

Title 45.
Subtitle 1.
Chapter 1.
Article 8. (New)
Patient
Examinations
§1
C.45:1-74

(CORRECTED COPY)
P.L. 2021, CHAPTER 389, *approved January 18, 2022*
Senate, No. 1771 (*First Reprint*)

1 **AN ACT** concerning the practice of medicine and supplementing Title
2 45 of the Revised Statutes.
3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*
6
7 1. a. Except as provided in subsection b. of this section, no
8 individual licensed or certified to practice health care pursuant to
9 Title 45 of the Revised Statutes shall conduct an invasive
10 examination of any patient while the patient is under general
11 anesthesia or otherwise unconscious without the patient’s informed
12 written consent to the invasive examination. ¹**【If the patient is a**
13 **minor, unconscious, unresponsive, or otherwise lacks the capacity to**
14 **provide informed written consent to an invasive examination at the**
15 **time informed consent is sought, consent may be provided by any**
16 **individual authorized to make health care decisions on behalf of the**
17 **patient, provided that the health care practitioner shall make**
18 **reasonable efforts to obtain informed consent directly from the**
19 **patient whenever possible.】¹ If a health care practitioner authorized**
20 **to perform an invasive examination of a patient while the patient is**
21 **under general anesthesia or otherwise unconscious determines that**
22 **an additional invasive examination is required that is different in**
23 **nature from the invasive examination to which the patient ¹【or the**
24 **patient’s authorized representative】¹ previously consented, the**
25 **health care practitioner shall obtain a separate informed written**
26 **consent prior to performing the additional invasive examination.**
27 b. The requirements of subsection a. of this section shall not
28 apply in the case of emergency in which the patient is unconscious
29 or unresponsive and it reasonably appears that immediate medical
30 treatment is necessary to prevent severe or worsening injury to the
31 patient or to save the patient’s life, in which case a health care
32 practitioner may render any appropriate emergency treatment
33 services as are necessary, including performing any invasive
34 examinations of the patient as shall be necessary to evaluate and

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】 in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
¹Senate SHH committee amendments adopted May 6, 2021.

1 determine the appropriate course of emergency treatment for the
2 patient. ¹The health care practitioner shall notify the patient as soon
3 as practicable that an invasive examination has been performed.¹
4 Nothing in this subsection shall authorize the provision of emergency
5 treatment in any case in which the practitioner ¹【knows or has reason
6 to know the patient has】 is provided, prior to emergency treatment,
7 actual verification of an¹ executed ¹【a】¹ do not resuscitate order ¹【or
8 has otherwise proscriptively refused emergency treatment】¹ .
9 ¹Nothing in this subsection shall authorize the provision of
10 emergency treatment that conflicts with a patient's verified
11 Practitioner Orders for Life-Sustaining Treatment documentation.¹

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

36 d. ¹A patient providing informed written consent for an invasive
37 examination shall provide the consent to the health care practitioner
38 using a form prescribed by the Commissioner of Health. In addition
39 to any other requirements set forth by the Commissioner of Health,
40 each form shall meet the following requirements:

41 (1) each form shall have a heading clearly stating the nature of
42 the examination;

43 (2) each form shall contain a full description of the nature,
44 purpose, and attendant risks associated with the proposed invasive
45 examination;

46 (3) each form shall indicate if the proposed invasive examination
47 will be used for educational or training purposes; and

1 (4) each form shall be separate from any other document, consent
2 form, notice, or agreement.

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

10 f.¹ As used in this section:

11 “Informed consent” means the affirmative authorization provided
12 by a patient ¹or the patient's authorized representative¹ to a health
13 care practitioner to perform an invasive examination of the patient,
14 which authorization shall not be valid unless the health care
15 practitioner first provides the patient ¹or the patient's
16 representative¹ with a full description of the nature and attendant
17 risks associated with the proposed invasive examination.

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

21
22 2. This act shall take effect immediately.
23
24

25
26
27 Expressly prohibits invasive examination of unconscious patient
28 by health care practitioner without patient's prior informed written
29 consent.