

**HB2232**

**HD2,SD1**



Committee: Committee on Judiciary and Labor  
Hearing Date/Time: Tuesday, March 27, 2012, 10:30 a.m.  
Place: Conference Room 016  
Re: Testimony of the ACLU of Hawaii in Support of H.B 2232, HD2, SD1, Relating to Health

Dear Chair Hee and Members of the Committee on Judiciary and Labor:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of H.B. 2232, HD2, SD1, which would regulate the practice of performing pelvic examinations performed on anesthetized or unconscious female patients.

The ACLU has a deep commitment to individual privacy and decision-making, based on the right to control the confidentiality of one’s own medical and other private information and how that information is used, and the right to make one’s own informed decisions about medical testing and treatment. Breaches of privacy in the form of unauthorized and unnecessary medical treatment, particularly pelvic examinations of anesthetized or unconscious women, may constitute criminal and civil offenses and must not be tolerated.

Informed consent is also both morally and ethically necessary. The American Association of Medical Colleges, which represents 125 accredited U.S. medical schools and over 400 teaching hospitals labeled performance of pelvic exams on women under anesthesia as unethical and unacceptable. Hawaii’s women must be able to trust that our medical professionals are held to the highest standards of care.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 45 years.

Thank you for this opportunity to testify.

Sincerely,  
Laurie Temple  
Staff Attorney  
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**PRESENTATION OF THE  
HAWAII MEDICAL BOARD**

TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR

TWENTY-SIXTH LEGISLATURE  
Regular Session of 2012

Tuesday, March 27, 2012  
10:30 a.m.

**WRITTEN TESTIMONY ONLY**

**TESTIMONY ON HOUSE BILL NO. 2232, H.D. 2, S.D. 1, RELATING TO HEALTH.**

TO THE HONORABLE CLAYTON HEE, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Constance Cabral and I am the Executive Officer of the Hawaii Medical Board ("Board"). House Bill No. 2232, H.D. 2, S.D. 1, addresses the circumstances under which pelvic examinations may be performed by certain health care providers and medical students. The Board supports this bill.

Please be advised that the companion bill, S.B. No. 2578, was heard by the Senate Committee on Health on February 10 and passed with amendments. However, it was not heard by this Committee and therefore, this bill is the only live measure.

Thank you for the opportunity to provide written testimony in support of H.B. No. 2232, H.D. 2, S.D. 1.

**Hazel Glenn Beh**  
Professor of Law and Co-Director, Health Law Policy Center

March 25, 2012

Hawai'i State House of Representatives,  
The Twenty-Sixth Legislature  
Regular Session of 2012  
Senate Committee on Judiciary and Labor

TESTIMONY IN STRONG SUPPORT OF HB 2232 HD 2 SD 1

Dear Sen. Clayton Hee, Chair and Sen. Maile Shimabukuro, Vice Chair:

My name is Hazel Beh. I am a professor of law and co-director of the Health Policy Center at the William S. Richardson School of Law. I strongly support House Bill 2232 HD2, SD1. My familiarity with the practice of medical students performing pelvic examinations on anesthetized women for teaching purposes comes from discussions with students, researchers, and by reviewing the current national medical literature. I have been told that JABSOM's official policy does not endorse this practice and that the school is working diligently to strengthen policies that discourage it. In fact, I believe a law will assist the medical school and empower its medical students to curtail such practices that are artifacts of outdated teaching methods.

The easy answer in this case is that it is good medical practice and good medical education to require a medical student to identify him or herself as a student and explicitly obtain informed consent before performing a pelvic examination for teaching and learning purposes when a woman is about to undergo a procedure under anesthesia. Although now discouraged by professional organizations, the routine practice of allowing medical students to perform pelvic examinations on anesthetized women without informed consent remains entrenched in national medical education. The AMA and the American Academy of Obstetrics and Gynecology, among other professional organizations, have adopted policies against it.

Let me summarize the results of repeated studies on the attitudes of women undergoing gynecological surgery to the prospect of receiving a pelvic exam for teaching purposes while under anesthesia. A 2010 study at a major teaching hospital reports, "most patients are willing to allow medical students to perform such examinations, but the patients feel strongly that someone must seek out their permission beforehand." It is obvious that a pelvic exam that is not diagnostic and without consent degrades the dignity and autonomy of women patients. Should a woman learn that the procedure took place, she will most certainly and most justifiably feel violated, and her trust in her physicians diminished.

