MISSOURI HOUSE OF REPRESENTATIVES

WITNESS APPEARANCE FORM

BILL NUMBER: **HB 1742**	DATE: **3/29/2022**
COMMITTEE: **Emerging Issues**	

TESTIFYING: ☑ IN SUPPORT OF ☐ IN OPPOSITION TO ☐ FOR INFORMATIONAL PURPOSES

WITNESS NAME

INDIVIDUAL:

WITNESS NAME: **ARI SILVER-ISENSTADT**	PHONE NUMBER:	
BUSINESS/ORGANIZATION NAME:	TITLE:	
ADDRESS:		
CITY:	STATE:	ZIP:

EMAIL: **arisi1@verizon.net**	ATTENDANCE: **Written**	SUBMIT DATE: **3/28/2022 8:46 PM**

THE INFORMATION ON THIS FORM IS PUBLIC RECORD UNDER CHAPTER 610, RSMo.

March 28, 2022House Emerging Issues Committee Hearing for HB 1742Re: House Bill 1742 Consent for intimate examination on a patient who is anesthetized or unconscious Dear Members: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.1 Ubel P, Jepson C, Silver-Isenstadt A. Don't ask, don't tell: A change in medical studentattitudes 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 1742 would extend that promise of autonomy and respect to intimate teaching exams with patients.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 Fail To Seek Consent, 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 second1See 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 or unconscious people—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 patients' 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,3Ari Silver-Isenstadt, MD1 Affiliation is for identification purposes only. I write in my individual capacity andmy employer takes no position on this or any other bill.

MISSOURI HOUSE OF REPRESENTATIVES

WITNESS APPEARANCE FORM

BILL NUMBER: **HB 1742**	DATE: **3/29/2022**
COMMITTEE: **Emerging Issues**	

TESTIFYING: ☑ IN SUPPORT OF ☐ IN OPPOSITION TO ☐ FOR INFORMATIONAL PURPOSES

WITNESS NAME

INDIVIDUAL:

WITNESS NAME: **ARNIE C. "HONEST-ABE" DIENOFF-STATE PUBLIC ADVOCAT**	PHONE NUMBER:	
BUSINESS/ORGANIZATION NAME:	TITLE:	
ADDRESS:		
CITY:	STATE:	ZIP:

EMAIL: **arniedienoff@yahoo.com**	ATTENDANCE: **Written**	SUBMIT DATE: **3/29/2022 11:48 PM**

THE INFORMATION ON THIS FORM IS PUBLIC RECORD UNDER CHAPTER 610, RSMo.

I am in Support of this Bill and Legislation to Protect and Give Rights Back to ALL Missouri Patients!

MISSOURI HOUSE OF REPRESENTATIVES

WITNESS APPEARANCE FORM

BILL NUMBER: **HB 1742**	DATE: **3/29/2022**
COMMITTEE: **Emerging Issues**	

TESTIFYING: ☑ IN SUPPORT OF ☐ IN OPPOSITION TO ☐ FOR INFORMATIONAL PURPOSES

WITNESS NAME

INDIVIDUAL:

WITNESS NAME: **ASHLEY S. WEITZ**	PHONE NUMBER:	
BUSINESS/ORGANIZATION NAME:	TITLE:	
ADDRESS:		
CITY:	STATE:	ZIP:

EMAIL: **ashley.s.weitz@gmail.com**	ATTENDANCE: **Written**	SUBMIT DATE: **3/28/2022 9:25 PM**

THE INFORMATION ON THIS FORM IS PUBLIC RECORD UNDER CHAPTER 610, RSMo.

Members of the Emerging Issues Committee,I am a victim advocate and trauma-informed care consultant in Salt Lake City, Utah. I am writing in strong support of House Bill 1742 regarding patient examinations. I am thrilled for Missouri to be considering this action, and I am so eager to see your great state pass this important bill into law.In 2007, I went to an ER for uncontrolled nausea and vomiting. Neither labs nor various imaging studies yielded clear answers. In an attempt to control and alleviate my symptoms, the attending physician gave me a sedating medication, and noted, "She is quite somnolent." I was very, very asleep. The encounter note continued, "Still, there are symptoms … I performed a pelvic exam." There was no discussion beforehand of the doctor's reasoning, and at no point was the exam considered acutely necessary, as the physician himself noted an exam would not impact his clinical decision making or my treatment; he planned to discharge me to follow up with my primary care provider with a presumptive diagnosis of endometriosis.I know I never consented to the exam because I woke up in pain, my legs in stirrups, a bright light shining on my exposed body, and another person in the room. I was screaming.As a survivor of sexual abuse and assault, the experience was as confusing as it was traumatizing. It was not until 2019 when similar legislation was introduced in Utah that I realized my experience had felt like a violation because it was one. My experience still impacts the way I seek and receive medical care, even today, nearly 15 years later; I have gone without necessary care and indicated screenings because I cannot ensure my own safety at my most vulnerable.While my experience did not take place in a learning environment, my non-consensual exam was a product of the way that clinician, and so many others, have learned for generations; no one ever has any reason to stop doing what they don't consider to be wrong or harmful. A simple conversation would have made all the difference,Repeated student exams for learning purposes are not patient care, and patients have every right to consent (or refuse) to be a part of learning. As a patient, my request for clinicians is simple: please just ask. The risk, time involved, and energy required of asking is surely so much less than the risk of causing lasting harm. To be frank: in no other profession does society tolerate the practice of routinely instructing learners to penetrate people without their knowledge or explicitly informed consent.House Bill 1742, if passed, will help patients, trainees, and providers in Missouri—and nation- and worldwide. I welcome any questions, comments, and/or additional discourse, and so appreciate your consideration and votes in support of this measure. Sincerely,Ashley S. Weitzashley.s.weitz@gmail.com801-810-6430

