations of the patient as shall be necessary to evaluate and determine the appropriate course of emergency treatment for the patient. The health care practitioner shall notify the patient as soon as practicable that an invasive examination has been performed. Nothing in this subsection shall authorize the provision of emergency treatment in any case in which the practitioner is provided, prior to emergency treatment, actual verification of an executed do not resuscitate order. Nothing in this subsection shall authorize the provision of emergency treatment that conflicts with a patient's verified Practitioner Orders for Life-Sustaining Treatment documentation.

c. In no case shall any invasive examination of a patient who is under general anesthesia or otherwise unconscious be undertaken for educational or training purposes unless the patient has provided separate, informed consent, verbally and in writing, to the invasive examination. When requesting separate informed consent to conduct an invasive examination of a patient while the patient is under general anesthesia or otherwise unconscious for educational or training purposes, the health care practitioner requesting informed consent shall advise the patient of the exact nature of the invasive examination, of the estimated number of students and other individuals who will be performing or participating in the invasive examination, and that no medical care or treatment will be denied to the patient if the patient withholds consent to an invasive examination for educational or training purposes. In the event that the invasive examination for educational or training purposes would take place during, or in association with, a medical procedure, the consent required pursuant to this subsection shall be obtained independently of, and in addition to, any informed consent provided by the patient to undergo the medical procedure; provided that nothing in this subsection shall be deemed to prohibit a practitioner from obtaining informed consent to both the medical procedure and the invasive examination for educational or training purposes at the same time, provided that it is clear to the patient that the consents are being requested for distinct and independent purposes.

d. A patient providing informed written consent for an invasive examination shall provide the consent to the health care practitioner using a form prescribed by the Commissioner of

Health. In addition to any other requirements set forth by the Commissioner of Health, each form shall meet the following requirements:

- (1) each form shall have a heading clearly stating the nature of the examination;
- (2) each form shall contain a full description of the nature, purpose, and attendant risks associated with the proposed invasive examination;
- (3) each form shall indicate if the proposed invasive examination will be used for educational or training purposes; and
- (4) each form shall be separate from any other document, consent form, notice, or agreement.

e. A health care practitioner who fails to obtain a patient's informed written consent prior to conducting an invasive examination of the patient while the patient is under general anesthesia or otherwise unconscious, except in the instances provided in subsection b. of this section, shall be subject to discipline for professional misconduct pursuant to section 8 of P.L.1978, c.73 (C.45:1-21).

f. As used in this section:

“Informed consent” means the affirmative authorization provided by a patient to a health care practitioner to perform an invasive examination of the patient, which authorization shall not be valid unless the health care practitioner first provides the patient with a full description of the nature and attendant risks associated with the proposed invasive examination.

“Invasive examination” means any visual, tactile, or mechanical inspection of the patient's reproductive organs, rectal cavity, or breasts.

2. This act shall take effect immediately.

Approved January 18, 2022.