



Legislative Affairs  
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## 2019 – 2020 Legislative Memorandum

**Subject: Relates to requiring consent to perform a pelvic examination on an anesthetized or unconscious person  
S.1092-B (Persaud) / A.6325 (Solages)**

**Position: SUPPORT**

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In teaching hospitals throughout New York, unconscious patients are being used as teaching tools for medical students learning how to perform pelvic exams. As part of their educational programs and under the supervision of a health care provider, medical students perform these exams by inserting their fingers into unconscious patients' vaginas without a medical purpose related to the patients' treatment and without prior consent.<sup>1</sup> Often, patients are never told that they were used as teaching tools, and the information is not included in their medical records.<sup>2</sup>

S.1092-B/A.6325 would end this intrusive practice. The bill makes it professional misconduct for a provider to supervise or perform a pelvic exam on an anesthetized or unconscious patient without first obtaining the patient's informed consent, unless the pelvic exam is part of the medical procedure or the patient is unconscious and the pelvic exam is medically necessary and required for diagnosis.<sup>3</sup>

The NYCLU strongly supports this bill and urges its speedy passage.

Pelvic exams are uniquely invasive, and without prior consent, these exams inflict a particularly unique and egregious gender-specific harm. Patients often feel vulnerable, subordinate, and nervous prior to pelvic exams.<sup>4</sup> Sexual assault survivors can find these exams particularly traumatic.<sup>5</sup> In fact, "many women said they would feel 'physically assaulted'" if they did not specifically consent to a pelvic exam performed while they were

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<sup>1</sup> Phoebe Friesen, *Why Are Pelvic Exams on Unconscious, Unconsenting Women Still Part of Medical Training?*, SLATE, Oct. 30, 2018, <https://slate.com/technology/2018/10/pelvic-exams-unconscious-women-medical-training-consent.html>.

<sup>2</sup> *Id.*

<sup>3</sup> S.1092--B § 1, 2019-2020 Reg. Sess. (N.Y. 2019).

<sup>4</sup> Friesen, *supra* note 1; see generally M. Larsen, CC Oleide, & K. Malterud, *Not so bad after all..., Women's experiences of pelvic examinations*, 14 FAM. PRACT. 148 (1997).

<sup>5</sup> Friesen, *supra* note 1.

unconscious.<sup>6</sup> Moreover, the practice of nonconsensual pelvic exams likely disproportionately impacts women of color and poorer women, given that three-quarters of safety-net hospitals are teaching hospitals.<sup>7</sup>

Patients are not the only ones who object to this practice. The American College of Obstetricians and Gynecologists' Committee on Ethics opposes the practice.<sup>8</sup> Further, medical students also express discomfort performing pelvic exams on unconscious patients who have not consented.<sup>9</sup> But, constrained by the hierarchical structure of medical education, they too often are afraid to speak out or to refuse to participate.

This practice not only harms patients and providers, it is also unnecessary to achieve the intended purpose of medical training and education. In fact, five states, California, Hawaii, Illinois, Oregon, and Virginia, have prohibited the practice of nonconsensual pelvic exams, and medical education in those states has not declined.<sup>10</sup> In these states, teaching hospitals hire professional patients,<sup>11</sup> employ electronic teaching mannequins,<sup>12</sup> or obtain consent,<sup>13</sup> demonstrating that there are other, less invasive ways to teach students to perform pelvic exams.

New York should join the list of states that prohibit this intrusive practice by expeditiously passing S.1092-B/A.6325.

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<sup>6</sup> Phoebe Friesen, *Educational pelvic exams on anesthetized women: Why consent matters*, 2018 *BIOETHICS* 1, 8 (2018) [hereinafter Friesen II].

<sup>7</sup> Andrea Callow & Dee Mahan, *Medicaid: Supporting Doctors, Hospitals, and the Communities They Serve*, Families USA, Dec. 2015, <https://familiesusa.org/product/medicaid-supporting-doctors-hospitals-and-communities-they-serve>.

<sup>8</sup> *Professional Responsibilities in Obstetric-Gynecologic Medical Education and Training*, Comm. Opinion (Amer. College of Obstetricians and Gynecologists), Aug. 2011, reaffirmed 2017, at 1. ("Pelvic examinations on an anesthetized woman that offer her no personal benefit and are performed solely for teaching purposes should be performed only with her specific informed consent obtained before her surgery.")

<sup>9</sup> *E.g.* Friesen II, *supra* note 6 at 1 – 2 (quoting medical student, "In obstetrics and gynecology, I encountered the first act of medical training that left me ashamed. For 3 weeks, four to five times a day, I was asked to, and did, perform pelvic examinations on anesthetized women, without specific consent, solely for the purpose of my education . . . To my shame, I obeyed. As a medical student, I am all too aware of the hierarchy that exists during training. My medical education experience has reinforced the notion that the medical student should not question the practices of those above him or her. I was very conflicted about performing an act that I felt was unethical, but owing to both the culture of medicine and my own lack of courage, I did not immediately speak out . . ."); *see also* Lilly Sullivan, *While You Were Out*, *This Amer. Life*, Nov. 9, 2018, <https://www.thisamericanlife.org/661/but-thats-what-happened/act-two-3>; Friesen, *supra* note 1.

<sup>10</sup> CAL. BUS. & PROF. CODE § 2281 (2003); HAW. REV. STAT. § 453-28 (2012); 410 ILL. COMP. STAT. 50/7 (2004); OR. REV. STAT. § 676.360 (2011); VA. CODE ANN. § 54.1-2959 (2007).

<sup>11</sup> *See* Friesen II, *supra* note 6 at 7, for a discussion of the value of professional patients (Professional patients "guide the students, teaching them not only the proper technique for speculum and bimanual examination but also what to say and how to say it. Students and professors say that for an examination that can be painful and embarrassing, it is invaluable to have someone reflect on the patient's experience while providing guidance and instruction." (internal citations omitted)).

<sup>12</sup> Friesen, *supra* note 1.

<sup>13</sup> Many women report that they would consent to having a medical student perform a pelvic exam for educational purposes if asked first. Wainberg, Wrigley, et al., *Teaching Pelvic Examinations Under Anaesthesia: What Do Women Think?*, 32 *J. OBSTET. GYNAECOLOGY CAN.* 49, 51 (2010).