MISSOURI HOUSE OF REPRESENTATIVES

WITNESS APPEARANCE FORM

BILL NUMBER: **HB 1742**	DATE: **3/29/2022**
COMMITTEE: **Emerging Issues**	

TESTIFYING: ☑ IN SUPPORT OF ☐ IN OPPOSITION TO ☐ FOR INFORMATIONAL PURPOSES

WITNESS NAME

INDIVIDUAL:

WITNESS NAME: **BRIANNA STEVENS**	PHONE NUMBER:	
BUSINESS/ORGANIZATION NAME:	TITLE:	
ADDRESS:		
CITY:	STATE:	ZIP:

EMAIL: **stevensmade11@gmail.com**	ATTENDANCE: **Written**	SUBMIT DATE: **3/28/2022 8:54 PM**

THE INFORMATION ON THIS FORM IS PUBLIC RECORD UNDER CHAPTER 610, RSMo.

Brianna Stevens1023 Stonecreek RdFarmington, MO 63640Dear Members of the House Emerging Issues Committee:I write as a mother and a teacher to urge this body to enact House Bill 1742, the patient respect bill. First, let me speak as a mother. Both of my children were born at St. Luke's in Chesterfield, Missouri. The webpage for St. Luke's says that medical students do medical training at St. Luke's (as one example: St. Luke's Hospital Pharmacy Residency Programs, St. Luke's Hospital).Now, I have no idea if I was used to teach medical students how to do a pelvic exam or anything else. But I know this: I would want to be asked before being used in that way. Giving birth is an emotional, intimate, private moment. To think that if I had been anesthetized for a C-section or any other reason, and students had practiced giving pelvic exams on me, is almost unfathomable. Yet students are doing this in Missouri (Sarah Fenske, Missouri Rep. Seeks To Require Consent For Pelvic Exams Of Unconscious Women, St. Louis Public Radio, The Takeaway, March 6, 2020 at 3:53 PM CST, (Accessed March 28, 2022)).Until I started looking into this after hearing a story on the radio, I had no idea that St. Luke's is a teaching hospital, it is 275 miles from University of Missouri-Kansas City School of Medicine. How could I possibly know that medical students would be involved unless explicitly told?Second, let me speak as a teacher. I teach art to 3rd, 4th and 5th graders, kids ages 8-11. As you can imagine, I spend a lot of my day reminding kids to respect each other—for the younger ones, not to hit, not to fight, not to bite, and not even to touch each other without permission. For the older ones, to show empathy and compassion. Norms of respect are something that my students master by junior high.How is it possible that this teaching about respect is well-honed by adulthood, but gets set aside when we become patients? Why is it that medical students can lay hands on patients, for the student's benefit, without asking?House Bill 1742 rests on a scaffolding of common decency and respect for persons. This, too, should be taught in medical school and there is no more powerful way to transmit these values to the next generation of leaders than to model them in our teaching.Thank you for taking up the cause of all patients.Sincerely, Brianna Stevens

MISSOURI HOUSE OF REPRESENTATIVES

WITNESS APPEARANCE FORM

BILL NUMBER: **HB 1742**	DATE: **3/29/2022**
COMMITTEE: **Emerging Issues**	

TESTIFYING: ☑ IN SUPPORT OF ☐ IN OPPOSITION TO ☐ FOR INFORMATIONAL PURPOSES

WITNESS NAME

INDIVIDUAL:

WITNESS NAME: **DR. PHOEBE FRIESEN**	PHONE NUMBER:	
BUSINESS/ORGANIZATION NAME:	TITLE:	
ADDRESS:		
CITY:	STATE:	ZIP:

EMAIL: **phoebe.friesen@mcgill.ca**	ATTENDANCE: **Written**	SUBMIT DATE: **3/28/2022 9:20 PM**

THE INFORMATION ON THIS FORM IS PUBLIC RECORD UNDER CHAPTER 610, RSMo.