While learning to perform pelvic examinations is important, to do so without permission is bad medical education. A study published in the American Journal of Obstetrics recently revealed that following the medical rotation in obstetrics, where students were required to perform pelvic exams on anesthetized patients without consent, the practice was linked to an overall decline in attitude about the importance of informed consent. If we do not require students to obtain

consent, we squander an opportunity for medical students to learn how to establish a positive and respectful interaction with their female patients.

No one disputes the educational value of conducting pelvic examinations on anesthetized patients. There is less discomfort for the patient; medical students have a better opportunity to palpate internal organs when muscles are relaxed; and it allows patients to participate in a meaningful teaching and learning opportunity that will benefit future patients. Without explicit consent, however, the risk of harm to the dignity of the woman and the ethical development of the student outweighs any clinical practice benefit.

Senate Draft 1 is modeled after a California law that has been on the books since 2003. I hope that Hawai'i will join California, Virginia, and Oregon by enacting a law to expressly require informed consent before these examinations.

Thank you for your consideration of this important matter.

Sincerely,

/s/ Hazel Beh  
Co-Director  
Health Law Policy Center



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March 27, 2012

**Testimony in Support: HB 2232 HD2 SD1**

**To:** Chair Gilbert Clayton Hee, Vice Chair Maile Shimabukuro, and Members of the Senate Committee on Judiciary and Labor

**From:** Katie Reardon Polidoro, Director of Government Relations & Public Affairs

**Re:** Testimony in Support of HB 2232 HD2 SD1, Relating to Health

Thank you for hearing HB 2232 HD2 SD1. Planned Parenthood of Hawaii (PPHI) strongly supports this bill, which would require medical professionals and students to obtain informed consent before performing pelvic examinations on patients for training purposes, when patients are incapacitated due to anesthesia or otherwise unconscious.

For many women, pelvic examinations are intimate medical screenings that require privacy and trust between a patient and her doctor. Making sure that patients have a clear understanding and explanation of what the examination will entail is an important part of care. The performance of pelvic exams on patients without their knowledge is unethical and an unacceptable violation of a patient's right to privacy. In fact, the American College of Obstetricians and Gynecologists has condemned the practice.<sup>1</sup>

While it is important that medical students learn how to correctly perform pelvic exams, the ability to obtain informed consent and to practice respect for patients is an equally important lesson for students. Further, exams on unconscious, uninformed patients are not necessary in Hawaii. Willing and trained women currently participate in the John A. Burns School of Medicine's Professional Patient Program. That program provides third year medical students studying obstetrics and gynecology the opportunity to practice pelvic exams in a safe environment.

Because we believe that performing intimate exams on unconscious, uninformed patients is unethical, a violation of patients' rights, and is harmful to women, we support HB 2232 HD2 SD1. Please pass this bill.

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<sup>1</sup> American College of Obstetrics and Gynecologists, Committee On Ethics, *Professional Responsibilities in Obstetric-Gynecological Medical Education and Training*, August 2011, [http://www.acog.org/Resources\\_And\\_Publications/Committee\\_Opinions/Committee\\_on\\_Ethics/Professional\\_Responsibilities\\_in\\_Obstetric-Gynecologic\\_Medical\\_Education\\_and\\_Training](http://www.acog.org/Resources_And_Publications/Committee_Opinions/Committee_on_Ethics/Professional_Responsibilities_in_Obstetric-Gynecologic_Medical_Education_and_Training)

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(A Maui United Way Agency)

## **In support of HB 2232**

Shawn S. Barnes, M.A.  
4<sup>th</sup> year medical student  
University of Hawaii John A. Burns School of Medicine

My name is Shawn Barnes, a 4<sup>th</sup> year medical student at the University of Hawaii John A. Burns School of Medicine, and I submit this testimony in strong support of HB 2232. I am a 4<sup>th</sup> year medical student having recently completed my 3<sup>rd</sup> year OB/GYN clerkship. During my third year, I have had the chance to actively participate in various aspects of medical training, which have spanned the emotional spectrum from fascinating to mundane to exhilarating to heartbreaking. However, in OB/GYN I encountered the first act of medical training that left me ashamed. For three weeks, 4-5 times/day, I was asked to, and did, perform pelvic examinations on anesthetized women, without specific consent, solely for the purpose of my education. Typically this would unfold as follows. I would be assigned a gynecologic surgery case to scrub in on. I would be required to go meet the patient beforehand and introduce myself as “the medical student on the team” or some such vague statement of my role in the procedure, without mentioning a pelvic exam. I would then follow the patient into surgery. Once anesthesia was administered and the patient was asleep, the attending or resident would ask me to perform a pelvic exam on the patient for educational purposes. To my shame, I obeyed. This experience is not limited to my own medical training. A report in 2003, found that over 90% of medical students in Philadelphia were asked to perform unconsented pelvic exams on anesthetized women for educational purposes.<sup>1</sup>

