

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Enrolled

House Bill 364

(Delegate Bagnall, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

Health Care Practitioners - Medical Examinations on Anesthetized or
Unconscious Patients

This bill prohibits a “health care practitioner” or a student or trainee in a program to become a health care practitioner, from performing a pelvic, prostate, or rectal examination on a patient who is under anesthesia or unconscious unless (1) the patient has given informed consent for the examination; (2) the examination is within the standard of care for the patient; (3) the patient is unconscious and the examination is required for diagnostic or treatment purposes; or (4) an emergency exists, it is impractical to obtain the patient’s consent, and the examination is required for diagnostic or treatment purposes. The bill authorizes a health occupations board, in accordance with existing hearing procedures, to discipline a health care practitioner under its authority for any violation of the bill’s prohibition.

Fiscal Summary

State Effect: None. The bill does not directly affect governmental operations or finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law/Background: In 2007, the American College of Obstetricians and Gynecologists issued a committee opinion regarding professional responsibilities in obstetric/gynecologic education: “Physicians must learn new skills in a manner consistent with their ethical obligations to benefit the patient, to do no harm, and to respect a patient’s

right to make informed decisions. Patients should be given the opportunity to consent to or refuse treatment by students.” However, while this is an official opinion it is not a legal requirement.

Furthermore, a 2017 article published by *Forbes* notes that, while there are medically appropriate reasons to perform a pelvic exam on an unconscious woman as part of a legitimate treatment plan, there are also troubling cases where a patient is unconscious and medical students or trainees are invited to perform a pelvic exam for practice purposes without first obtaining the patient’s consent. Male patients have also been subjected to rectal or prostate examinations by medical students without their consent.

Five other states (California, Hawaii, Illinois, Oregon, and Virginia) have passed similar legislation about obtaining informed consent before performing a pelvic examination on an unconscious or anesthetized patient.

Additional Information

Prior Introductions: None.

Cross File: SB 909 (Senator Feldman) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Department of Health; American College of Obstetricians and Gynecologists; *Forbes*; *Journal of the American Medical Association*; Department of Legislative Services

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