NOTE
WHAT WENT DOWN WHEN YOU WENT UNDER? THE PERFORMANCE OF NONCONSENSUAL PELVIC EXAMS ON UNCONSCIOUS PATIENTS

I. INTRODUCTION

Imagine going to the hospital for uncontrolled vomiting when suddenly you wake up with your feet up in stirrups and a doctor's hand in your vagina.[1] Ashley Weitz woke up screaming when this was her reality.[2] When Ms. Weitz's emergency room doctors were unable to determine a diagnosis for her uncontrolled vomiting, she was given Phenergan, a powerful sedative.[3] Before providing the sedative, her doctor had inquired whether he could test her for sexually transmitted infections.[4] Because she was celibate at the time, she declined.[5] Ms. Weitz's doctor blatantly disregarded her wishes and performed a pelvic examination ("pelvic exam") anyway.[6] This assault, a pelvic exam for which Ms. Weitz clearly did not provide consent, triggered her childhood sexual abuse trauma.[7] In her own words, "[i]t was the absence of consent that

1. *See generally* Lorelei Laird, *Examined While Unconscious*, A.B.A. J., Jan.-Feb. 2019, at 20 (telling Ashley Weitz's story of when she received an unexpected pelvic examination in 2007 after telling her emergency room doctor she did not want one).

2. *See id.*; Sarah Betancourt, *Bills Bar Non-Consensual Pelvic Exams Under Anesthesia*, COMMONWEALTH (Apr. 18, 2019), https://commonwealthmagazine.org/health-care/bills-bar-nonconsensual-pelvic-exams-under-anesthesia [https://perma.cc/BA5J-VBEB].

3. Laird, *supra* note 1, at 20. Ms. Weitz was a patient at the Intermountain Healthcare LDS Hospital emergency room ("LDS Hospital") in Salt Lake City. Claire Lampen, *Hospitals Might Not Get Consent to Give Unconscious Patients Pelvic Exams*, CUT (Feb. 17, 2020), https://www.thecut.com/2020/02/some-hospitals-perform-pelvic-exams-on-unconscious-patients.html [https://perma.cc/X4XT-5AZ3]. LDS Hospital serves as a supplementary training site for University of Utah residents who are on an obstetric rotation. *See Clinics & Hospitals*, HEALTH UNIV. OF UTAH, https://medicine.utah.edu/dfpm/family-medicine/residency/training-curriculum/clinic-hospitals.php [https://perma.cc/267K-AJKG] (last visited Apr. 1, 2023).

4. Lampen, *supra* note 3.

5. *Id.* Ms. Weitz insisted that a sexually transmitted infection was impossible because she was a "really good 23-year-old Mormon girl" at the time of her hospital visit. *See* Laird, *supra* note 1, at 20 (quoting Ashley Weitz).

6. Laird, *supra* note 1, at 20.

7. *See id.* Ms. Weitz is a survivor of childhood sexual abuse and is now an advocate for trauma survivors. *Id.*

made this a trauma,"[8] and "[t]his felt like the same trauma" she experienced as a child.[9]

Janine, a nurse from Arizona, was also reminded of her history of sexual abuse when she had a similar experience.[10] Janine visited the hospital for stomach surgery and before the procedure, explicitly informed her physician that she did not want medical students directly involved in her procedure.[11] Afterwards, Janine was informed by a resident that she was on her period, which was discovered because a pelvic exam was performed.[12] Panicked and distressed, Janine began to understand that she too received a nonconsensual pelvic exam while under anesthesia.[13]

Zahara Heckscher, a George Washington University Hospital patient, specifically asked her surgeon if any medical students would be performing pelvic exams on her while she was unconscious for her cyst removal.[14] The answer was a simple yes.[15] Although that yes came as a shock to Ms. Heckscher, many teaching hospitals[16] across the United States use generalized consent forms as permission to perform pelvic exams while patients are unconscious.[17]

---

8. *See* Lampen, *supra* note 3 (quoting Ashley Weitz's experience from when she spoke with the *Times*).

9. Betancourt, *supra* note 2.

10. *See* Emma Goldberg, *She Didn't Want a Pelvic Exam. She Received One Anyway*, N.Y. TIMES, https://www.nytimes.com/2020/02/17/health/pelvic-medical-exam-unconscious.html [https://perma.cc/L4RY-6KKT] (last updated Feb. 19, 2020). Janine stated in an interview, "I have a history of sexual abuse, and [the pelvic exam] brought up bad memories." *Id.*

11. *Id.*

12. *Id.* Janine was informed by her physician that the operating team noticed she was due for a Pap smear during her procedure and therefore conducted a pelvic exam. *See id.* A Pap smear is a procedure where a spatula is used to "scrape the ectocervix" and then "an endocervical brush or broom" is used to collect endocervical cells. Danielle J. O'Laughlin et al., *Addressing Anxiety and Fear During the Female Pelvic Examination*, J. PRIMARY CARE & CMTY. HEALTH, Jan.-Dec. 2021 at 1, 2.

13. *See* Goldberg, *supra* note 10. As a nurse herself, Janine was left disheartened because "[p]atients put such trust in the medical profession, especially on sensitive topics such as going under anesthesia." *Id.*

14. Avram Goldstein, *Practice vs. Privacy on Pelvic Exams*, WASH. POST (May 10, 2003), https://www.washingtonpost.com/archive/politics/2003/05/10/practice-vs-privacy-on-pelvic-exams/4e9185c4-4b4c-4d6a-a132-b21b8471da58 [https://perma.cc/G4UD-Z4L9].

15. *Id.* As Zahara asked around, everyone "acknowledged [that] they normally do that." *Id.*

16. *See* MACKENZIE K. HENDERSON ET AL., HANDBOOK OF ACADEMIC MEDICINE: HOW MEDICAL SCHOOLS AND TEACHING HOSPITALS WORK 5 (2013). Teaching hospitals are common educational settings that provide a clinical training site for medical students and residents. *Id.* They are a "core component in the education and training of future medical professionals." *Id.* at 45.

17. Goldstein, *supra* note 14; Lori Bruce, *A Pot Ignored Boils On: Sustained Calls for Explicit Consent of Intimate Medical Exams*, 32 HEC F. 125, 127 (2020).

Pelvic exams are sometimes conducted on a patient while the patient is under anesthesia or unconscious,[18] even when medically unnecessary.[19] Unless the exam is a medical emergency and consent is unobtainable, such an exam is assault.[20] Unfortunately, this practice is poorly documented due to limited research and a small scattering of personal accounts.[21] The lack of personal accounts stems from the reality that many patients will never find out whether they received a pelvic exam or not because of their unconscious state at the time of the exam.[22]

Patients with female[23] reproductive organs are not the only ones affected.[24] Anyone can fall victim to nonconsensual rectal exams conducted for training purposes.[25] There is currently little to no discussion of

18. Michael T. Alkire et al., *Consciousness and Anesthesia*, 322 SCI. 876, 876 (2008). Patients who receive low-sedative doses of anesthesia present similar effects of drunkenness, but at higher doses, the patient is unable to move in response to commands. *Id.* At this point, the patient is considered unconscious. *Id.*

19. *Medical Necessity Definitions*, CIGNA, https://www.cigna.com/health-care-providers/coverage-and-claims/policies/medical-necessity-definitions [https://perma.cc/H5YG-TVHC] (last visited Apr. 1, 2023). The general definition for when a procedure is medically necessary is "[f]or the purpose of evaluating, diagnosing, or treating an illness, injury, disease, or its symptoms." *Id.* Therefore, unless the procedure has been conducted for one of the foregoing reasons, the exam is medically unnecessary. *See id.*

20. *See* Misha Valencia, *Hospitals Are Allowing Medical Students to Perform Pelvic Exams on Unconscious Women—Without Their Consent*, HEALTHY WOMEN (Apr. 26, 2021), https://www.healthywomen.org/your-care/pelvic-exams-unconscious-women [https://perma.cc/FB7R-A2N8] (describing how pelvic exams that are conducted by doctors and medical students when there is a lack of emergency and consent, is an assault or medical battery on the patient).

21. Phoebe Friesen, *Educational Pelvic Exams on Anesthetized Women: Why Consent Matters*, 32 BIOETHICS 298, 299 (2018).

22. *Id.*

23. Laurel Wamsley, *A Guide to Gender Identity Terms*, NPR (June 2, 2021, 6:01 AM), https://www.npr.org/2021/06/02/996319297/gender-identity-pronouns-expression-guide-lgbtq [https://perma.cc/Q84D-VSMU]. "Sex refers to a person's biological status" and is typically categorized as male or female, while gender is a social construct of norms formed through behavior and varying societal roles. *Id.* Although gender identity aligns with a person's assigned sex at birth for many, this Note recognizes that a person's assigned sex at birth may not coincide with a person's gender identity and preferred pronouns. *See id.* However, to reflect the current literature in which this Note relies, this Note will occasionally use the terms female and woman and use she/her pronouns when referring to a patient who has received a pelvic exam. *See infra* Part II-IV.

24. *See* Bruce, *supra* note 17, at 126.

25. *Id.* Rectal exams require penetration and are commonly performed to detect abnormalities in the rectum, prostate, and abdomen. *Id.* at 127. In one case, a male patient received a sequence of digital rectal exams by several students. *Id.* at 135. Although he was conscious, he was unaware of what was happening at the time because a sheet divided him and the medical students. *Id.* One medical student spoke to this encounter and said there was "about three or four medical students" and the patient "had no idea that we were there and . . . none of the theatre staff spoke to him about what was happening." *Id.*

educational rectal exams being performed by medical students.[26] Any nonconsensual intimate exam, whether being a rectal exam or a pelvic exam, is problematic, but due to the lack of discourse on rectal exams, this Note primarily focuses on the discussion of nonconsensual pelvic exams on unconscious patients.[27] However, this Note does encompass the practice of nonconsensual rectal exams in the proposed solution.[28]

Many medical professionals publicly defend the practice of medical students performing educational pelvic exams on unconscious women[29] and are unsympathetic towards the strong reactions it has produced in the public as they see it as a standard in medical students' training.[30] A small list of states have passed legislation prohibiting nonconsensual pelvic exams and legislation is pending in even fewer.[31] Because the majority of states have not addressed this sensitive topic, there remains a strong call for states to continue enacting legislation or for the enactment of more wide-sweeping federal legislation.[32]

This Note will demonstrate that existing legislative solutions are inadequate and will provide a model state statute to rectify this issue.[33] The model state statute will draw on current state legislative responses and will include additional measures intended to remedy gaps in current coverage.[34] A model state statute for nationwide adoption would solve the uncertainty in the law that poses risks to patients' health and safety.[35] In Part II, this Note will discuss why pelvic exams on anesthetized patients is a common practice, the educational benefits of such exams, and the

---

26. *See* Friesen, *supra* note 21, at 299 n.8. In 2018, Phoebe Friesen noted that although they may take place, she was unable to find evidence or discussion of rectal exams being performed for teaching purposes on anesthetized men. *Id.*

27. *See infra* Part II. See Bruce, *supra* note 17, at 137, for further discussion and recommendations to prevent the practice of conducting rectal and pelvic exams on un-consenting patients.

28. *See infra* Part IV.A.

29. Robin F. Wilson, *Autonomy Suspended: Using Female Patients to Teach Intimate Exams Without Their Knowledge or Consent*, 8 J. HEALTH CARE L. & POL'Y 240, 242 (2005) [hereinafter *Autonomy Suspended*].

30. *See* Bowlin v. Duke Univ., 423 S.E.2d 320, 323 (N.C. Ct. App. 1992) (finding that the use of medical students to provide health care is a standard practice in teaching hospitals). Plaintiff's claim that informed consent was not obtained was inviable because she had signed a consent form that contained a provision that she agreed medical students would be assisting and providing care, and because she was treated at Duke University Medical Center, a teaching institution. *Id.*

31. Valencia, *supra* note 20; *see infra* Part II.D.

32. Valencia, *supra* note 20. There is currently no federal law that prohibits the performance or supervision of a pelvic exam on an anesthetized patient. *See* Goldstein, *supra* note 14 (discussing People Against Non-Consensual Pelvic Exams' want for federal legislation to ban nonconsensual pelvic examinations).

33. *See infra* Part IV.

34. *See infra* Part IV.

