

3 February 2023

HB23-1077: Informed Consent To Intimate Patient Examinations

Concerning a requirement to obtain a patient's informed consent before performing an intimate examination of the patient under specified circumstances.

Members of the House Health & Insurance Committee,

I am a victim advocate and trauma-informed care consultant in Salt Lake City, Utah. I am writing today in strong support of House Bill 23-1077 regarding patient examinations. I am thrilled for Colorado to be considering this action, and I am so eager to see your great state pass this important bill into law.

I am especially impressed with the whistleblower protections in your state's drafted legislation and believe Colorado is poised to pass truly effective, productive legislation that not only protects patients but also those in care roles who often feel limited in their roles as learners and providers when they see something they feel isn't quite right.

In 2007, I went to an ER for uncontrolled nausea and vomiting. Neither labs nor various imaging studies yielded clear answers. In an attempt to control and alleviate my symptoms, the attending physician gave me a sedating medication, and noted, "She is quite somnolent." I was very, very asleep. The encounter note continued, "Still, there are symptoms ... I performed a pelvic exam." There was no discussion beforehand of the doctor's reasoning, and at no point was the exam considered acutely necessary, as the physician himself noted an exam would not impact his clinical decision making or my treatment; he planned to discharge me to follow up with my primary care provider with a presumptive diagnosis of endometriosis.

I know I never consented to the exam because I woke up in pain, my legs in stirrups, a bright light shining on my exposed body, and another person in the room. I woke up screaming.

As a survivor of sexual abuse and assault, the experience was as confusing as it was traumatizing. It was not until 2019 when similar legislation was introduced in Utah that I realized my experience had felt like a violation because it was one. My experience still impacts the way I seek and receive medical care, even today, over 15 years later; I have gone without necessary care and indicated screenings because I cannot ensure my own safety at my most vulnerable.

While my experience did not take place in a learning environment, my non-consensual exam was a product of the way that clinician, and so many others, have learned for generations; no one ever has any reason to stop doing what they don't consider to be wrong or harmful. A simple conversation would have made all the difference.

Repeated student exams for learning purposes are not patient care, and patients have every right to consent (or refuse) to be a part of learning. As a patient, my request for clinicians is simple: **please just ask**. The risk, time involved, and energy required of asking is surely so much less than the risk of causing lasting harm. To be frank: in no other profession does society tolerate the practice of routinely instructing learners to penetrate people without their knowledge or explicitly informed consent.

In a 2019 survey of over 100 medical students, 61% said they did not have patient permission for the training exams they conducted, and in a 2020 survey of 305 medical students, 42% said they rarely, if ever, had patient permission.

House Bill 23-1077, if passed, will help patients, trainees, and providers in Colorado—and, truly, nation- and worldwide. I have included below a list of common arguments I've encountered in my advocacy and my responses to them. I have also included links to various news outlets' coverage of this issue and my story. I have friends and family in Colorado, and my child and I often spend time in your beautiful state. This bill is good, helpful, and needful.

I welcome any questions, comments, and/or additional discourse, and so appreciate your consideration and votes in support of this measure.

Sincerely,

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Common arguments in opposition to ending this practice:

The pelvic/genital organs are no different to clinicians than any other organ or system

Examination of the genitals is different to patients, and any insistence that clinician convenience or perception is of higher priority than patients' sense of safety is antithetical to everything patients are told (and believe) medicine and those providing medical care stand for, including the charge to "first, do no harm."

If we ask, patients may refuse

Ok, and? Refusing any portion of care (and/or taking part in medical education) is every patient's right. As a patient, I routinely refuse medical students' presence in routine follow-ups with my primary-care provider where I expect to remain fully clothed; why would I not have the same right when in any state of undress and/or additional vulnerability? Intimate examinations performed by medical students for their own education are not medically necessary patient care and are not noted in patient charts. Patients are healthcare system consumers, who have every right to refuse extraneous exams and/or witnesses.

Students on clinical rotations are often instructed to introduce themselves as "members of the care team," but are often also told to avoid disclosing their specific roles on the "care team." That students in many different programs nationwide are routinely instructed to interact with patients in this way indicates institutional awareness of and complicity in the dubious ethics of the practice. Indeed, that there is so much institutional resistance year after year to this kind of legislation indicates to me that patients and learners would be well served by it.

If the exams are such a non-issue, then so is asking. If the exams are such a non-issue, it also seems clinicians would welcome the opportunity for more uniform, accessible records of having obtained fully informed consent. And if the problem is that the patients don't understand the institutional practice beforehand, explaining it explicitly only provides additional liability coverage for the institution.

Explicit consent is a violation of the provider-patient relationship and it's overstepping the role of law

The law exists to protect patients. If clinicians are already having these conversations, already obtaining explicitly informed consent, very little of their clinical practice would change. Exams for learning purposes, or serial exams, are not medical care.

