May 1, 2023

BY EMAIL

House Public Health Policy Committee Hearing for HB 89

Re: House Bill 89 Consent for pelvic examinations by medical students on an anesthetized or unconscious patients

Dear Members of the House Public Health Policy Committee, Chair Lipps and Vice Chair Stewart:

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

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

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

1. **All Healthcare Procedures Require Consent.**

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

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

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

House Bill 89 would extend that promise of autonomy and respect to intimate teaching exams with women.

2. **Asking Takes Approximately One Minute.**

I know first-hand how busy physicians are and how many patients we see every day. That fact alone might lead you to want to avoid burdening physicians further. I have had countless conversations with patients, explaining that we would like to have medical learners involved in their care precisely so we can educate the next generation of providers. I explain that participation in medical education is voluntary, that the students are supervised, and that educating medical students is a powerful service to the next generation of physicians and their patients. This candid disclosure and request for permission takes less than a minute. It empowers the patient and preserves autonomy. It also empowers the student, who now knows that the patient has consented. The student does not feel pressure to obfuscate the true nature of the interaction—the student's own education.

3. **Patients Will Consent, But They Want to be Asked.**

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

4. **When Attending Physicians Dispense With Asking, We Teach New Physicians That Consent Does Not Matter.**

A significant literature shows that the ethical judgments of aspiring doctors get worse as they progress through their medical education. That is, first and second

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

year students identify more ethical concerns than in later years of their education. This suggests that their sensibilities harden, likely because the attending physicians are not treating patients with the respect they deserve. Role models matter.

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

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

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

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

I write in my individual capacity.

Very Truly Yours,[3]

Ari Silver-Isenstadt, MD

3 Academic affiliation is for identification purposes only. I write in my individual capacity and my university takes no position on this or any other bill.