

**ASSEMBLY, No. 1489**

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**STATE OF NEW JERSEY**

**219th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

**Assemblyman PAUL D. MORIARTY**

**District 4 (Camden and Gloucester)**

**Assemblywoman GABRIELA M. MOSQUERA**

**District 4 (Camden and Gloucester)**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

**Co-Sponsored by:**

**Assemblyman Calabrese, Assemblywoman Murphy and Assemblyman  
Zwicker**

**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: 11/8/2021)**

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

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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, in  
26 the case of female patients, the patient’s breasts.

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28 2. This act shall take effect immediately.

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## 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 or rectal cavity, and, in the case  
45 of female patients, any visual, tactile, or mechanical inspection of  
46 the patient’s breasts. Informed consent may be provided verbally or  
47 in writing. Health care practitioners will be required to make

1 reasonable efforts to obtain informed consent directly from the  
2 patient whenever possible.

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

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

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

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

1 states, including California, Hawaii, Illinois, Oregon, and Virginia,  
2 have adopted laws prohibiting the practice of conducting pelvic  
3 examinations without obtaining separate consent. It is the sponsor's  
4 intent that, in order to protect the rights and bodily autonomy of all  
5 patients, and to ensure that trust remains a vital component of the  
6 patient-practitioner relationship, no examination be performed on a  
7 patient unless the patient has expressly provided informed consent  
8 to the examination.