

[First Reprint]

SENATE, No. 1771

STATE OF NEW JERSEY
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SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Senate Health, Human Services and Senior Citizens Committee on May 6, 2021, with amendments.

(Sponsorship Updated As Of: 1/10/2022)

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:

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**
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.]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
35 determine the appropriate course of emergency treatment for the
36 patient. ¹The health care practitioner shall notify the patient as
37 soon as practicable that an invasive examination has been
38 performed.¹ Nothing in this subsection shall authorize the
39 provision of emergency treatment in any case in which the
40 practitioner ¹**[knows or has reason to know the patient has]** is
41 provided, prior to emergency treatment, actual verification of an¹
42 executed ¹**[a]**¹ do not resuscitate order ¹**[or has otherwise**
43 **proscriptively refused emergency treatment]¹ . ¹Nothing in this
44 subsection shall authorize the provision of emergency treatment that**

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 conflicts with a patient's verified Practitioner Orders for Life-
2 Sustaining Treatment documentation.¹

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

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

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

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

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

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

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

48 f.¹ As used in this section:

1 “Informed consent” means the affirmative authorization provided
2 by a patient ¹【or the patient’s authorized representative】¹ to a
3 health care practitioner to perform an invasive examination of the
4 patient, which authorization shall not be valid unless the health care
5 practitioner first provides the patient ¹【or the patient’s
6 representative】¹ with a full description of the nature and attendant
7 risks associated with the proposed invasive examination.

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

11

12 2. This act shall take effect immediately.