

Proponent Testimony to the Senate Criminal Justice Committee on SB 109

December 9th, 2024

Dear members of the 135th General Assembly:

I am writing to support SB109, which would require “specific, informed consent” for “the performance of an intimate examination.”

I am an Ohio medical student who has completed their core clerkships and is currently on a leave of absence to pursue a Fulbright in Portugal on health literacy, I wholeheartedly support SB 109 because I believe it is a patient’s right to know what might happen to their bodies while they are unconscious. Empowering medical students and other trainees to respect patients in such an intimate exam and setting will foster more trusting relationships between health care providers, trainees and their patients. This proposed law serves to benefit trainees and patients alike, as it empowers future doctors like me to feel confident communicating honestly and openly with patients.

During my clinical clerkships, especially during my surgery and obstetrics/gynecology rotations, I have had the opportunity to perform tasks that contribute to both my education and our patients’ treatment: placing sutures, suctioning fluids, holding retractors, and more. In addition, these clerkships offered me the opportunity to practice performing physical exams under supervision.

Usually, exams done for teaching purposes are first performed by a licensed supervisor, and then repeated by the trainee, and thus, aren’t medically necessary for the patient. I have performed these physical exams on conscious and unconscious patients as part of my learning and can attest that it is vital to have the opportunity to practice with both kinds of patients. There is much to learn from guiding an awake patient through a sensitive exam, feeling anatomical structures when their body is completely relaxed in sleep, and contextualizing exam findings with their purpose (for example, feeling for cervical motion tenderness in an awake patient versus identifying the position of the uterus prior to surgery to inform proper insertion of instruments).

Beyond learning various maneuvers, diagnoses, and treatment modalities, medical training requires us to learn how to demonstrate respect for and build trust with our patients. This opens the door for discussions of sensitive topics and for performing intimate or uncomfortable exams or procedures when necessary. Consent is fundamental for this trust, as demonstrated in the policy handbook at my medical school, which states:

“Procedures under anesthesia, such as pelvic, rectal, breast and other examinations for teaching purposes, require specific consent and medical students should not perform such an examination unless that consent has been obtained. Such examinations should be related to the planned procedure, performed by a student who is recognized by the patient as part of their care team and should be done under direct supervision by the educator”

Because of my school's policy requirements, I was frequently encouraged to obtain consent for both my participation in patient care and for actions done solely for my education. However, these policies are inconsistent in how they are written and applied across institutions. Most of us receive training at a variety of sites throughout our clerkships, highlighting the importance of legislation that standardizes the informed consent process.

For example, there have been occasions where it was communicated to a patient that I would be "involved in the procedure" -- without explicitly indicating what actions were medically necessary for the patient's care versus what I might perform solely for my educational benefit. In those cases, I felt morally responsible to offer clarity to patients when I could. I would never be able to sleep well at night thinking that I did something to an unconscious person that they did not consent to, and I am scared that in the moments where I did not speak up, that I might have.

No trainee should have to deal with the moral angst of feeling uncertain that they may violate their patients' autonomy for the sake of their learning.

SB 109 offers a standard to reassure all of us that we are doing the right thing.

Respecting patients and honoring our medical ethical commitments will not shut down the education of students. Indeed, when my superiors and I asked for consent, we were rarely, if ever, denied. My experience corroborates scientific literature (Wilson, 2005) which has shown that pursuing these standards for consent does not hinder a trainee's opportunity to gain vital skills, nor does it constitute a means of exceptionalizing intimate exams. Consent is not an 'extra'. It is a fundamental part of the process of performing any examination or procedure.

Many thanks for allowing me to share my perspective. I admire greatly your leadership on behalf of patients and students who should not be asked to shoulder alone the duty of treating patients with respect.

Signed,

Ellena Privitera

References:

Wilson RF. Autonomy suspended: using female patients to teach intimate exams without their knowledge or consent. *J Health Care Law Policy*. 2005;8(2):240-63. PMID: 16471023.