When I voiced my concern over these unconsented practice pelvic exams, I found that it was considered standard practice by attending physicians and residents. In fact, I was told I was the first medical student or resident in institutional memory to express concern over the practice. This reaction stood in stark contrast to that of female friends, outside the medical field, to whom I related the story. These women were shocked and horrified that such a practice goes on and considered it an egregious violation of doctor-patient trust. A strange dichotomy seemed to exist between a culture of medicine that considered unconsented pelvic exams a non-issue, and those outside the world of medicine that seemed to have no idea the practice existed and were repulsed by the thought of it.

My concerns and my shame over this practice and my own participation in it, begged me to ask what seemed to be a basic question; Why not require the medical student involved in the case to simply ask specific consent to do a practice pelvic exam on a woman under anesthesia?

In conversations with attendings, residents, and other medical students, along with a review of the literature, I have identified 5 basic arguments used to defend unconsented practice pelvic exams. Here I attempt to refute these.

**1. Unconsented medical student pelvic exams on anesthetized women is standard practice. Specific consent is a non-issue.**

Some may believe that these exams are within accepted guidelines, and therefore a non-issue. However, the American College of Obstetrics and Gynecology (ACOG),



American Medical Association (AMA), and the Association of American Medical Colleges (AAMC) have all released official statements condemning the practice. These are the organizations that make guidelines. A 2007 opinion from the American College of Obstetricians and Gynecologists (ACOG) is worth quoting at length:

*"Physicians must learn new skills and techniques in a manner consistent with the ethical obligations to benefit the patient, to do no harm, and to respect a patient's right to make informed decisions about health matters. These obligations must not be unjustifiably subordinated to the need and desire to learn new skills...Some procedures, such as pelvic examinations, require specific consent. If any examination planned for an anesthetized woman undergoing surgery offers her no personal benefit and is performed solely for teaching purposes, it should be performed only with her specific informed consent, obtained when she has full decision-making capacity."*<sup>2</sup>

The American Medical Association (AMA) has issued a similarly worded call for consent.<sup>3</sup> In perhaps the strongest rebuke of the practice, the Association of American Medical Colleges (AAMC) has issued this 2003 statement:

*"To become effective physicians, medical students and residents not only must acquire clinical skills, they must also learn to treat their patients always with respect and dignity. Recent reports have suggested that medical students are performing pelvic examinations on women under anesthesia, without their knowledge and approval. AAMC believes that such practice is unethical and unacceptable."*<sup>4</sup>

The position of these organizations seems clear. The ACOG, AMA, and AAMC all call for mandatory and specific consent before pelvic exams for educational purposes. As the AAMC states, to do otherwise is "unethical and unacceptable." In addition, the practice is currently illegal in California, Illinois, and Virginia.

## **2. Patients accepting care at a teaching hospital give implicit consent for such exams.**

Leaving aside the requirement for specific and explicit consent stated by the AMA, ACOG, and AAMC, some may believe that accepting care at a teaching hospital is tantamount to consent to a practice pelvic exam under anesthesia. We must first remember that patients tend to seek care at facilities that are geographical nearby, where their regular physician has privileges, or where their insurance is accepted. Consent forms at teaching hospitals tend to use language stating that medical students and residents may be involved in that case. That involvement is not specified. Also, consent forms tend to authorize care for the benefit of the patient, and not solely for educational purposes.<sup>5</sup>

## **3. A medical student does not need to ask specific consent for every minor activity they may perform during surgery, such as cutting sutures, closing an incision, or retracting tissue. A practice pelvic exam is no different.**

Medical students are often called upon to perform any number of minor activities to learn technique and assist the surgery team. Clearly, a medical student is not expected to seek specific consent for a laundry list of minor actions during surgery ("Mrs. X., is it OK if I cut your sutures...how about retract your tissue...etc"). However, the pelvic exam is intrinsically different. The pelvic exam is a much more personal and intimate act, very different from suturing a wound. As a male medical student, I am required to have a chaperone when performing a pelvic exam on a conscious patient, but I do not need one to remove staples. Clearly, medical professionals understand that the pelvic exam is not analogous. In a study of women's attitudes on the subject, one study found that 100%

(69/69) of women surveyed expected to be specifically consented for pelvic exams by students for educational purposes when under anesthesia.<sup>6</sup> Several of the respondents said they would feel "physically assaulted" if this were not done. Clearly, both patients and doctors understand the unique nature of the pelvic exam.

