

SENATE, No. 1771

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

Expressly prohibits invasive examination of unconscious patient by health care practitioner without patient's prior informed written consent.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/6/2021)

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

3

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

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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. If the patient is a
13 minor, unconscious, unresponsive, or otherwise lacks the capacity
14 to provide informed written consent to an invasive examination at
15 the time informed consent is sought, consent may be provided by
16 any individual authorized to make health care decisions on behalf of
17 the patient, provided that the health care practitioner shall make
18 reasonable efforts to obtain informed consent directly from the
19 patient whenever possible. 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 or the
24 patient's authorized representative previously consented, the health
25 care practitioner shall obtain a separate informed written consent
26 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
35 determine the appropriate course of emergency treatment for the
36 patient. Nothing in this subsection shall authorize the provision of
37 emergency treatment in any case in which the practitioner knows or
38 has reason to know the patient has executed a do not resuscitate
39 order or has otherwise proscriptively refused emergency treatment.

40 c. In no case shall any invasive examination of a patient who is
41 under general anesthesia or otherwise unconscious be undertaken
42 for educational or training purposes unless the patient has provided
43 separate, informed consent, verbally and in writing, to the invasive
44 examination. When requesting separate informed consent to
45 conduct an invasive examination of a patient while the patient is
46 under general anesthesia or otherwise unconscious for educational
47 or training purposes, the health care practitioner requesting
48 informed consent shall advise the patient of the exact nature of the

1 invasive examination, of the estimated number of students and other
2 individuals who will be performing or participating in the invasive
3 examination, and that no medical care or treatment will be denied to
4 the patient if the patient withholds consent to an invasive
5 examination for educational or training purposes. In the event that
6 the invasive examination for educational or training purposes would
7 take place during, or in association with, a medical procedure, the
8 consent required pursuant to this subsection shall be obtained
9 independently of, and in addition to, any informed consent provided
10 by the patient to undergo the medical procedure; provided that
11 nothing in this subsection shall be deemed to prohibit a practitioner
12 from obtaining informed consent to both the medical procedure and
13 the invasive examination for educational or training purposes at the
14 same time, provided that it is clear to the patient that the consents
15 are being requested for distinct and independent purposes.

16 d. As used in this section:

17 “Informed consent” means the affirmative authorization provided
18 by a patient or the patient’s authorized representative to a health
19 care practitioner to perform an invasive examination of the patient,
20 which authorization shall not be valid unless the health care
21 practitioner first provides the patient or the patient’s representative
22 with a full description of the nature and attendant risks associated
23 with the proposed invasive examination.

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

27
28 2. This act shall take effect immediately.
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31 STATEMENT
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33 This bill provides that health care practitioners may not perform
34 an invasive examination of a patient while the patient is under
35 general anesthesia or otherwise unconscious without the patient, or
36 the patient’s authorized representative, providing informed written
37 consent to the invasive examination. As used in the bill, “informed
38 consent” means an affirmative authorization to perform an invasive
39 examination, which authorization will not be valid unless the health
40 care practitioner first provides the patient or the patient’s
41 representative with a full description of the nature and attendant
42 risks associated with the proposed invasive examination. “Invasive
43 examination” includes any visual, tactile, or mechanical inspection
44 of the patient’s reproductive organs, rectal cavity, or breasts.
45 Informed consent may be provided verbally or in writing. Health
46 care practitioners will be required to make reasonable efforts to
47 obtain informed consent directly from the patient whenever
48 possible.

1 If a health care practitioner authorized to perform an invasive
2 examination while the patient is under general anesthesia or
3 otherwise unconscious determines that an additional invasive
4 examination is required that is different in nature from the invasive
5 examination to which the patient or the patient's authorized
6 representative previously consented, the health care practitioner will
7 be required to obtain a separate informed written consent prior to
8 performing the additional invasive examination.

9 These informed written consent requirements will not apply in
10 situations in which the patient is unconscious or unresponsive and it
11 reasonably appears that emergency treatment is needed to prevent
12 injury or death to the patient, in which case the emergency
13 treatment provided may include any invasive examinations as are
14 necessary to evaluate and determine the appropriate course of
15 emergency treatment for the patient. Nothing in this exception to
16 the requirements of the bill will authorize the provision of
17 emergency treatment in any case in which the practitioner knows or
18 has reason to know the patient has executed a do not resuscitate
19 order or has otherwise proscriptively refused emergency treatment.

20 The bill additionally requires health care practitioners to obtain
21 the patient's separate informed consent, both verbally and in
22 writing, before performing any invasive examination for
23 educational or training purposes that would take place while the
24 patient is under general anesthesia or otherwise unconscious. When
25 requesting separate informed consent to conduct an invasive
26 examination for educational or training purposes, the health care
27 practitioner requesting informed consent will be required to advise
28 the patient of the exact nature of the invasive examination, of the
29 estimated number of students and other individuals who will be
30 performing or participating in the invasive examination, and that no
31 medical care or treatment will be denied to the patient if the patient
32 withholds consent to an invasive examination for educational or
33 training purposes. The bill specifies that, if the invasive
34 examination for educational or training purposes would take place
35 during, or in association with, a medical procedure, the consent to
36 the invasive examination is to be obtained independently of any
37 other consent the patient provides for the medical procedure, and it
38 is to be made clear to the patient that the consents are being
39 requested for separate and independent purposes.

40 Currently, many medical students are taught how to conduct
41 pelvic examinations using the bodies of anesthetized, unconscious
42 women. Although surveys indicate that between 70 and 100 percent
43 of women expect their consent to be requested prior to a pelvic
44 examination for educational purposes, in the vast majority of cases,
45 women are not asked for, and have not provided, express consent to
46 their bodies being used for teaching purposes. At least five other
47 states, including California, Hawaii, Illinois, Oregon, and Virginia,
48 have adopted laws prohibiting the practice of conducting pelvic

1 examinations without obtaining separate consent. It is the sponsor's
2 intent that, in order to protect the rights and bodily autonomy of all
3 patients, and to ensure that trust remains a vital component of the
4 patient-practitioner relationship, no examination be performed on a
5 patient unless the patient has expressly provided informed consent
6 to the examination.