35. *See infra* Part III; *infra* Part II.C.

negative effects this practice produces.[36] Part III of this Note discusses the discrepancies in the state laws that have been enacted and the current lack of regulation imposed on healthcare professionals and medical students.[37] Part IV proposes a model state statute requiring oral and written specialized consent for the performance of a pelvic exam.[38] Finally, in Part V, this Note will conclude and reiterate the importance of bringing awareness to an ongoing practice that many patients are unaware of, and the practice's associated health risks.[39]

II. THE HISTORY OF PELVIC EXAMS

Part II of this Note reviews the practice of conducting and supervising pelvic exams on unconscious patients.[40] Subpart A illustrates the reasons why pelvic exams are conducted and pelvic exams' educational benefits for medical students.[41] Subpart B discusses medical professionals' justifications for the performance of exams without first obtaining specific consent.[42] Subpart C discusses the associated risks and consequences this practice generates.[43] Finally, Subpart D analyzes the ethical issues and varying state legislation enacted to prohibit this practice.[44]

A. What Is a Pelvic Examination, and What Is Its Educational Purpose?

Pelvic exams are regularly performed medical procedures that generally commence after a patient has started having intercourse[45] or once a patient has reached the age of twenty-one.[46] A patient seeking a pelvic exam will typically have one conducted by a primary care provider[47] or a

36. *See infra* Part II.
37. *See infra* Part III.
38. *See infra* Part IV.
39. *See infra* Part V.
40. *See infra* Part II.
41. *See infra* Part II.A.
42. *See infra* Part II.B.
43. *See infra* Part II.C.
44. *See infra* Part II.D.
45. Marie G. Oscarsson et al., *The First Pelvic Examination*, 28 J. PSYCHOSOMATIC OBSTETRICS & GYNECOLOGY 7, 7-8 (2007).
46. *What Is a Pelvic Exam?*, PLANNED PARENTHOOD, https://www.plannedparenthood.org/learn/health-and-wellness/wellness-visit/what-pelvic-exam [https://perma.cc/TY8M-ZZCG] (last visited Apr. 1, 2023).
47. Lisa Torborg, *Mayo Clinic Q and A: Gynecologic Exams Not Necessary for All Adolescent Girls*, MAYO CLINIC (May 1, 2018), https://newsnetwork.mayoclinic.org/discussion/mayo-clinic-q-and-a-gynecologic-exams-not-necessary-for-all-adolescent-girls [https://perma.cc/9PCQ-8K7A]. A primary care provider includes practitioners in family medicine or internal medicine. *See id.*

gynecologist.[48] When the patient is ready, she will undress[49] and put on a paper or cloth gown.[50] She will then lay down in a supine position[51] with her legs placed in stirrups.[52] The external and internal genitals[53] will be examined with "instruments and bimanual palpation" as the examiner stands or sits in between the patient's separated legs.[54] An exam with instruments typically includes the use of a speculum.[55] The examiner will slide the speculum into the vagina and perform any necessary testing.[56] For a bimanual exam, the examiner will put on a glove and with lubricated fingers go inside the vagina while "gently pressing on [the] lower abdomen with their other hand."[57]

Patients may receive or need a pelvic exam for several reasons.[58] During a bimanual exam, the examiner checks the size, shape, and positioning of the uterus.[59] Tenderness or pain during an exam may be a sign of infection or other underlying conditions.[60] The examiner also looks for enlarged ovaries, ovarian cysts, or tumors.[61] Speculum exams enable practitioners to gather samples for STD tests, Pap smears, and HPV tests.[62]

---

48. *Id.* Gynecologists specialize in the reproductive health care of women and will treat any conditions that affect the reproductive system. *What Is the Difference Between OB/GYN and Gynecology?*, WOOSTER CMTY. HOSP. (Feb. 7, 2020), https://www.woosterhospital.org/what-is-the-difference-between-ob-gyn-and-gynecology [https://perma.cc/CCR6-69RY]. Gynecologists often perform pelvic exams, breast exams, and Pap smears. *Id.*

49. *See* Oscarsson et al., *supra* note 45, at 8.

50. *What Is a Pelvic Exam?*, *supra* note 46.

51. *The Ultimate Guide to the Supine Position*, STERIS HEALTHCARE (Jan. 8, 2021), https://www.steris.com/healthcare/knowledge-center/surgical-equipment/supine-position [https://perma.cc/YS8A-79DS]. Being in a supine position is when the patient is laying down and is face up. *Id.*

52. Oscarsson et al., *supra* note 45, at 8. Stirrups are also commonly known as footrests or knee-rests. *See What Is a Pelvic Exam?*, *supra* note 46.

53. *What Is a Pelvic Exam?*, *supra* note 46. Externally, the examiner will examine the patient's vulva. *Id.* Internally, the examiner will exam the reproductive organs which include the vagina, cervix, ovaries, fallopian tubes, and uterus. *Id.*

54. Oscarsson et al., *supra* note 45, at 8; *see What Is a Pelvic Exam?*, *supra* note 46.

55. *What Is a Pelvic Exam?*, *supra* note 46. Vaginal speculums allow access to the vaginal tissue by retracting the structures to allow exposure and observation of tissue. STEVE MOUTREY, THE FUNDAMENTALS OF SURGICAL INSTRUMENTS: A PRACTICAL GUIDE TO THEIR RECOGNITION, USE AND CARE 52 (2017).

56. *See What Is a Pelvic Exam?*, *supra* note 46.

57. *Id.*

58. *See generally id.* (listing the array of reasons a pelvic exam is necessary as a regular part of a patient's wellness visit).

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

1. Teaching Medical Students Pelvic Exams

Pelvic exams are "a normal part of taking care of [the] body,"[63] therefore pelvic exams are a basic clinical skill that any practitioner should be capable of proficiently performing.[64] Although most medical students will not seek a specialization in obstetrics and gynecology, it is important that medical students are as educated in the performance of pelvic exams as they would be with any other organ system.[65] Medical students may learn how to conduct a pelvic exam through a variety of options including the use of pelvic mannequins, animal models, paid standardized patients, and/or conscious or unconscious patients.[66] Despite the variation of educational tools to help medical students learn how to perform pelvic exams, some are a "woefully inadequate" substitute to a real patient.[67] Pelvic mannequins are stiff, expensive, and only represent one anatomical type.[68] The use of animal models is disfavored because they often vary substantially from humans in size and anatomy.[69] Although paid standardized patients are specifically trained to help medical students' education and provide useful feedback,[70] their participation can easily cost fifty dollars or more per hour, creating an

63. *Id.*

64. Jennifer Goedken, *Pelvic Examinations Under Anesthesia: An Important Teaching Tool*, 8 J. HEALTH CARE L. & POL'Y 232, 232 (2005). The Association of American Medical Colleges has included pelvic exams in its recommendations for Clinical Skills Curricula. ASS'N AM. MED. COLL., RECOMMENDATIONS FOR CLINICAL SKILLS CURRICULA FOR UNDERGRADUATE MEDICAL EDUCATION 26 (2005) (ebook).

65. Goedken, *supra* note 64, at 232-33. The Associations of American Medical Colleges compiled a table that displays the number of active residents who graduated from United States Medical Degree-granting schools by specialty. *Table B4. MD-PhD Residents, by GME Specialty*, ASS'N AM. MED. COLLS., https://www.aamc.org/data-reports/students-residents/interactive-data/report-residents/2022/table-b4-md-phd-residents-gme-specialty [https://perma.cc/EPT9-YET8] (last visited Apr. 1, 2023). In 2020, there was a total of 4,330 residents specialized in Obstetrics and Gynecology out of a total of 88,085 residents across all specialties. *Id.* In 2021, there was a slight increase to 4,409 residents specialized in Obstetrics and Gynecology out of a total of 89,366 graduated and active residents. *Id.*

66. Goedken, *supra* note 64, at 233-34.

67. *See id.* at 233.

68. *Id.*

69. *Id.*

70. Stacy Weiner, *What "Informed Consent" Really Means*, ASS'N AM. MED. COLLS. (Jan. 24, 2019), https://www.aamc.org/news-insights/what-informed-consent-really-means [https://perma.cc/3T9C-P9FF]. Standardized patients are also known as simulated patients or simulated participants. Dinah Wisenberg Brin, *Standardized Patients Teach Skills and Empathy*, ASS'N AM. MED. COLLS. (Nov. 27, 2017), https://www.aamc.org/news-insights/standardized-patients-teach-skills-and-empathy [https://perma.cc/4SEL-QWVA]. They are coached to portray themselves as patients in a realistic situation seeking medical assistance to help medical students in their real-world education. *Id.* This technique gives medical students a safe and controlled environment to experience the awkwardness, stress, and confusion of office visits, gain exposure, and build self-confidence. *Id.*

impractical and expensive method.[71] Thus, performing exams on conscious and unconscious patients is the most ideal method for medical students' training.[72]

There are reasonable advantages to performing pelvic exams while a patient is unconscious.[73] A patient's unconsciousness affords medical students additional time to perform the pelvic exam due to the lack of concern for a conscious patient's physical discomfort during an exam that is normally present.[74] Additionally, when performing a pelvic exam on an unconscious patient, "there is a total relaxation of the abdominal and pelvic musculature," enhancing the examiner's ability to obtain a complete assessment of the patient's internal pelvic organs,[75] and the patient is "more likely to have palpable abnormal pathology."[76] When a patient is conscious, the level of difficulty for physicians and medical students to conduct a complete assessment increases.[77] Failure to obtain a complete assessment is especially seen in patients who are obese or have difficulty relaxing their abdomen and pelvic muscles during an exam.[78]

An incomplete assessment may result in the patient's internal genitals, including the uterus, fallopian tubes, and ovaries, not being adequately evaluated.[79] Consequently, medical professionals will be unable to properly diagnose and provide treatment for underlying reproductive diseases, and medical students will be unable to develop the necessary knowledge or understanding of what internal reproductive organs feel like.[80] Many medical students have expressed that performing a pelvic exam on an unconscious patient was the first time they could "actually" feel an ovary.[81]

However, conscious patients do provide different educational opportunities for medical students.[82] For example, medical students can learn how to alleviate the discomfort and embarrassment that is commonly associated with pelvic exams.[83] Additionally, medical students

71. Goedken, *supra* note 64, at 233.
72. *See supra* Part II.A.1.
73. *See generally* Goedken, *supra* note 64, at 234 (explaining the benefits an unconscious state provides when performing a pelvic exam).
74. Sanjana Salwi et al., *Aligning Patient and Physician Views on Educational Pelvic Examinations Under Anaesthesia: The Medical Student Perspective*, 47 J. MED. ETHICS 430, 431 (2021).
75. Goedken, *supra* note 64, at 234; *see also* Salwi et al., *supra* note 74, at 431.
76. Salwi et al., *supra* note 74, at 431.
77. *See* Goedken, *supra* note 64, at 234.
78. *Id.*
79. *Id.*
80. *Id.*
81. *Id.*
82. *Id.*
83. *Id.*

can still feel and learn the difference between normal and abnormal anatomy.[84] After all, because the majority of pelvic exams will be performed on patients under anesthesia, physicians and medical students need ample practice in performing pelvic exams on conscious patients.[85] Furthermore, despite the educational benefits for medical students, it is crucial to recognize that the performance of educational pelvic exams do not provide the same clinical benefits to the patient as they are not being performed for diagnostic purposes.[86]

2. The Performance of Pelvic Exams on Unconscious Patients Without Their Consent Continues Despite Criticism

Studies demonstrate that the practice of performing pelvic exams on unconscious patients without their consent continues despite public scrutiny.[87] In 2003, after surveying 400 medicals students from five medical schools in Philadelphia, a study found that ninety percent of the surveyed medical students had performed a pelvic exam on an anesthetized patient.[88] Unfortunately, the quantity of women who consented to the exam is unclear from this study.[89] But, two years later, the University of Oklahoma conducted a similar survey and found "that a large majority of medical students had given pelvic exams to gynecologic surgery patients who were under anesthesia, and that in nearly three quarters of these cases the women had not consented to the exam."[90] A study conducted in the United Kingdom found that at least twenty-four percent of performed pelvic exams were conducted without the patients' consent

84. *Id.*

85. *See* Bethany Ao, *Medical Students in Pa. Practiced Pelvic Exams on Unconscious Patients for Years. That Could End Soon.*, PHILA. INQUIRER (Mar. 3, 2020), https://www.inquirer.com/health/pelvic-exam-medical-student-pennsylvania-20200304.html [https://perma.cc/7RVT-2MB3].

86. Salwi et al., *supra* note 74, at 431; *see* Shawn S. Barnes, *Practicing Pelvic Examinations by Medical Students on Women Under Anesthesia: Why Not Ask First?*, 120 OBSTETRICS & GYNECOLOGY 941, 942-43 (2012) (explaining that pelvic exams performed by medical students on patients under anesthesia are only for educational purposes).

87. Friesen, *supra* note 21, at 299, 305 n.49; *see generally* Peter A. Ubel et al., *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*, 188 AM. J. OBSTETRICS & GYNECOLOGY 575 (2003) (explaining the results of a study conducted on medical students of five Philadelphia-area medical schools); Stephanie Schniederjan & G. Kevin Donovan, *Ethics Versus Education: Pelvic Exams on Anesthetized Women*, 98 J. OKLA. STATE MED. ASS'N 386, 386 (2005); Yvette Coldicott et al., *The Ethics of Intimate Examinations: Teaching Tomorrow's Doctors*, 326 BRIT. MED. J. 97, 97-98 (2003) (discussing how medical schools have formal policies for pelvic exams but do not achieve ethical standards).