**4. There is no such thing as a “practice” pelvic exam in gynecologic surgery, so the point is moot.**

Some may argue that any pelvic exam before gynecological surgery is medically warranted and is intrinsically part of the procedure and/or care. Therefore, by definition, there can never be a “practice” pelvic exam for “educational purposes”. Such thinking would render the ACOG, AMA, and AAMC recommendations moot, as they apply to pelvic exams for “educational purposes”. Indeed, such a view would posit the impossibility of pelvic exams for educational purposes in the O.R. However, this point can be easily refuted. While the attending and resident use the pelvic exam for purposes of diagnosis, trocar placement, anatomical layout, surgical procedure, etc, the medical student is not in the O.R. to diagnose, plan care, or decide on treatment. In fact, the medical student is often legally prohibited from doing so. He or she is inherently there to learn. Therefore, a medical student pelvic exam under anesthesia is clearly done for educational purposes.

**5. If medical students were required to seek specific consent, no women would give it, and students would miss out on a valuable learning experience, jeopardizing the competence of future physicians.**

There is no doubt that a pelvic exam under anesthesia offers a valuable learning experience for students. Anesthesia promotes relaxation of the pelvic musculature, which allows for an easier and more detailed exam, while sparing the patient discomfort. In addition, a pelvic exam in the operating room allows the student to immediately correlate findings from the exam with actual anatomy and pathology revealed during surgery.<sup>7</sup> The question is whether seeking consent would effectively eliminate this opportunity for students. The literature suggests otherwise. The two studies that have investigated this question in the U.S. and Canada found the percentage of women who would agree to a medical student pelvic exam under anesthesia for educational purposes, if asked first, to be 53% and 62%, respectively.<sup>8,9</sup> If these numbers are to be believed, we need not fear the loss of the educational opportunity by asking permission for it.

**A final thought: Not asking for consent shortchanges medical students as well as patients**

Asking for consent for pelvic exams is important not only because it respects the rights of the patient, but also because it re-affirms the value doctors in training should place in such rights. A statement by Ubel *et al* bears repeating: “An ethical medical education should teach the precedence of patients' rights.”<sup>8</sup> What are students taught when consent for an intimate examination is bypassed? One answer to this question is suggested by a disturbing 2003 report. In a survey of over 2,000 American medical students, those students that had completed a 3<sup>rd</sup> year OB/GYN clerkship thought that consent was significantly less important than those students who had not yet completed a

3<sup>rd</sup> year OB/GYN clerkship.<sup>1</sup> This effect was specific to the OB/GYN clerkship, as the total number of other clerkships completed was not associated with any significant change in attitude toward consent. Perhaps it should not come as a surprise that obtaining medical education unethically, through an unconsented and intensely personal exam, creates doctors with a significantly lower valuation of the idea of consent, doctors who become residents and attendings who assume unconsented pelvic exams are standard practice, and pass that attitude on to the next generation of medical students.

## **Conclusion**

The practice of unconsented practice pelvic exams by medical students on women under anesthesia has been condemned by national organizations such as the American College of Obstetricians and Gynecologists (ACOG), American Medical Association (AMA), and Association of American Medical Colleges (AAMC). Specific consent for such educational exams is necessary. Research has shown that over half of women would likely consent to such exams, if asked. The act of asking allows medical students to learn the value of patient autonomy and reinforces doctor-patient trust. Why not ask first?

## **References**

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3. American Medical Association. Medical student involvement in patient care. *Opinion 8.087*. 2001.

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5. Wilson, RF. Unauthorized practice: teaching pelvic examination on women under anesthesia. *Journal of the American Medical Women's Association*. 2003;58(4):217-20
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8. Ubel PA, Silver-Isenstadt A. Are patients willing to participate in medical education. *Journal of Clinical Ethics*. 2000;11(3):231-235.
9. Wainberg S, Wrigley H, Fair J, Ross S. Teaching pelvic examinations under anesthesia: What do women think? *Journal of Obstetrics and Gynaecology Canada*. 2010;32(1):49-53.