Explicit consent diminishes medical training and clinicians will fear liability and/or higher rates of drop-out

Explicit consent legislation has already passed in 20 other states, commonly with overwhelming bipartisan support, and no other states have had problems with medical training falling apart. In a recent study from OB/GYN Dr. Julie Chor, when her clinic enacted an explicit consent policy, her physicians and trainees *preferred* a policy because they would much rather be honest with their patients. In line with prior data, about 90% of her patients did agree to the extra training exam. Patients WILL and DO agree to extra training exams; we just want to be asked.

There is no problem; if students or patients are upset, it's because they don't understand/didn't see consent happening between attending and patient

This is a problem. Frankly, patients and other professionals in this space are tired of being told we don't understand or that it's not happening when there are so many people coming forward: nurses, medical students, patients, ethicists, legal scholars, and other physicians.

This isn't really happening/not happening that often/not happening in Colorado

We know the practice of examining patients without explicitly informed consent is ubiquitously utilized, especially in teaching environments. If this practice weren't happening in Colorado, its teaching institutions still have an obligation to train students to uphold professional standards. Additionally, many clinicians trained elsewhere do come to Colorado to practice, and should be held to a standard consistent with best practices and trauma-informed care.

News coverage re non-consensual exams:

The New York Times: [She Didn't Want a Pelvic Exam. She Received One Anyway.](#)

Healthy Women: [Hospitals Are Allowing Medical Students to Perform Pelvic Exams on Unconscious Women—Without Their Consent](#)

KSHB TV: [Without consent: Pelvic exams under anesthesia still happen without patient knowledge](#)

Thank you. Good afternoon members of the committee. My name is Lauren Smith, and I am the policy director for Soul 2 Soul Sisters. I am here to testify in support of HB1077, Informed Consent To Intimate Patient Examinations.

Soul 2 Soul Sisters advocates for reproductive justice for all communities, especially Black Women, femmes, and trans people. We believe that the ability to have autonomy over your body and make informed decisions about what's best for yourself is your sacred and divine right. Black communities are all too familiar with medical violence and sexual assault, especially Black Women. The history of our medical system is deeply intertwined with the history of slavery in our country. Medical studies were consistently conducted on enslaved Black people without their consent - the birth of gynecology stands on the backs of enslaved Black Women who were experimented on against their will. Our country has a long history of coercive and compulsive sterilization, which disproportionately targets Black and Indigenous communities. The medical system in our country has constantly sent messages to Black people that our bodies are not our own - it is a history that is incredibly dehumanizing and painful.

This foundation of medical violence persists in our systems to this day. Black Women consistently experience medical violence and neglect due to the systemic racism woven into the foundations of our healthcare systems. Black Women die at significantly higher rates than white women due to childbirth, and there are countless stories of Black Women's pain being ignored and dismissed until it is too late.

Conducting intimate exams without consent is yet another example of modern-day medical violence. Oftentimes, these nonconsensual examinations are conducted by a medical student and are seen as a "teaching exercise". Marginalized communities typically have limited options on where they can access healthcare and many of them are forced to seek care at a teaching hospital, where nonconsensual exams for the sake of "learning" are more likely to occur. Exploiting Black bodies for the sake of advancing medical study draws haunting parallels with the medical experimentation of the pre-civil war. Our bodies are not tools to learn on - our bodies are our own and we refuse to be exploited by the medical institution, as we have time and time again.

Colorado is one of 29 other states in the US that haven't banned this practice - we now have an opportunity to clearly communicate that this medical violence simply will not be tolerated here in Colorado. Soul 2 Soul Sisters asks you to strongly support HB23-1077, thank you.



February 2, 2023

Dear Madame Chair and Members of the Committee,

My name is Katherine Riley and I am the Policy Director at the Colorado Organization for Latina Opportunity and Reproductive Rights (COLOR). COLOR is a reproductive justice organization that works to engage and empower Latinxs in the state to speak out about the policies that impact our daily lives.

I am honored to testify in support of House Bill 1077 that aims to prohibit non-consensual intimate exams on patients and instead, seek informed consent for any such practice.

Reproductive Justice, as a movement and framework, was born out of a very similar issue. At a time when Black and Brown bodies were experimented on under the guise of medical advancement, activists rose up and said enough is enough. The Tuskegee experiments, cruel violations on enslaved Black women, sterilization of Latinas in Puerto Rico and Los Angeles and, most recently, the hysterectomies occurring in ICE detention centers are just some of the horrific things that People of Color have experienced. More often than not, it is these communities - BIPOC, queer, low-income - that bear the brunt of human rights violations and non-consensual medical practices.