88. Ubel et al., *supra* note 87, at 579.

89. Friesen, *supra* note 21, at 299.

90. *Id.*; Schniederjan & Donovan, *supra* note 87, at 386.

and more than one student often examined the same patient.[91] Most recently in 2019, a survey of 101 medical students across seven major American medical schools found that ninety-two percent of the students performed a pelvic exam on an unconscious patient and sixty-one percent performed the exam without explicit consent.[92] Just under a majority of patients never even had the opportunity to meet the medical students involved in their procedure.[93]

Shawn Barnes told his story after completing an obstetrics and gynecology clinical clerkship[94] where he performed pelvic exams for educational purposes on unconscious patients, without specific consent, four to five times a day for three weeks.[95] He was required to meet the patient first and introduce himself as a medical student who will be on the team or provide some "vague statement" of his role in the procedure.[96] This "vague statement" did not include any indication that he would be performing a pelvic exam.[97] Barnes asked his fellow classmates if they had similar experiences, and he discovered his experience was certainly not isolated[98]: "[n]early all of the students [he] spoke with . . . also had been asked to perform unconsented pelvic examinations on anesthetized women, and many had ethical concerns."[99]

An additional layer of concern which is controversial across the medical field is the quantity of medical students who are involved when performing educational pelvic exams on a single patient.[100] The majority of teaching hospitals allow only one to two medical students to perform an exam along with the attending physician on a patient, but there have also been accounts of as many as five medical students participating.[101]

---

91. *See* Friesen, *supra* note 21, at 299; *see also* Coldicott et al., *supra* note 87, at 98.

92. Jennifer Tsai, *Medical Students Regularly Practice Pelvic Exams on Unconscious Patients. Should They?*, ELLE (June 24, 2019), https://www.elle.com/life-love/a28125604/nonconsensual-pelvic-exams-teaching-hospitals [https://perma.cc/AEW4-9HNB].

93. *Id.* (finding that only forty-nine percent of patients met the medical students before the procedure).

94. *Scheduling Clinical Clerkships*, AM. MED. ASS'N, https://www.ama-assn.org/residents-students/career-planning-resource/scheduling-clinical-clerkships [https://perma.cc/8GN3-THES] (last visited Apr. 1, 2023). Clinical clerkships are also commonly known as rotations. *Id.* After a medical student has completed their second year of medical school, the student will spend the following two years participating in clinical clerkships in different medical specialties. *Id.*

95. Barnes, *supra* note 86, at 941.

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *See* Goldstein, *supra* note 14.

101. *Id.*; *see* Valencia, *supra* note 20 (discussing Dr. Heather Bartos', an OB-GYN and medical director of Be.Women's Health and Wellness in Texas and member of HealthyWomen's Women's Health Advisory Council, experience of when she was in medical school).

Once the attending physician and one or two residents have had the opportunity to conduct a pelvic exam, three or four medical students may follow.[102] In what was hopefully a rare instance, a medical student described her experience in performing a pelvic exam on a patient, "[it was like] all these medical students parading in to each take their turn, y'know, like going to a *vending machine*, and walking by. Only it's not a vending machine, it's a woman's vagina. And you're each taking your turn, walking by and sticking your hand in."[103] Fortunately, the more common occurrence is that only students within the patient's care team are performing an educational pelvic exam.[104] But, if there are "five medical students on an OB-GYN rotation, they aren't going to let one do it and not the other four."[105]

B. Have You Already Consented? Medical Professionals' Justifications for Educational Pelvic Exams

Unsurprisingly, a minimum of seventy-two percent of women who were polled expected that if under anesthesia, specific consent for the performance of an educational pelvic exam is required.[106] Without such consent, many women "said they would feel physically assaulted."[107] Yet, teaching hospitals do not make it a standard practice to obtain specific consent before performing a pelvic exam on a woman who is under anesthesia.[108] Medical professionals provide the following justifications as to why specific consent is not obtained: (1) patients are aware that because they are seeking treatment at a teaching hospital they have

---

102. Tsai, *supra* note 92.

103. Robin F. Wilson, *"Unauthorized Practice": Regulating the Use of Anesthetized, Recently Deceased, and Conscious Patients in Medical Teaching*, 44 IDAHO L. REV. 423, 426-27 (2008) [hereinafter *Unauthorized Practice*] (quoting Dean Scheibel, *Appropriating Bodies: Organ(izing) Ideology and Cultural Practice in Medical School*, 24 J. APPLIED COMMC'N RSCH. 310, 318 (1996)) (emphasis in original) (internal quotations omitted).

104. *Id.* at 427.

105. Goldstein, *supra* note 14 (quoting Michael Greger). Michael Greger, a doctor from Boston who lectures to medical students nationwide, further said he has "never heard of anyone out of some kind of respect for the patient just limiting it to a few." *Id.*

106. Paul Hseih, *Pelvic Exams on Anesthetized Women Without Consent: A Troubling and Outdated Practice*, FORBES (May 14, 2018, 9:20 AM), https://www.forbes.com/sites/paulhsieh/2018/05/14/pelvic-exams-on-anesthetized-women-without-consent-a-troubling-and-outdated-practice/?sh=5a95af378462 [https://perma.cc/8PKC-JCQ8]; Friesen, *supra* note 21, at 305; Sara Wainberg et al., *Teaching Pelvic Examinations Under Anaesthesia: What Do Women Think?*, 32 J. OBSTETRICS & GYNAECOLOGY CAN. 49, 51 (2010).

107. Hseih, *supra* note 106 (quoting Friesen, *supra* note 21, at 305-06 (internal quotations omitted)).

108. *Id.*

implicitly consented[109] to the performance of educational pelvic exams; (2) consent has been obtained through the routine general consent form signed upon admittance to the hospital; and (3) fear that if patients are asked for consent, they will not provide it.[110] As one doctor explained, why obtain specific consent when this practice is "considered a part of ordinary medical practice[?]"[111]

1. Implied Consent

Dr. William Dignam, the Director of the University of California, Los Angeles's Obstetrics and Gynecology Clerkships, says one reason specific consent is not commonly obtained is because he is "reasonably certain that patients know medical students will be participating" in their care.[112] This is a primary justification for medical providers' failure to obtain specific consent—it is their belief that patients have implicitly consented to treatment performed by medical students because the patient is receiving care from a teaching hospital.[113] While implicit consent for the performance of such exams sounds like a potentially valid argument, there is little to support the conclusion that a patient has made a conscious decision to accept medical students' performance of a pelvic exam simply because the patient is receiving care at a teaching hospital.[114]

It is possible that a patient may have specifically chosen a teaching facility for cost reasons due to insurance status.[115] However, more frequently, many patients are not making a decision to be treated at a teaching facility nor are they aware that the hospital they have chosen is a teaching facility.[116] It may be incredibly difficult for the average citizen to recognize the type of facility they have chosen because disclosure of

---

109. *Implied Consent*, CORNELL L. SCH., https://www.law.cornell.edu/wex/implied_consent [https://perma.cc/6V8K-RX2N] (last visited Apr. 1, 2023). Implied consent is defined as an "agreement given by a person's action (even just a gesture) or inaction, or can be inferred from certain circumstances by any reasonable person." *Id.*

110. *See Autonomy Suspended*, *supra* note 29, at 249-50.

111. *Id.* at 242 (quoting Dr. Steven Swift, an Obstetrics and Gynecology Professor at the Medical University of South Carolina).

112. Audrey Warren, *Using the Unconscious to Train Medical Students Faces Scrutiny*, WALL ST. J. (Mar. 12, 2003, 12:01 AM), https://www.wsj.com/articles/SB104743137253942000 [https://perma.cc/5RKT-Y536]; *Autonomy Suspended*, *supra* note 29, at 242.

113. *Autonomy Suspended*, *supra* note 29, at 250; *Unauthorized Practice*, *supra* note 103, at 432.

114. *Unauthorized Practice*, *supra* note 103, at 432.

115. *Unauthorized Intimate Teaching Exams: Public Engagement Initiative*, EPSTEIN HEALTH L. & POL'Y PROGRAM, https://www.epsteinprogram.com/pelvic-exams [https://perma.cc/W786-9EZR] (last visited Apr. 1, 2023).

116. *Unauthorized Practice*, *supra* note 103, at 434-35.

the facility's association with a medical school to the public varies substantially from hospital to hospital.[117] It can be significantly obvious when the name of a facility indicates their affiliation with a medical school in their name,[118] such as Duke University Medical Center or George Washington University Hospital.[119] However, schools with the word "university" in their name are the exception, for they only account for approximately twenty percent of the total number of schools that are members of the Council of Teaching Hospitals and Health Systems.[120]

A second factor to consider is the hospitals' physical proximity to their associated medical school.[121] Close proximity may be an indication to patients when the hospital is only a few feet away from the medical school, but that constructive notice is severely diminished when the hospital and affiliated medical school are not in proximity.[122] For example, Stanford Hospital is a teaching hospital for Columbia University but is located forty miles from Manhattan.[123]

Additionally, patients who are seeking emergency care are most likely not concerned with which hospital they are getting to, nor do they likely have any control over where they are being transported.[124] Someone who calls 911 for an ambulance when in need of emergency medical services does not always get the opportunity to choose their hospital of choice.[125] Sometimes that decision is automatically made by a coordinator who is "tasked with distributing patients evenly between regional hospitals."[126] It is even possible to be taken to a hospital across town when there is a closer hospital, especially depending on the type of

117. *Autonomy Suspended*, *supra* note 29, at 251.

118. *Id.*

119. See *AAMC Hospital/Health System Members*, ASS'N AM. MED. COLLS., https://members.aamc.org/eweb/DynamicPage.aspx?site=AAMC&webcode=AAMCOrgSearchResult&orgtype=Hospital/Health%20System [https://perma.cc/QLY9-6TJD] (last visited Apr. 1, 2023), for a full list of medical school, hospital/health system, and academic society members.

120. *Autonomy Suspended*, *supra* note 29, at 251; *see also AAMC Hospital/Health System Members*, *supra* note 119. The Council of Teaching Hospitals and Health System leads the Association of American Medical College's nearly 400 teaching hospital and health system members. *Council of Teaching Hospitals and Health Systems (COTH)*, ASS'N AM. MED. COLLS., https://www.aamc.org/professional-development/affinity-groups/coth [https://perma.cc/6QHZ-9VNU] (last visited Apr. 1, 2023).

121. *Unauthorized Practice*, *supra* note 103, at 433.

122. *Id.*

123. *Unauthorized Intimate Teaching Exams: Public Engagement Initiative*, *supra* note 115.

124. *See Autonomy Suspended*, *supra* note 29, at 255; *see also Unauthorized Practice*, *supra* note 103, at 434; Rod Brouhard, *How Paramedics Choose Where to Take You*, VERYWELL HEALTH (Apr. 16, 2020), https://www.verywellhealth.com/how-do-paramedics-choose-a-hospital-1298357 [https://perma.cc/TW8S-7476].

125. Brouhard, *supra* note 124.

126. *Id.*

medical emergency at issue.[127] Protocols differ from state to state: in California, patients are often given the option to go to a hospital of their choosing, but in "other states, you may only be advised of your destination as you leave,"[128] such as in New York City where patients are transported to the nearest hospital even if a patient has a doctor affiliated with a different hospital.[129] Therefore, "the idea that patients know, or even quietly suspect, that they are in a teaching facility is frequently a fiction."[130]

2. General Consent

Some healthcare professionals believe that patients have already consented to the performance of a pelvic exam by a medical student when the patient signed the general consent form given to her upon admission to the hospital.[131] They say, "it's pretty much all covered in the overall consent form."[132] This argument may be stronger when the educational pelvic exam is similar to the procedure, such as a gynecological surgery, and the patient has already consented to have a pelvic exam performed by her attending physician.[133] However, emergency room consent forms are exceptionally broad, and some medical professionals argue that a patient's signature authorizes a variety of student involvement in their care even when consent is obtained for one procedure and used for "additional, related procedures."[134]

Teaching hospitals, such as Penn Medicine, clearly indicate in their general consent form that their facility is a teaching hospital and "residents and other trainees will participate" in their care.[135] Consider the following provision of a consent form:

> I give permission to my responsible practitioner to do whatever may be necessary if there is a complication or unforeseen condition during my procedure . . . I understand that some of the system hospitals are teaching hospitals. Doctors or other health practitioners who are members of the care team and are in training may help my practitioner with the

127. *Id.*

128. *Id.*

129. *The Private Ambulance Difference*, RCA AMBULANCE SERV., https:web.archive.org/web/20210615141618/https://www.rcambulancenyc.com/blog_post.php?id=4 [https://perma.cc/4C6N-SHV6] (last visited Apr. 1, 2023).

130. *Autonomy Suspended*, *supra* note 29, at 255-56.

131. *Id.* at 249.

132. Warren, *supra* note 112; *Autonomy Suspended*, *supra* note 29, at 242 (quoting Dr. William Dignam).

133. *Unauthorized Practice*, *supra* note 103, at 435.

134. *Id.* at 435-36.

135. Weiner, *supra* note 70.

> procedure. I understand that these trainees are supervised by qualified staff and the responsible practitioner will be present at all important times during the procedure. I also understand that associate(s), surgical assistance and/or other physicians or trainees may assist my responsible practitioner to perform parts of the procedure under the responsible practitioner's supervision, as permitted by law and hospital policy.[136]

Any fair reading of this provision would lead to the conclusion that the patient is consenting to procedures for her own benefit and not the benefit of the medical students.[137]

Obtaining a patient's *informed* consent to "medical treatment is fundamental in both ethics and law," as opposed to simply obtaining general consent.[138] For a patient's consent to be considered informed, their attending practitioner must explain any material facts related to the patient's treatment in order to help the patient make any decision about their treatment.[139] States determine the standard for informed consent, and there are three possible approaches: a subjective standard,[140] a reasonable patient standard, and a reasonable physician standard.[141]

Some states have opted to use the reasonable patient standard and state statutes, regulations, or case law may determine what material facts must be disclosed to a patient.[142] The reasonable patient standard requires "physicians [to] disclose [any] information that a reasonable person would want to know in a similar situation,"[143] or "[w]hat would the average patient need to know to be an informed participant in the

---

136. *Unauthorized Intimate Teaching Exams: Public Engagement Initiative*, *supra* note 115.

137. *Id.*

138. FLA. S., S.B. 716 ANALYSIS AND FISCAL IMPACT STATEMENT 3 (2021), https://www.flsenate.gov/Session/Bill/2021/716/Analyses/2021s00716.rc.PDF [https://perma.cc/MR7P-HZT2].

139. Kim Stanger, *Consent Forms v. Informed Consent*, HOLLAND & HART (July 18, 2017), https://www.hollandhart.com/showpublication.aspx?Show=33260 [https://perma.cc/ZD6Q-DD2L]. Informed consent dates back to 1914 when the court in *Schloendorff v. Society of New York Hospital* held that any operation without a patient's consent is assault. *See* Schloendorff v. Soc'y of N. Y. Hosp., 105 N.E. 92, 93 (N.Y. 1914); S.B. 716 ANALYSIS AND FISCAL IMPACT STATEMENT, *supra* note 138, at 3.

140. Parth Shah et al., *Informed Consent*, STATPEARLS (June 11, 2022), https://www.ncbi.nlm.nih.gov/books/NBK430827 [https://perma.cc/9RZX-V4YT]. A subjective standard asks, "[w]hat would this patient need to know and understand to make an informed decision?" *Id.*

141. *Id.*

142. *See* Daniel E. Hall et al., *Informed Consent for Clinical Treatment*, 184 CAN. MED. ASS'N J. 533, 533 (2012); Stanger, *supra* note 139. Material facts often include the nature of the proposed treatment, any significant risks and benefits associated, alternative methods of the proposed treatment and the alternatives' risks and benefits, and the identity of practitioners who will be rendering the patient's care. Stanger, *supra* note 139.

143. Hall et al., *supra* note 142, at 533 (internal quotations omitted).

decision?"[144] For a patient to effectively understand what they are consenting to, practitioners will often have to explain the matter at the patient's educational level, or obtain the aid of a qualified interpreter to translate for the doctor or translate any necessary documents.[145] If states lack informed consent standards for healthcare facilities, then courts may require the disclosure of information per the reasonable physician standard.[146] The practitioner will often measure the level of information disclosed to the patient based on the practice of other similarly practicing practitioners in the community and what they would discuss and disclose with the patient in their care.[147]

A secure method to document a patient's informed consent is to provide patients with "procedure-specific consent forms,"[148] versus the general consent forms often provided to patients to authorize a practitioner's care that "do not constitute effective informed consent" unless accompanied by effective communication.[149] For example, the laws of Florida provide that a medical student is not permitted to perform a pelvic exam on a patient, unless written consent specific to the performance of a pelvic exam is provided.[150]

3. Consent Is Not Obtained Because of the Fear That Consent Will Not Be Granted

There remains the concern by healthcare professionals that patients will say "no" to an educational pelvic exam, and as a consequence, medical students will be unable to obtain a crucial part of their training.[151] This justification stems from the fear of refusal.[152] Thus "we can't ask you, because if we ask you, you won't consent."[153]

Medical students have internalized this fear of refusal[154] and have significant concern for their "technical shortcomings" due to their lack of experience.[155] Many medical students assume that the patients they

144. Shah et al., *supra* note 140.

145. Stanger, *supra* note 139.

146. Hall et al., *supra* note 142, at 533.

147. Bryan Murray, *Informed Consent: What Must a Physician Disclose to a Patient?*, AM. MED. ASS'N J. ETHICS (July 2012), https://journalofethics.ama-assn.org/article/informed-consent-what-must-physician-disclose-patient/2012-07 [https://perma.cc/2PZJ-8JXZ]. The physician asks, "[w]hat would a typical physician say about this procedure?" Shah et al., *supra* note 140.

148. Hall et al., *supra* note 142, at 538.

149. Stanger, *supra* note 139; *see supra* Part II.B.2.

150. SB 716 ANALYSIS AND FISCAL IMPACT STATEMENT, *supra* note 138, at 5.

151. Warren, *supra* note 112; *see also Unauthorized Practice*, *supra* note 103, at 437-38.

152. *Autonomy Suspended*, *supra* note 29, at 259.

153. *Id.*; *see Unauthorized Practice*, *supra* note 103, at 438.

154. *Unauthorized Practice*, *supra* note 103, at 438.

155. *Id.*

are performing procedures on share these similar concerns.[156] In consequence, medical students will avoid obtaining specific consent because they assume that the patient will refuse due to the students' lack of experience.[157]

In reality, both hypothetical studies,[158] as well as studies conducted on women receiving a pelvic exam, demonstrate that women do not have an issue with consenting to educational pelvic exams.[159] A study conducted by Robert Berry[160] found that if asked in advance and without feeling pressured to consent, more than eighty percent of patients consented to a medical student conducting an educational pelvic exam.[161] Patients are even willing to consent to medical students being present for gynecological procedures that pose a high risk, such as a vaginal childbirth and birth by cesarean section.[162] Patients' willingness to allow medical students to participate in training is not limited but rather expansive, including permission to perform a rectal exam.[163] Although "medical students dramatically underestimate the esteem in which patients hold them,"[164] it is evident that patients do not underestimate the students' competency to the level that medical students believe and are willing to consent to their participation.[165]

156. *Id.*

157. *Id.*

158. *Autonomy Suspended*, *supra* note 29, at 260. Hypothetical studies are studies in which the patient is asked hypothetical questions to see how they would respond when asked to do something. *See id.*

159. *Id.*; *Unauthorized Intimate Teaching Exams: Public Engagement Initiative*, *supra* note 115.

160. Ao, *supra* note 85. Robert Berry is the Obstetrics and Gynecology residency director at the University of Massachusetts Medical School. *Id.*

161. *Id.*

162. *Unauthorized Practice*, *supra* note 103, at 438.

163. *See id.* Fifty-two percent of patients would consent to the performance of a rectal exam by a medical student. *Id.* (citing Peter A. Ubel & Ari Silver-Isenstadt, *Are Patients Willing to Participate in Medical Education?*, 11 J. CLINICAL ETHICS 230, 234 (2000)). Forty-eight percent of patients would allow a medical student to make an incision. *Id.* Forty-four percent of patients would allow intubation and forty-one percent would allow the student to suture them. *Id.* Even fifty-two percent of surveyed patients would allow a medical student to perform their first spinal tap if done under close supervision. Charles Telfer Williams & Norman Fost, *Ethical Considerations Surrounding First Time Procedures: A Study and Analysis of Patient Attitudes Toward Spinal Taps by Students*, 2 KENNEDY INST. ETHICS J. 217, 221 (1992).

164. *Unauthorized Practice*, *supra* note 103, at 438.

165. *Id.*

C. Who Is Affected and How?

Getting a pelvic exam, whether it is performed while the patient is conscious or unconscious, is an intimate medical procedure.[166] Many medical students find the practice to be morally wrong when they know that the patient is unaware that the exam is taking place.[167] Thankfully, it appears that medical students' ethics training is paying off, as the primary source of objections to this practice comes from medical students themselves.[168] Regardless of their concerns, this is a practice that still continues despite the negative consequences for patients: the risk of physical injury; the impact on the mental health of a patient, particularly those with past trauma; and patients' overall negative impressions of the medical profession.[169]

1. The Impact on Medical Students

Medical students have noted the ethical dilemmas they encounter throughout their clinical training when they are asked to perform pelvic exams on unconscious women who had not consented to the exam.[170] One study found that "many medical students are concerned with the moral aspects" of their training.[171] These results imply that medical students are learning a "moral lesson regarding when informed consent is and is not required."[172] An unfortunate effect this practice has on medical students and their future patients is that medical students' interests in informed consent decreases after completing an obstetrics and gynecology clerkship.[173] Upon completion of their clinical clerkship, medical students "place significantly less importance on seeking permission from women who are to be anesthetized before performing pelvic examinations."[174]

---

166. Bruce, *supra* note 17, at 137.

167. Friesen, *supra* note 21, at 299.

168. Dena S. Davis, *Pelvic Exams Performed on Anesthetized Women*, 5 AM. MED. ASS'N J. ETHICS 193, 194 (2003).

169. *See infra* Part II.C.2.

170. *See* Lisa K. Hicks et al., *Understanding the Clinical Dilemmas That Shape Medical Students' Ethical Development: Questionnaire Survey and Focus Group Study*, 322 BRIT. MED. J. 709, 709 (2001) (describing the results of a questionnaire survey and focus group study conducted on medical students at the University of Toronto); *see also* Friesen, *supra* note 21, at 299 (telling Shawn Barnes' experience as a medical student preforming pelvic exams on anesthetized patients without specific consent).

171. Friesen, *supra* note 21, at 299.

172. *Id.*

173. *Id.*; Bruce, *supra* note 17, at 129; Ubel et al., *supra* note 87, at 577. After completing an Obstetrics/Gynecology clerkship, students were "less likely to think consent for rectal examinations was important." Bruce, *supra* note 17, at 129 (quoting Ubel et al., *supra* note 87, at 578).

174. Friesen, *supra* note 21, at 299 (quoting Ubel et al., *supra* note 87, at 578).

Medical students may experience guilt, anxiety, or distress when preforming a pelvic exam on an unconscious patient when the patient has not consented or when the student is unaware of what has been specifically consented to.[175] This may lead to distrust among the team of medical professionals operating on the patient and a feeling that the patient is being violated.[176] Having the proper processes in obtaining and documenting consent reassures medical students' wariness and protects them from unnecessary psychological harm.[177]

2. The Risks of Physical and Mental Injury

Fortunately, pelvic exams on anesthetized patients are considered a safe procedure that may be performed without the potential for any serious bodily injury.[178] However, there is the potential for the damage of nerves, blood vessels, or organs when a retractor[179] or speculum is used for an exam,[180] and such injury would not be uncommon.[181] The discomfort and pain associated with the use of a speculum that is too large may also prevent a patient from seeking future visits.[182]

---

175. Maya M. Hammoud et al., *Consent for the Pelvic Examination Under Anesthesia by Medical Students*, 134 OBSTETRICS & GYNECOLOGY 1303, 1304, 1306 (2019).

176. *Id.* at 1304.

177. *Id.* at 1306. A question to ponder is whether the public's feelings associated with genitalia have any effect upon physicians? *See* Goedken, *supra* note 64, at 236. Physicians, and specifically physicians specialized in Obstetrics and Gynecology, deal with the examination of female genitalia as their routine job and "do not, and arguably should not," associate their patients' genitalia in a sexual manner. *Id.* Not only would this viewpoint interfere with the practitioner's proper ability to care for the patient, but it would be "inappropriate and unethical." *Id.* A physician's departure from proper examination and care for a patient's genitalia could be grounds for loss of their license and public scrutiny. *Id.* However, the reality of seeing a pelvic exam as routine as a student performing a lung exam with a stethoscope on an unconscious patient does not coincide with society's feelings about their genitalia. *Id.*

178. Goedken, *supra* note 64, at 235. Because vaginal tissue is pliable, pelvic exams "rarely harm the vaginal tissue." *Unauthorized Practice*, *supra* note 103, at 427; *Top 6 Errors and Oversights in Vaginal Exams That Are Caused by Bad Equipment*, OPB MED. (Apr. 9, 2020), https://web.archive.org/web/20210919175650/https://obpmedical.com/top-6-errors-and-oversights-in-vaginal-exams-that-are-caused-by-bad-equipment [https://perma.cc/2GZS-4VQ8].