Reproductive Justice centers bodily autonomy and self-determination. HB23-1077 would make it so that any person, regardless of gender, would have to give informed consent for pelvic, rectal and/or prostate exams. This bill is grounded in a human rights framework and is Reproductive Justice in practice.

The research shows that 90% of medical students learn to conduct pelvic exams on unconscious patients, without their consent. This is outrageous and unacceptable. Not only have patients woken up with physical pain and trauma, but the mental health impact for patients and students oftentimes takes longer to heal.

COLOR is proud to support this bill and humbly asks for your yes vote. We know that our communities are the ones that often bear the brunt of these kinds of assaults and violations. HB 1077 would put a stop to this practice and show Coloradans that we care about their wellbeing and safety.

February 3, 2023

Written Testimony submitted online

House Health and Insurance Hearing for HB23-1077

Re: HB23-1077 Informed Consent To Intimate Patient Examinations

Dear Members:

I write in support of the HB23-1077. I am a physician in Baltimore, Maryland, and co-author of one of the last large-scale studies of consent practices for educational pelvic exams in the United States. In this study, my co-authors and I found that 90% of medical students at five medical schools in the Philadelphia area reported performing pelvic examinations on anesthetized patients for educational purposes during their obstetrics/gynecology rotation.¹ It was unclear whether consent was obtained.

After that work, I went into private practice as a pediatrician. I continue to follow with great interest the work of lawmakers to end the practice of using women for medical teaching without having specifically asked for their permission.

I write today to give some perspective on why you as lawmakers should finally lay to rest that antiquated practice.

All Healthcare Procedures Require Consent.

Every state requires not just consent, but *informed* consent before any procedure can be done on a patient. We learn in medical school that absent this consent, we can be liable to patients for battery.

We take this obligation seriously as medical professionals because our oath to patients requires that we do no harm. Moreover, we are taught that the right to give consent is based in respect for persons' agency. As Justice Cardozo famously observed in 1914, "[e]very human being of adult years and sound mind has a right to determine what shall be done with his body."

Asking Takes Approximately One Minute.

I know first-hand how busy physicians are and how many patients we see every day. That fact alone might lead you to want to avoid burdening physicians further. I have had countless conversations with patients, explaining that we would like to have medical learners involved in their care precisely so we can educate the next generation of providers. I explain that participation in medical education is voluntary, that the students are supervised, and that educating medical students is a powerful

¹ Ubel P, Jepson C, Silver-Isenstadt A. Don't ask, don't tell: A change in medical student attitudes after obstetrics/gynecology clerkships toward seeking consent for pelvic examinations on an anesthetized patient. *Am J Obstet Gynecol.* 2003;188:575-579.

service to the next generation of physicians and their patients. This candid disclosure and request for permission takes less than a minute. It empowers the patient and preserves autonomy. It also empowers the student, who now knows that the patient has consented. The student does not feel pressure to obfuscate the true nature of the interaction—the student's own education.

Patients Will Consent, But They Want to be Asked.

In earlier work I did with Professor Peter Ubel,² we showed that patients are altruistic—they want to assist with medical education but prize being asked. We worried that some students “may even deceive patients about their status as medical students” because they have not learned first-hand, from asking permission and receiving it, that patients will in fact consent.

When Attending Physicians Fail To Seek Consent, We Teach New Physicians That Consent Does Not Matter.

A significant literature shows that the ethical judgments of aspiring doctors get worse as they progress through their medical education. That is, first and second year students identify more ethical concerns than in later years of their education. This suggests that their sensibilities harden, likely because the attending physicians are not treating patients with the respect they deserve. Role models matter.

Honesty in Practice Is Essential to Maintaining Trust as a Profession.

The trust patients place in physicians is sacrosanct. It matters to good outcomes. As patients, we are at our most vulnerable. Ethics and law teach us that as physicians we have fiduciary duties to patients to patients, precisely because we have a knowledge and experience advantage that most patients lack. The whole system is imbued with duties to respect patients because their trust is so central to the healthcare system working. Without trust, patients will delay treatment.

If we continue to treat a category of patients—anesthetized or unconscious people—as not deserving of our respect, or if we exempt a category of care as not requiring consent because, after all, no one will know, that trust will collapse on itself like a house of cards.

I know you must weigh many things when deciding to regulate a field. I hope that my perspective as a physician can assist you to see that ensuring that patients' autonomy is respected will not tax our profession. Quite the contrary, it will allow us to safeguard the wellbeing of all our patients and the integrity of our profession.

I write in my individual capacity.

Very Truly Yours,
Ari Silver-Isenstadt, MD

²See Peter A. Ubel & Ari Silver-Isenstadt, Are Patients Willing to Participate in Medical Education?, 11 J. CLINICAL ETHICS 230, 230 (2000).