179. MOUTREY, *supra* note 55, at 37. A retractor is an instrument that is used to expose tissue within the operative site. *Id.* A vaginal wall retractor is a type of retractor designed to make it easier to visualize the cervix and vagina. *Id.* at 164.

180. Goedken, *supra* note 64, at 235; *see supra* Part II.A (explaining why retractors and speculums are used in the course of pelvic exams).

181. *Top 6 Errors and Oversights in Vaginal Exams That Are Caused by Bad Equipment*, *supra* note 178.

182. *Id.* A reluctance to obtain future exams may have potentially harmful health effects. O'Laughlin et al., *supra* note 12, at 2. Obtaining routine care is "essential for maintaining good health" and is "integral in the early detection and treatment of sexually transmitted diseases, pelvic infections, pathological conditions, and cancer." O'Laughlin et al., *supra*.

Regardless of the lack of potential physical injury, "harm can certainly encompass matters outside the realm of mere physical" injury.[183] It may seem "superfluous" or "unworthy" to obtain specific consent or even inform a patient of mundane procedures such as who has monitored their blood pressure,[184] but when women are aware that they are about to receive a pelvic exam, it is common to feel several emotions including vulnerability, embarrassment, and subordination that are not commonly associated with other medical procedures.[185] The sensitivity of the topic and the exam makes transparency crucial to any patient's autonomy.[186]

Pelvic exams are significantly more personal than any other exam because of the notion that genitalia are connected to sex, "which has the power to invoke feelings" of "pleasure [or] fear."[187] Up to sixty-four percent of women report feelings of anxiety or fear before receiving a pelvic exam in a conscious state, and up to fifty-two percent of women experience embarrassment.[188] Feelings of embarrassment may stem from undressing, the exposure of their genitals, and being self-conscious of odor and cleanliness.[189] Fear often comes from the potential discovery of a health condition, discomfort, pain, and loss of control over their body.[190] A patient's sense of violation can even trigger post-traumatic stress disorder.[191]

Although having a negative experience with a previous exam increases anxiety and fear, the most pressing "risk factors for anxiety and fear in patients is a history of exposure to trauma, such as sexual trauma, which may elicit memories of prior trauma."[192] Like Ms. Weitz and Janine,[193] women who have experienced sexual assault often experience distress after discovering they have received a pelvic exam they did not consent to.[194] The mental effects are clearly prevalent on conscious women, and the effects are exacerbated when a patient discovers she received a pelvic exam while she was unconscious that she was unaware

183. Goedken, *supra* note 64, at 235.

184. *Id.*

185. Phoebe Friesen, *Why Are Pelvic Exams on Unconscious, Unconsenting Women Still Part of Medical Training?*, SLATE (Oct. 30, 2018, 9:00 AM), https://slate.com/technology/2018/10/pelvic-exams-unconscious-women-medical-training-consent.html [https://perma.cc/TU2T-RTMG].

186. *See* Goedken, *supra* note 64, at 235-36.

187. *Id.* at 236.

188. O'Laughlin et al., *supra* note 12, at 2.

189. *Id.*

190. *Id.*

191. Hammoud et al., *supra* note 175, at 1304.

192. O'Laughlin et al., *supra* note 12, at 2.

193. *See supra* Part I; Laird, *supra* note 1, at 20; Goldberg, *supra* note 10.

194. Friesen, *supra* note 185.

of nor provided consent for.[195] The feeling of being violated and experiencing significant trauma is a medical trauma that is "just as significant as other types of trauma."[196] A pressing concern is that as society becomes aware of unethical practices, such as nonconsensual pelvic exams, there is a decline in trust that leads to a reduction in patients seeking care and following treatment recommendations by physicians.[197]

D. What Has Been Done to Stop This Practice?

Medical students performing pelvic exams on unconscious women without their informed consent has garnered the attention of politicians, the general public, and, perhaps as a consequence, the medical profession.[198] Janis Orlowski, the Chief Health Care Officer of the Association of American Medical Colleges, said, "patients have the right to know what procedures they will undergo and who will be involved in performing them," and specific consent must be obtained to conduct a pelvic exam because "[p]erforming pelvic examinations under anesthesia without patients' consent is unethical and unacceptable."[199] The American College of Obstetricians and Gynecologists agree that pelvic examinations on an anesthetized woman that are "performed solely for teaching purposes, . . . should be performed only with her specific informed consent, obtained before her surgery."[200] Not only is the practice unethical, but when performed by medical students, "it's almost *always* medically unnecessary."[201] Thankfully, a growing number of advocacy groups recognize that the current standards of consent are not enough, and based on both ethical and legal grounds, are advocating for the obtainment of specific consent for pelvic exams that are performed on anesthetized or unconscious patients.[202]

---

195. Misha Valencia, *Pelvic Exams Being Performed on Sedated Hospital Patients Without Consent*, AM. PATIENT RTS. ASS'N (Aug. 30, 2019), https://www.americanpatient.org/internal-pelvic-exams-being-performed-on-sedated-hospital-patients-without-consent [https://perma.cc/5YR3-MCPL].

196. *Id.* (quoting Sarah Gundle, a clinical psychologist and the clinical director of Octav in New York City).

197. Salwi et al., *supra* note 74, at 432-33; Hammoud et al., *supra* note 175, at 1304; *see* O'Laughlin et al., *supra* note 12, at 3 (describing how patients can "exhibit avoidance behaviors by avoiding" going to a healthcare facility to receive a pelvic exam).

198. Weiner, *supra* note 70. There was a "burst of public outcry in the mid-1990s." Friesen, *supra* note 21, at 299.

199. Weiner, *supra* note 70.

200. Pro. Resps. Obstetric-Gynecologic Med. Educ. & Training, Comm. Op. 500 (2011).

201. Valencia, *supra* note 195 (emphasis in original).

202. John Kasprak, *Non-Consensual Pelvic Examinations* (June 22, 2004), https://www.cga.ct.gov/2004/rpt/2004-R-0512.htm [https://perma.cc/GK3F-R9FY].

New York,[203] Delaware, Maine, Maryland, Washington,[204] Florida, California,[205] Hawaii, Illinois, Iowa, Virginia, Oregon, Texas, and New Jersey have all banned non-consensual pelvic examinations on anesthetized patients.[206] Similar legislation is pending in Arizona and Connecticut.[207] During the COVID-19 pandemic, pending legislation died in Wisconsin, Georgia, and Minnesota.[208] Unfortunately, there remains a total of thirty-six states without any regulation against this practice.[209]

1. New York's Efforts

Prior to the enactment of legislation, New York teaching hospitals unethically performed pelvic exams on anesthetized or unconscious patients to further medical students' education without informing the patient or documenting the exam on the patients' medical records.[210] The pelvic exams were often performed when medically unnecessary or inappropriate.[211] In the face of mounting criticism of these practices, former Governor Andrew Cuomo signed legislation that went into effect in April 2020 amending New York Public Health Laws and Education Laws because "[n]o one should ever have to question what was done to their body when undergoing anesthesia . . . in a healthcare setting."[212]

---

203. N.Y. PUB. HEALTH LAW § 2504(7) (McKinney 2020); *see infra* Part II.D.1.

204. WASH. REV. CODE § 18.130.430 (2020); *see infra* Part II.D.2.

205. CAL. BUS. & PROF. CODE § 2281 (West 2004); *see infra* Part II.D.2.

206. Valencia, *supra* note 20; DEL. CODE ANN. tit. 16, § 1221 (West 2019); ME. STAT. tit. 24, § 2095-B (2021); MD. CODE ANN., HEALTH OCC. § 1-221.1 (West 2019); FLA. STAT. § 456.51 (2022); HAW. REV. STAT. § 453-18 (2012); 410 ILL. COMP. STAT. 50/7 (2004); VA. CODE ANN. § 54.1-2959 (2007); OR. REV. STAT. § 676.360 (2011); TEX. HEALTH & SAFETY CODE ANN. § 167A.002 (West 2021); N.J. REV. STAT. § 45:1-74(1)(a) (2021).

207. Valencia, *supra* note 20.

208. *Id.*

209. *See id.* (listing the states that have enacted legislation and states with pending legislation).

210. Robert P. Carpenter et al., *Health Law*, 71 SYRACUSE L. REV. 191, 210 (2021); *see also* Press Release, N.Y. State, Governor Cuomo Signs Legislation Prohibiting Pelvic Exams on Anesthetized or Unconscious Patients (Oct. 7, 2019), https://web.archive.org/web/20191008130303 17/https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-prohibiting-pelvic-exams-anesthetized-or-unconscious-patients [https://perma.vv/6278-ENEJ?type=image] (discussing the enactment of legislation to ban the "immoral behavior" that had been occurring in New York State).

211. Carpenter et al., *supra* note 210, at 210.

212. Bethany Bump, *Cuomo Signs Law Banning Pelvic Exams on Unconsenting Women*, TIMES UNION (Oct. 7, 2019), https://www.timesunion.com/news/article/Cuomo-signs-law-banning-pelvic-exams-on-14498398.php [https://perma.cc/87CX-7ZWY]; Press Release, N.Y. State, *supra* note 210. Former governor Andrew Cuomo stated that, "[i]t is a blatant and completely unacceptable abuse of trust for any doctor or healthcare provider to perform an exam that was not previously consented to by the patient, and with this new measure we are making crystal clear that this repugnant behavior will be punished accordingly." *See* Press Release, N.Y. State, *supra* note 210. The New York State Bar Association Section on Women in Law strongly supported the enactment of New York Public Health Law § 2504(7). Memorandum from the New York State Bar Association

The clear intent and purpose of the enactment of New York's statute is to preserve patients' bodily autonomy and dignity.[213]

The New York legislation requires medical professionals to obtain written or oral informed consent specific to the pelvic examination before performing or supervising the performance of such an exam on an anesthetized or unconscious patient.[214] There are a few instances where specific informed consent[215] is not required.[216] The statute clearly notes that when the performance of the pelvic exam is within the scope of care that is scheduled to be performed on the patient, and the patient has already provided consent for the scheduled care, then specific informed consent is not required.[217] Specific informed consent is also not required when the patient is unconscious and therefore consent is unobtainable, and the exam is medically necessary or the patient is in immediate need of medical attention.[218]

Disregarding the newly enacted standards in New York's legislation comes with consequences.[219] Any violation of New York Public Health Law § 2504(7) constitutes professional misconduct.[220] The Office of Professional Medical Conduct ("OPMC") investigates and enforces any allegations of professional misconduct.[221] OPMC "maintains a public list of all practitioners who have been subject to disciplinary investigation or orders."[222] A violation of the legislation can result in

---

Section on Women in Law, to New York State Assembly (June 17, 2019), https://nysba.org/app/uploads/2020/03/19-20Women3.pdf [https://perma.cc/YMB7-Y3KY].

213. Memorandum from the New York State Bar Association, *supra* note 212.

214. N.Y. PUB. HEALTH LAW § 2504(7)(a) (McKinney 2020).

215. N.Y. COMP. CODES R. & REGS. tit. 10, § 405.7(b)(9) (2011). Specific informed consent requires the patient receive any necessary information needed to provide informed consent prior to the start of the patient's nonemergency procedure. *Id.* Informed consent must include the specific procedure, such as the performance of an educational pelvic exam, and the reason for the procedure. *Id.* Evidence of informed consent must be documented and included in the patient's medical records. *Id.* Patients must also be given "the name, position and function of any person providing treatment to the patient." *Id.* § 405.7(b)(7).

216. N.Y. PUB. HEALTH LAW § 2504(7) (McKinney 2020).

217. *Id.* § 2504(7)(b).

218. *Id.* § 2504(7)(c).

219. *See New York's Professional Misconduct Enforcement System*, NYSED.GOV, http://www.op.nysed.gov/opd [https://perma.cc/D7EP=P93L] (last visited Apr. 1, 2023).

220. N.Y. PUB. HEALTH LAW § 230-e (McKinney 2020); *see also* N.Y. EDUC. LAW § 6530(50) (McKinney 2021) (establishing the performance or supervision of the performance of a pelvic examination in violation of New York Public Health Law § 2504(7) as professional misconduct). New York's Professional Misconduct Enforcement System defines professional misconduct as "the failure of a licensed profession to meet expected standards of practice." *New York's Professional Misconduct Enforcement System*, *supra* note 219.

221. Memorandum from the New York State Bar Association, *supra* note 212; *see also New York's Professional Misconduct Enforcement System*, *supra* note 219.

222. Memorandum from the New York State Bar Association, *supra* note 212.

suspension or a revocation of the license to practice, fines of up to $10,000 for each violation, required additional training, or community service.[223]

2. Reform in Other States

In 2004, California was one of the first states to enact legislation on this issue.[224] The statute prohibits physicians, surgeons, or students from performing pelvic examinations on anesthetized or unconscious patients unless informed consent has been provided.[225] Similar to New York's legislation, informed consent is not required if the exam is within the scope of care for the surgical procedure or if the pelvic exam is required for diagnostic purposes and the patient is unconscious.[226] California's legislation comes with harsh repercussions for any violation, including a misdemeanor and grounds for a loss of a physician's license.[227]

Unlike California, Maryland's legislation enacted in 2019 is much more lenient when distributing punishment for performing a pelvic exam on unconscious patients.[228] Consequences include formal reprimands, probation, or suspension or revocation of professional license but no grounds for the charging of a misdemeanor.[229] If there is a violation, a professional board house in the Maryland Department of Health will determine the appropriate punishment.[230]

A few states, including Delaware, Maine, and Maryland, have taken into consideration the practice of rectal exams, and have prohibited the performance of a "pelvic, prostate, or rectal examination on a patient who is under anesthesia or unconscious."[231] In contrast, a declaratory statement filed with the Florida Board of Medicine questioned whether pelvic exams applied to all patients or only to female patients after Florida enacted its statute prohibiting the performance of pelvic exams on unconscious patients without the patients' informed consent.[232] Florida

223. *Id.*; *New York's Professional Misconduct Enforcement System*, *supra* note 219.

224. CAL. BUS. & PROF. CODE § 2281 (West 2004).

225. *Id.*

226. *Id.*; *see also* N.Y. PUB. HEALTH LAW § 2504(7) (McKinney 2020).

227. *Autonomy Suspended*, *supra* note 29, at 242.

228. Emily Galik, *My Body, Whose Choice?*, REGULATORY REV. (Oct. 8, 2020), https://www.theregreview.org/2020/10/08/galik-my-body-whose-choice [https://perma.cc/CLK6-U646].

229. *See* MD. CODE ANN., HEALTH OCC. § 1-221.1 (West 2019); Galik, *supra* note 228.

230. *See* MD. CODE ANN., HEALTH OCC. § 1-221.1 (West 2019); Galik, *supra* note 228.

231. MD. CODE ANN., HEALTH OCC. § 1-221.1 (West 2019); DEL. CODE ANN. tit. 16, § 1221 (West 2019); ME. STAT. tit. 24, § 2095-B (2021); see *supra* note 25 and accompanying text, for discussion on rectal exams.

232. S.B. 716 ANALYSIS AND FISCAL IMPACT STATEMENT, *supra* note 138, at 5.

clarified that the statute applies only to exams "of the organs of the female internal reproductive system."[233]

Virginia enacted legislation that was signed into law in 2007.[234] This legislation is similar to California and New York legislation as it bars the performance of a pelvic exam on an anesthetized patient unless informed consent specific to the pelvic exam has been obtained.[235] The statute provides exceptions for pelvic exams made in the scope of care or when the patient is unconscious and unable to provide consent and the exam is medically necessary for diagnosis or treatment.[236] A notable difference that the Virginia statute provides is that it places all responsibility of securing consent on the teaching facility in control of the graduate educational program.[237] A crucial element that Delaware has incorporated to bring awareness of this practice to patients is the requirement that healthcare practitioners or healthcare professionals "notify the patient as soon as reasonably practical" that an exam has been conducted pursuant to one of the statute's listed exceptions.[238]

Washington has amended its legislation to include an exception not common to all current state legislation prohibiting this practice.[239] The statute allows for a pelvic exam to be conducted when sexual assault is suspected.[240] A pelvic exam may be performed to collect evidence "if the patient is not capable of informed consent due to a longer term medical condition, or if evidence will be lost."[241] After Washington enacted its statute, healthcare facilities' consent forms were changed.[242] The consent form highlights that residents and medical students who are involved in the patient's care may perform a pelvic exam while the patient is under anesthesia.[243] The consent form also provides that the patient

233. *Id.*

234. VA. CODE ANN. § 54.1-2959 (2007).

235. *Compare* VA. CODE ANN. § 54.1-2959 (2007), *with* N.Y. PUB. HEALTH LAW § 2504(7) (McKinney 2020), *with* CAL. BUS. & PROF. CODE § 2281 (West 2004).

236. VA. CODE ANN. § 54.1-2959 (2007); *Unauthorized Practice*, *supra* note 103, at 448.

237. VA. CODE ANN. § 54.1-2959 (2007); *Unauthorized Practice*, *supra* note 103, at 448.

238. DEL. CODE ANN. tit. 16, § 1221(b) (2019).

239. *See* WASH. REV. CODE § 18.130.430 (2020); *see also* ME. STAT. tit. 24, § 2095-B (2021) (including an exception in sexual assault cases); OR. REV. STAT. § 676.360 (2011) (including an exception for the collection of evidence).

240. *See* WASH. REV. CODE § 18.130.430 (2020); Memorandum from Sarah Chicoine, Legal Intern, to Chief Med. Officers, Legal Couns. and Gov't Affs. Staff (June 15, 2020).

241. *See* WASH. REV. CODE § 18.130.430 (2020); Memorandum from Sarah Chicoine, *supra* note 240.

242. James Drew, *New Law Requires Consent for Pelvic Exams on Unconscious or Anesthetized Patients*, NEWS TRIBUNE, https://senatedemocrats.wa.gov/dhingra/2020/06/16/new-law-requires-consent-for-pelvic-exams-on-unconscious-or-anesthesized-patients [https://perma.cc/92TT-DLVZ] (last visited Apr. 1, 2023).

243. *Id.*

can opt out from receiving a pelvic exam from residents and medical students.[244]

III. THE LIMITS OF CURRENT STATE LEGISLATION AND PRIVATE TORT ACTIONS

The enactment of legislation by some states is certainly a step in the right direction to end this practice.[245] However, the discouraging reality is that state-by-state legislation is slow and there is a lack of uniformity among the approaches to stop this practice,[246] unless there is a model statute for states to enact.[247] Subpart A of this Part examines the defects and lack of protection in current state legislation.[248] Subpart B highlights how and why this practice is assault.[249] Additionally, Subpart B addresses how tort law is an ineffective method to obtain recovery due to a lack of awareness, and discouragement to report, leaving a patient with a difficult scenario to state a claim of misconduct.[250]

A. Lack of Uniformity Among Existing State Laws

From 2004 to 2021, there has been a slow movement to prohibit the performance of pelvic exams.[251] All current legislation prohibits the performance of pelvic exams on anesthetized or unconscious patients without their informed consent, and common exceptions to this prohibition include: (1) if the pelvic exam is performed within the scope of care of the surgical procedure; and (2) if in an emergency, or if the pelvic exam is medically necessary for diagnosis or treatment, and the patient is unable to provide consent.[252] However, the commonalities in state legislation primarily end there.[253]

---

244. *Id.* Dr. Barbara Goff, a professor and chair of the University of Washington Medicine Department of Obstetrics and Gynecology says that prior to the enactment of the Washington legislation, consent forms contained a clause allowing medical students and residents to conduct a pelvic exam and patients already had the ability to opt out. *Id.*

245. *See* Friesen et al., *Legislative Alert: The Ban on Unauthorized Pelvic Exams*, 25 HEALTH L.J. 29, 32 (2020).

246. *Unauthorized Practice*, *supra* note 103, at 449.

247. *See infra* Part IV.

248. *See infra* Part III.A.

249. *See infra* Part III.B.

250. *See infra* Part III.B; *Unauthorized Practice*, *supra* note 103, at 444-45.

251. *See supra* Part II.D.1-2.

252. *See* N.Y. PUB. HEALTH LAW § 2504(7) (McKinney 2020).

253. *Compare* N.Y. PUB. HEALTH LAW § 2504(7) (McKinney 2020), *with* FLA. STAT. § 456.51 (2022).

One of the largest discrepancies among the state statutes lies within the scope of their application.[254] New York, California, Florida, and a few others have only prohibited the performance of *pelvic exams* on unconscious patients.[255] Florida has clarified that its statute applies only to female patients receiving a pelvic exam.[256] Although discussion about rectal and prostate exams is limited, the unauthorized procedures are occurring, and Washington, Delaware, and Maine have been responsive to this issue by significantly increasing the scope of protection their statutes provide by prohibiting the performance of prostate and rectal exams in addition to pelvic exams.[257]

Another significant difference is the requirements imposed for the level of consent required to perform a pelvic exam on a patient.[258] All states that have enacted legislation require informed consent.[259] However, a handful of states do not provide the method by which consent must be obtained.[260] Florida requires specific informed consent expressly identifying the performance of a pelvic exam be given in writing.[261] In New York and Hawaii, it is acceptable to obtain specific informed consent either orally or in writing.[262] Maine demands that specific informed consent be given both orally and in writing.[263] In Texas, to perform a

254. *See* Friesen et al., *supra* note 245, at 29 (discussing how there are "varying policies and procedures, and jurisdictional requirements that guide different medical institutions about . . . the scope of the consent").

255. *See* N.Y. PUB. HEALTH LAW § 2504(7) (McKinney 2020); CAL. BUS. & PROF. CODE § 2281 (West 2004); FLA. STAT. § 456.51 (2022).

256. SB 716 ANALYSIS AND FISCAL IMPACT STATEMENT, *supra* note 138, at 5 (providing additionally that "[d]iscrete visual examination of the vagina, cervix, uterus, fallopian tubes, ovaries, rectum, or external pelvic tissue or organs does not constitute a pelvic examination").

257. *See* WASH. REV. CODE § 18.130.430 (2020); DEL. CODE ANN. tit. 16, § 1221 (West 2019); ME. STAT. tit. 24, § 2095-B (2021); *see also* Friesen et al., *supra* note 245, at 32 (explaining how there remains "no empirical data" and "very little discussion" about the performance of rectal exams on men or women who are under anesthesia); *supra* notes 25, 27 and accompanying text.

258. *See* Friesen et al., *supra* note 245, at 29 (stating how there are "varying policies and procedures, and jurisdictional requirements that guide different medical institutions about . . . whether [consent] is obtained verbally or documented in the medical record").

259. *See* N.Y. PUB. HEALTH LAW § 2504(7)(a) (McKinney 2020); CAL. BUS. & PROF. CODE § 2281 (West 2004); DEL. CODE ANN. tit. 16, § 1221 (West 2019); ME. STAT. tit. 24, § 2095-B (2021); MD. CODE ANN., HEALTH OCC. § 1-221.1 (West 2019); WASH. REV. CODE § 18.130.430 (2020); FLA. STAT. § 456.51 (2022); HAW. REV. STAT. § 453-18 (2012); VA. CODE ANN. § 54.1-2959 (2007); OR. REV. STAT. § 676.360 (2011); TEX. HEALTH & SAFETY CODE ANN. § 167A.002 (West 2021).

260. *See* CAL. BUS. & PROF. CODE § 2281 (West 2004); DEL. CODE ANN. tit. 16, § 1221 (West 2019); MD. CODE ANN., HEALTH OCC. § 1-221.1 (West 2019); VA. CODE ANN. § 54.1-2959 (2007); OR. REV. STAT. § 676.360 (2011).

261. *See* FLA. STAT. § 456.51 (2022).

262. *See* N.Y. PUB. HEALTH LAW § 2504(7)(a) (McKinney 2020); HAW. REV. STAT. § 453-18 (2012).

263. *See* ME. STAT. tit. 24, § 2095-B (2021).

pelvic exam on an unconscious patient, written or electronic informed consent must be obtained.[264] The written or electronic informed consent form can be within a general informed consent form if it is in a separate or distinct section that contains the following headline: "CONSENT FOR EXAMINATION OF PELVIC REGION."[265] The consent form must specify the nature and purpose of the pelvic exam and inform the patient that a medical resident or student may be present and consent can authorize the medical resident or student to perform a pelvic exam or observe the performance of a pelvic exam.[266]

The limits imposed on healthcare facilities performing pelvic exams on anesthetized or unconscious patients also differ from state to state because of the variety of exceptions included within different states' laws.[267] For instance, Washington, Oregon, and Maine have included exceptions for instances of sexual assault.[268] When sexual assault is suspected and informed consent cannot be obtained by the patient and evidence will be lost, a pelvic exam may be performed to gather evidence.[269] Florida, Texas, Oregon, and Delaware do not explicitly reference sexual assault in their statutes, but provide that a pelvic exam may be performed if a court orders performance for the collection of evidence.[270] Another exception seen in state legislation is in the care of a pregnant woman having contractions.[271] Written consent is only needed

---

264. *See* TEX. HEALTH & SAFETY CODE ANN. § 167A.002 (West 2021).

265. *Id.* (emphasis in original) Additionally, the text must be "in at least 18-point boldface type." *Id.*

266. *Id.*

267. *Compare* WASH. REV. CODE § 18.130.430 (2020), *with* FLA. STAT. § 456.51(2) (2022).

268. *See* WASH. REV. CODE § 18.130.430 (2020); OR. REV. STAT. § 676.360 (2011); ME. STAT. tit. 24, § 2095-B (2021). The U.S. Department of Justice provides that it is of "paramount importance" to effectively collect evidence when a sexual assault occurs to successfully prosecute sex offenders. U.S. DEP'T JUST., A NATIONAL PROTOCOL FOR SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATIONS iii (2013) (ebook). The obtained evidence is potentially used in four ways: "[(1)] to identify the suspect; [(2)] to document recent sexual conduct; [(3)] to document force, threat, or fear; and [(4)] to corroborate the facts of the assault." *Id.* at 95. The U.S. Department of Justice also notes that despite the method used to obtain the patient's informed consent for a pelvic exam, the procedure and options should be fully explained to the patient. *Id.* at 97.

269. Drew, *supra* note 242.

270. FLA. STAT. § 456.51 (2022); TEX. HEALTH & SAFETY CODE ANN. § 167A.002 (West 2021); OR. REV. STAT. § 676.360 (2011); DEL. CODE ANN. tit. 16, § 1221(a)(4) (West 2019). Delaware requires that for any court order issued to perform a pelvic exam for the collection of evidence, the court must find there is a compelling need for the pelvic exam and the compelling need cannot be accommodated by other means. tit. 16, § 1221(a)(4). The court must weigh the need for the pelvic exam "and the disclosure of the results against the privacy interest of the individual to be examined" to assess the compelling need. *Id.* The pleadings pertaining to the order for a pelvic exam must also substitute a pseudonym for the true name of the patient. *Id.* The patient's true name must be kept under seal of the court. *Id.*

271. FLA. STAT. § 456.51(3) (2022).

to perform the initial pelvic exam, but the written consent must notify the patient that multiple pelvic exams may be conducted following the initial pelvic exam.[272]

States' exceptions to allow the performance of pelvic exams on unconscious patients when medically necessary is important, but with the advancement of technology, the need to perform a pelvic exam has decreased, and once the exam has been performed by a professional, any following exams performed by a medical student are no longer medically necessary.[273] Importantly, there is a line between conducting a procedure for the patient's care versus the student's education.[274] When a patient receives a pelvic exam from a medical student the question to ask when determining if the exam is for the patient's care is "whether the student's examination would not have been performed but for the fact that her physician was a member of the teaching facility."[275] The student would have to perform the pelvic exam in place of the attending physician for the pelvic exam to be considered medically necessary.[276] But it is crucial to recognize that this is rarely the case because "medical students are often legally prohibited from diagnosing and planning care during an intervention such as surgery."[277] Therefore, it is important to note that although state legislation has included this exception, the exception should not apply to medical students.[278]

The different consequences for medical practitioners that exist in each state's laws invariably may result in disparities in the rate of effectiveness of the statutory requirements.[279] For example, New York and

---

272. *Id.* § 456.51.

273. *See* Friesen et al., *supra* note 245, at 30-31; Karen N. Brown, *Obtaining Patient Consent Before Pelvic Exams*, GE WOMEN'S HEALTH (Oct. 14, 2020), https://www.volusonclub.net/empowered-womens-health/obtaining-patient-consent-before-pelvic-exams [https://perma.cc/53AC-6HCK]. For example, when a patient is experiencing pelvic pain, a 3D ultrasound is a less invasive tool to diagnose the patient than the use of a bimanual exam. Brown, *supra* note 273. But the American College of Obstetricians and Gynecology categorizes bimanual exams "as screening exams for asymptomatic women, and only recommends them in select 'diagnostic' situations, such as abnormal bleeding or vaginal bulge." *Id.*

274. *See Autonomy Suspended*, *supra* note 29, at 258.

275. *Id.* Consider the following scenario:

> [A] woman is admitted for surgery, and the surgeon does a pelvic exam to reconfirm her diagnosis before removing the patient's ovaries. The student then repeats the pelvic exam for her own training purposes. The second [exam] is a duplicate of the first, that would not have been performed but for the surgeon's status as a medical school member . . . the student-performed exam would not have occurred as it did and consequently is not necessary for the patient's care.

Id.

276. Friesen et al., *supra* note 245, at 30.

277. *Id.*

278. *See id.*

279. *See supra* Part II.D.1-2.

California statutes are similar but their consequences differ.[280] Because New York's legislation recently took effect, whether the potential penalties are too harsh remains unanswered.[281] A physician's license being revoked may be justified if the healthcare professional has "knowingly deviated from the law on multiple occasions despite repeated warning and trainings," but would be too extreme if performed due to lack of awareness of the law.[282] Unjustly harsh punishment combined with a lack of incentive for hospital staff to report leads to an increased danger that teaching facilities will continue to perform pelvic exams on unauthorized patients despite enacted legislation.[283]

B. The Limitations of Private Tort Lawsuits

It is the "legal embodiment of the concept that each individual has the right to make decisions affecting his or her health" and "[e]very human being of adult years and sound mind has a right to determine what shall be done to his own body; and a surgeon who performs an operation without his patient's consent commits an assault."[284] Because unauthorized pelvic exams are "intentional, unwanted, and offensive touching," they "fall into the category of the most basic of torts: battery."[285] A medical professional commits medical battery when he has violated a patient's right to decide what type of medical treatment the patient will receive and what the patient does not want to receive.[286] The difficulty in proving medical battery is that it requires the wrongdoer to be intentional in their action.[287] Therefore, patients with a claim often base their

280. *See* Friesen et al., *supra* note 245, at 33; *see also Autonomy Suspended*, *supra* note 29, at 242.

281. Friesen et al., *supra* note 245, at 33.

282. *Id.*

283. *Unauthorized Practice*, *supra* note 103, at 448-49. Students can be penalized for speaking up against nonconsensual pelvic exams. Valencia, *supra* note 20.

284. Paterick et al., *Medical Informed Consent: General Considerations for Physicians*, MAYO CLINIC PROCS. 313 (Mar. 2008), https://www.mayoclinicproceedings.org/action/showPdf?pii=S0025-6196(11)60864-1 [https://perma.cc/NFA2-ZPPB]; *see* Schloendorff v. Soc'y of N.Y. Hosp., 105 N.E. 92, 93 (N.Y. 1914); S.B. 716 ANALYSIS AND FISCAL IMPACT STATEMENT, *supra* note 138, at 3.

285. John Duncan et al., *Using Tort Law to Secure Patient Dignity*, TRIAL, Oct. 2004, at 44; *see also What Is The Difference Between Medical Malpractice and Medical Battery?*, PAULSON & NACE, PLLC, https://www.paulsonandnace.com/difference-medical-malpractice-medical-battery [https://perma.cc/6PAJ-PNAB] (last visited Apr. 1, 2023) (defining medical battery as intentional touching without permission). With a battery case generally comes actual damages and punitive damages. Duncan et al., *supra* note 285, at 44.

286. *What Is The Difference Between Medical Malpractice and Medical Battery?*, *supra* note 285.

287. *See* Duncan et al., *supra* note 285, at 44. Another obstacle presented with a battery claim is that many insurance policies do not include coverage for intentional touching. *Id.*

action on negligence or medical malpractice rather than battery.[288] Under a medical malpractice or negligence claim, the affected patient will have to demonstrate that the wrongdoer "created an unreasonable risk of bodily harm."[289]

Tort law may be a successful way in securing a woman's right to decide who gets to touch her body and under the circumstances of her choosing.[290] However, the glaring issue is that there is no tort law claim if the patient does not know she has a viable claim.[291] "Whether one student or five performs an education[al pelvic] exam, a patient is likely never to know" they received a pelvic exam to begin with if nobody informed them.[292] For a patient to prove that a pelvic exam took place while she was unconscious is an uphill battle because their records may simply not show any evidence that an educational pelvic exam took place.[293] Thankfully, "[h]ospitals and physicians who participate in Medicare or Medicaid are required to maintain a record of all medical procedures performed on a patient."[294] But, state regulations and hospital policies do not have to require thorough recordkeeping and only may if they choose to.[295] In addition to a lack of record of the procedure, pelvic exams are of a nature that "leave no marks" when performed.[296]

There is also no incentive for hospital staff to inform patients of the performed procedure,[297] and medical students may be intimidated to speak out against their supervising doctor.[298] This results in the potential for teaching hospitals to continue this practice despite the legal ramifications.[299] Medical students simply do not feel comfortable raising concerns for two reasons: (1) because of the rigid hierarchy that is applied in the medical education structure; and (2) they do not want to limit their chances and opportunities of being placed for their upcoming residencies.[300] The medical education system has built a foundation on the

288. *See id.* at 44-45.

289. *Id.* at 46; RESTATEMENT (SECOND) OF TORTS § 18 (1965).

290. Duncan et al., *supra* note 285, at 43-44.

291. *Unauthorized Practice*, *supra* note 103, at 443.

292. *Id.* at 427; Carpenter et al., *supra* note 210, at 210-11 (addressing the concern that women are unaware that they have received a procedure they did not consent to).

293. Duncan et al., *supra* note 285, at 46; *Unauthorized Practice*, *supra* note 103, at 444-45.

294. Duncan et al., *supra* note 285, at 46; 42 C.F.R. § 482.24 (2003).

295. Duncan et al., *supra* note 285, at 46.

296. *Unauthorized Practice*, *supra* note 103, at 443; *see supra* Part II.C.2 (explaining how pelvic exams are a relatively safe procedure that have little potential for injury).

297. *Unauthorized Practice*, *supra* note 103, at 449.

298. Friesen, *supra* note 185.

299. *Unauthorized Practice*, *supra* note 103, at 449.

300. Friesen, *supra* note 185; *see* Barnes, *supra* note 86, at 941 (explaining how when asked to perform a pelvic exam on an anesthetized patient "to [his] shame, [he] obeyed"). As a medical student, Barnes was fully aware of the structural hierarchy that exists in the medical field. Barnes, *su-*

notion that medical students "should not question the practices of those above him or her."[301] The previously discussed United Kingdom survey[302] also reveals that medical students express an inability to refuse their senior clinician's request, let alone express any discomfort against the performance of a pelvic exam.[303]

Therefore, not only does the level of protection a patient receives from obtaining non-consensual pelvic exams vary from state to state, but the federal government and the majority of states have made no effort to combat this issue.[304] This leaves patients with no preventative measures taken by either their state or federal legislatures in an attempt to eradicate this practice.[305] Along with the lack of preventative measures, due to the difficulties of compiling an action and the structural hierarchies within the medical field, the retroactive solution of tort law is failing patients who have been assaulted when they received a nonconsensual pelvic exam while seeking medical treatment.[306]

IV. A UNIFORM STATE STATUTE

The current standards implemented in healthcare facilities to obtain consent for the performance of pelvic exams are inadequate to stop this practice.[307] The most impactful method to end this practice is for state legislatures to adopt a uniform approach.[308] Therefore, this Note recommends that states adopt the model state legislation proposed in Subpart A.[309] Subpart A sets forth model language for state legislatures to adopt or to serve as guidance for the amendment of current legislation.[310] Subpart B sets forth how the proposed model state statute solves the current discrepancies within state legislation.[311] By adopting the following model state statute, women across the country can rest assured that they will not be assaulted simply because they have sought medical treatment at a teaching hospital.[312]

---

pra note 86, at 941. His awareness of the hierarchy and lack of courage ultimately led him to not initially speaking out against the practice and instead doing as he was told. *Id.*

301. *Id.*
302. *See supra* Part II.A.2.
303. Friesen, *supra* note 21, at 299; Coldicott et al., *supra* note 87, at 98.
304. *See supra* Part III.A; *see* Valencia, *supra* note 20.
305. *See* Valencia, *supra* note 20.
306. *See supra* Part III.B; Barnes, *supra* note 86, at 941; Duncan et al., *supra* note 285, at 46.
307. *See* Friesen et al., *supra* note 245, at 32.
308. *See infra* Part IV; Friesen et al., *supra* note 245, at 32.
309. *See infra* Part IV.A.
310. *See infra* Part IV.A.
311. *See infra* Part IV.B.
312. *See* Valencia, *supra* note 20.

A. A Model State Statute

This Note proposes the following model state statute for states that currently lack legislation and for states with current statutes to amend their legislation to conform with the proposed statute.[313] If adopted, the model state statute would provide uniformity across all healthcare facilities within the Unites States.[314] The following statute is modeled after current state legislation in New York, Delaware, and Texas made with appropriate changes to enhance the protection of patients' health and safety.[315]

> Pelvic, Rectal, or Prostate Examinations
>
> (A) No person shall perform or supervise the performance of a pelvic, rectal, or prostate examination on a patient who is anesthetized or unconscious unless one of the following applies:[316]
>
> > (1) [T]he patient or the patient's authorized representative [has] give[n] prior oral [*and*] written informed consent specific to the pelvic[, rectal, or prostate] examination;[317]
> > (2) [T]he patient is unconscious and the pelvic[, rectal, or prostate] examination is medically necessary for diagnostic or treatment purposes, and the patient is in immediate need of medical attention and an attempt to secure [specific informed] consent would result in a delay of treatment which would increase the risk to the patient's life or health.[318]
> > (3) A court of competent jurisdiction orders the performance of the examination for the collection of evidence.[319] The court must find that there is a compelling need for such examination, which cannot be accommodated by other means.[320] In assessing compelling needs, the court shall weigh the need for the examination and

313. *See supra* Part II.D, III.A.

314. *See The Model Legislation*, BENEFIT CORP., https://web.archive.org/web/20211016021749/https://benefitcorp.net/attorneys/model-legislation [https://perma.cc/BL4W-QYBD] (last visited Apr. 1, 2023).

315. *See* N.Y. PUB. HEALTH LAW § 2504(7) (McKinney 2020); DEL. CODE ANN. tit. 16, § 1221 (West 2019); TEX. HEALTH & SAFETY CODE ANN. § 167A.002 (West 2021).

316. *See* N.Y. PUB. HEALTH LAW § 2504(7) (McKinney 2020) (combining language with DEL. CODE ANN. tit. 16, § 1221 (West 2019)); DEL. CODE ANN. tit. 16, § 1221 (West 2019) (combining language with N.Y. PUB. HEALTH LAW § 2504(7) (McKinney 2020)).

317. *See* N.Y. PUB. HEALTH LAW § 2504(7)(a) (McKinney 2020) (emphasis added) (amending original language).

318. *Id.* (amending original language).

319. DEL. CODE ANN. tit. 16, § 1221(a)(4)(a) (West 2019).

320. *Id.* § 1221(a)(4).

> the disclosure of the results against the privacy interest of the individual to be examined.[321]
>
> (B) The patient shall be notified as soon as reasonably practical that an examination was performed, and the examination shall be noted in the patient's medical records.[322]
> (C) To obtain [specific] informed consent to perform a pelvic[, rectal, or prostate] examination on an unconscious or anesthetized patient, a [healthcare] practitioner must:[323]
>
> > (1) provide the patient or the patient's legally authorized representative with a written . . . informed consent form that:[324]
> >
> > > (a) must be a supplemental consent form and may not be included as a section of a general informed consent form;[325]
> > > (b) specifies the nature and purpose of the pelvic[, rectal, or prostate] examination;[326]
> > > (c) allows the patient or the patient's legally authorized representative the opportunity to consent to or refuse to consent to the pelvic[, rectal, or prostate] examination;[327] and
> > > (d) allows a patient or a patient's legally authorized representative that consents to a pelvic[, rectal, or prostate] examination under Paragraph (c) the opportunity to authorize or refuse to authorize:[328]
> > >
> > > > (i) a medical student or resident to perform the pelvic[, rectal, or prostate] examination; or
> > > > (ii) a medical student or resident to observe or otherwise be present at the pelvic[, rectal, or prostate] examination.[329]

The necessary processes for obtaining consent and documenting such specific consent "should be compliant with state and local laws and vetted by institutions' legal departments."[330] The responsibility to obtain

---

321. *Id.* § 1221(a)(4)(a).
322. *See id.* § 1221(b).
323. TEX. HEALTH & SAFETY CODE ANN. § 167A.002(b) (West 2021) (amending original language).
324. *Id.* § 167A.002(b)(1).
325. *See* Hammoud et al., *supra* note 175, at 1305. Similarly, healthcare facilities provide supplemental consent forms to receive blood transfusions. *Id.*
326. TEX. HEALTH & SAFETY CODE ANN. § 167A.002(b)(1)(C) (West 2021).
327. *Id.* § 167A.002(b)(1)(E).
328. *Id.* § 167A.002(b)(1)(F).
329. *Id.* § 167A.002(b)(1)(D).
330. Hammoud et al., *supra* note 175, at 1305.

consent should not solely rest on the medical student.[331] Rather, the responsibility shall be of the clinician who is obtaining consent for the underlying procedure.[332] Institutions themselves should be and are currently responsible for properly training their staff on proper procedures and monitoring all staff for compliance.[333]

B. Solving the Gaps

As discussed, despite the several states that have made efforts to try to eradicate this practice in their state, there are issues that span across the varied state legislation.[334] The newly proposed model state statute eliminates many of the gaps prevalent in current legislation.[335] New York's is the only state legislation to simplify the many terms associated with medical professionals and simply states "[n]o person" shall perform an unauthorized pelvic exam.[336] Provision (A) of the proposed model state statute has taken such language to ensure that private practices, hospitals, teaching facilities, medical students, residents, and any person associated with health care are all prohibited from participating in such practice.[337] Although rectal and prostate exams are not extensively discussed within this Note, provision (A) has included the prohibition of rectal and prostate exams that many of the current legislations are lacking.[338]

Provision (A)(1) has taken the language of New York State Legislation but has altered the language to require specific informed consent be made both orally and in writing by the patient.[339] Requiring consent to be made orally and in writing eliminates the inconsistencies among state statutes on whether consent should be obtained orally, in writing, or both.[340] Provision (A)(2) is consistent with all current state statutes.[341] The presence of provision (A)(2) allows patients to receive important medical attention even if informed consent has not been obtained for diagnostic and treatment purposes in an emergency situation.[342] However,

---

331. *Id.*
332. *Id.*
333. *Id.*
334. *See supra* Part III.A; *Unauthorized Practice*, *supra* note 103, at 449.
335. *See infra* Part IV.B.
336. *See* N.Y. PUB. HEALTH LAW § 2504(7) (McKinney 2020).
337. *See supra* note 316 and accompanying text.
338. *See supra* notes 25, 27 and accompanying text; *see supra* Part II.D.2.
339. *See* N.Y. PUB. HEALTH LAW § 2504(7) (McKinney 2020); *see supra* note 316 and accompanying text.
340. *See supra* Part III.A.
341. *See supra* Part III.A.
342. *See supra* Part IV.A.

it is important to note that this exception does not extend to medical students because once the supervising or attending physician has conducted the pelvic exam for emergency purposes, it is no longer medically necessary for medical students to follow.[343]

Provision (A)(3) has been included in the proposed model state statute because it is an important exception that is unfortunately missing from multiple statutes enacted by state legislatures.[344] Language from Delaware's legislation was taken to set clear guidelines for when a court may issue such order, unlike the absence of guidelines provided in the state legislatures that provide exceptions for court orders and occurrences of sexual assault.[345] The effective collection of evidence is crucial to successfully prosecute sex offenders.[346] Therefore, including this provision allows courts to order the collection of evidence even if the patient's specific informed consent has not been obtained.[347]

By including a mandatory notice and reporting provision in provision (B), women are no longer left unknowing of what happened to their body while under anesthesia.[348] Tort law is currently an unsuccessful option for patients who feel they have received unwanted medical attention without their consent because patients rarely even discover that that they have received an unwanted pelvic exam.[349] Mandating healthcare facilities to include exams performed by medical students and their attending physician on patients' medical records provides patients with evidence when they feel that have been subject to medical battery.[350]

Provision (C) mimics Texas's legislation by laying out best practices on how to obtain consent.[351] The provision recognizes the use of general consent forms in healthcare facilities and requires that if consent for medical procedures is to be obtained through a general consent form, then there *must* be a separate consent form for the performance of educational pelvic exams, rectal exams, and prostate exams.[352] The nature and purpose of the exam must be disclosed to the patient.[353] Including this provision requires patients be made aware that any exam performed by

---

343. *See supra* Part III.A; Friesen et al., *supra* note 245, at 33; Duncan et al., *supra* note 285, at 48.

344. *See supra* Part IV.A.

345. DEL. CODE ANN. tit. 16, § 1221 (West 2019); *see supra* note 270 and accompanying text.

346. *See supra* note 268; U.S. DEP'T JUST., *supra* note 268, at iii.

347. *See supra* notes 319-21 and accompanying text.

348. Duncan et al., *supra* note 285, at 46.

349. *See supra* Part III.B.

350. *See supra* Part III.B.

351. *See supra* Part IV.A; *see also* TEX. HEALTH & SAFETY CODE ANN. § 167A.002 (West 2021).

352. *See supra* Part II.B.2; *supra* note 325 and accompanying text.

353. *See supra* note 326 and accompanying text.

medical students for educational purposes and not for diagnosis or treatment.[354] Most importantly, provision (C) provides patients the authority to consent to or refuse the performance of a pelvic exam and authority to limit who may perform the pelvic exam, and even who may be present to observe the performance of a pelvic exam.[355]

V. CONCLUSION

It is crucial to remember that women are not property.[356] Healthcare providers and medical students should not be permitted to conduct such an intrusive exam without patients' specific informed consent.[357] Medical professionals have irresponsibly disregarded the ethical concerns that this practice presents and their justifications for allowing this practice to endure for so long is severely lacking evidentiary support.[358] Because pelvic exams are such an intimate exam, their performance can lead to unfortunate mental health effects for both the patient and the medical students being asked to perform the pelvic exam.[359] As indicated, Ms. Weitz was left traumatized after reliving her childhood sexual trauma when she received a pelvic exam after explicitly telling her healthcare provider she did not want one.[360] Not only are women left feeling violated, but medical students' performance of such exams deteriorates their perception of consent.[361]

In addition to nonconsensual pelvic exams exposing patients to a multitude of negative physical and mental health consequences, they offer little to no benefit to the patient and only benefit the medical student's educational opportunities.[362] When an exam contributes no medical benefit to a patient, consent for performance of such an exam has "no meaning."[363] Hence, pelvic exams performed without specific informed consent are simply an abusive practice that violates patients' rights to bodily autonomy.[364]

Women's accounts of this volatile practice have grabbed the attention of society, the news, and state legislatures.[365] The stories women

354. *See supra* note 326 and accompanying text.
355. *See supra* notes 327-29 and accompanying text.
356. *See* Valencia, *supra* note 20.
357. *Id.*
358. *See supra* Part II.B.1-3.
359. *See supra* Part II.C.1-2.
360. *See supra* Part I.
361. *See supra* Part II.C.1.
362. *See supra* Part II.A.1.
363. *Unauthorized Practice*, *supra* note 103, at 436.
364. *See* Valencia, *supra* note 20.
365. *See supra* Part I; *see supra* Part.II.D.

hear of this continuing practice only reinforce women's sense of sexual unsafety "when powerless and unconscious."[366] Although states have made an effort enacting legislation to stop this practice, it is a practice that is still "alive and well"[367] among the many states that remain without proper policies.[368] Legal requirements enacted by state legislatures that control the scope of performing pelvic exams and the level of consent required, "appear to be the most impactful" method to stop this practice.[369]

It is therefore imperative that all fifty states of the United States adopt the proposed model state statute.[370] Patient autonomy and safety should be prioritized when curating the necessary policies for pelvic exams conducted under anesthesia.[371] As a result, women can once again feel a sense of safety knowing that when they seek care from a medical facility, they will receive the expected medical attention they seek and not an unwanted pelvic exam.[372]

*Gabriella Ferreira**

366. Davis, *supra* note 167, at 194.

367. Friesen, *supra* note 21, at 299; *see supra* Part II.A.2.

368. Hseih, *supra* note 106; *see supra* Part II.D.1.

369. Friesen et al., *supra* note 245, at 32.

370. *See supra* Part IV.A.

371. Hammoud et al., *supra* note 175, at 1306.

372. *See* Valencia, *supra* note 20 (explaining that "[w]omen should be the ones making decisions about what happens to their bodies").

* J.D. Candidate 2023, Maurice A. Deane School of Law at Hofstra University; B.S. Justice and Law Administration, *summa cum laude*, Western Connecticut State University 2020. First and foremost, I would like to thank my Faculty Advisor, Jennifer Gundlach, Notes Editor, Haley Clancy, and all Staff Members on the *Hofstra Law Review* who have helped me during the Note-writing process and with the preparation of this Note for publication with their exceptional guidance and expertise. I would also like to extend a special thank you to all of my family and friends who have supported me with their unconditional love, care, and patience throughout this journey. My achievements would not have been possible without the support system that has grown around me, and for that I am eternally grateful.