March 28, 2022Re: House Bill 1742 Dear Members of the House Emerging Issues Committee:I am writing in support of Bill 1742, which requires hospitals in Missouri to have a policy requiring written and verbal informed consent before a medical student can perform a pelvic, prostate, or rectal examination on a patient who is under general anesthesia or otherwise unconscious. While these examinations are an important teaching tool, performing them without the consent of patients is a violation of patient rights and is a remnant of medicine's paternalistic past. It is time to follow the rest of the world and the country in requiring consent before pelvic examinations are performed on anesthetized patients.Below, I speak to three topics that I have considered within my research in medical ethics: I. Medical Student Experiences and Moral Distress, II. Non-consensual Exams as Violations of Autonomy, Bodily Rights, and Trust, III. Objections to a Legal Consent Requirement.I. Medical Student Experiences and Moral DistressI first learned of this practice while teaching ethics to medical students in New York. The students were asked to write summaries of ethical dilemmas they had encountered in their training so that I could help them engage in ethical analyses of these cases. Countless students wrote about their experiences of performing pelvic examinations on anesthetized patients who had not consented to the examination. Many of these students reported considerable moral distress accompanying the experience, reporting that it felt wrong and inappropriate, and thatthey wouldn't want the same to be done to them. Importantly, because the teaching faculty that were asking them to perform the examinations were also the ones that were evaluating them within medical school, and often writing their reference letters for residency, very few students felt comfortable raising their concerns with their instructors. Beyond the discomfort of medical students, engaging in this practice without consent teaches a problematic lesson to our future doctors: using an unconscious woman's body as a teaching tool, without her consent, is permissible. Today's students are aware that medicine has moved beyond the paternalism that has characterized its past and that practices like this need to be made into history1.1 Barnes, S. S. (2012). Practicing pelvic examinations by medical students on women under anesthesia: why not ask first? Obstet Gynecol, 120(4), 941-943. Tsai, J., June 24, 2019). Medical Students Regularly Practice Pelvic In the years since I learned of this practice, I have spoken to medical students across the country and have heard the same concerns expressed from coast to coast. The evidence is limited, but the data that does exist suggests that the practice is widespread. Last year in 2019, ELLE magazine polled students from across the United States and found that 61% of students had performed a pelvic examination on a female patient under anesthetic without her explicit consent. Of these students, 49% had never met the patient and 47% of these students felt uncomfortable with how their schools had handled these exams 2. In 2005, a survey of medical students at the University of Oklahoma found that a large majority of the sample had given pelvic examinations to patients under anesthesia, and that consent had not been obtained in nearly three quarters of the cases 3. Similarly, a survey from 2003

reported that the majority of medical students at five medical schools in Philadelphia has performed pelvic examinations on patients who were anesthetized before a gynecological surgery and it was unclear how many of them had consented 4. Research has also shown that educational pelvic examinations under anesthesia have been common in the United Kingdom, Canada, and New Zealand, each of which is taking, or has already taken, measures to ensure that specific consent for these examinations is always obtained 5. Within the United States, consent has become a legal requirement for educational pelvic examinations in California, Hawaii, Illinois, Oregon, Virginia, Utah, Maryland, and New York. At least 13 more states have bills under consideration 6. It is time that Missouri joins them in putting patient rights first.II. Non-consensual Exams as Violations of Autonomy, Bodily Rights, and TrustExams On Unconscious Patients. Should They? ELLE. Retrieved from https://www.elle.com/life- love/a28125604/nonconsensual-pelvic-exams-teaching-hospitals/2 Tsai, J. (2019, June 24, 2019). Medical Students Regularly Practice Pelvic Exams On Unconscious Patients.Should They? ELLE. Retrieved from https://www.elle.com/life-love/a28125604/nonconsensual-pelvic- exams-teaching-hospitals/3 Schniederjan, S., & Donovan, G. K. (2005). Ethics versus education: pelvic exams on anesthetized women. J Okla State Med Assoc, 98(8), 386-388.4 Ubel, P. A., Jepson, C., & Silver-Isenstadt, A. (2003). 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. American journal of obstetrics and gynecology, 188(2), 575.5 Coldicott, Y., Pope, C., & Roberts, C. (2003). The ethics of intimate examinations--teaching tomorrow's doctors. (Education and debate). British Medical Journal, 326(7380), 97. Gibson, E., & Downie, J. (2012). Consent requirements for pelvic examinations performed for training purposes. CMAJ : Canadian Medical Association Journal, 184(10), 1159-1161. Malpas, P. J., Bagg, W., Yielder, J., & Merry, A. F. (2018).Medical students, sensitive examinations and patient consent: a qualitative review. The New Zealand Medical Journal (Online), 131 (1482), 29-37. General Medical Council. Intimate examinations and chaperones. Retrieved from https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for- doctors/intimate-examinations-and-chaperones/intimate-examinations-and-chaperones Liu, K. E., Dunn, J. S., Robertson, D., Chamberlain, S., Shapiro, J., Akhtar, S. S., . . . Simmonds, A. H. (2010). Pelvic Examinations by Medical Students. Journal of Obstetrics and Gynaecology Canada, 32(9), 872-874. Bagg, W., Adams, J., Anderson, L., Malpas, P., Pidgeon, G., Thorn, M., . . . Merry, A. F. (2015). Medical Students and informed consent: A consensus statement prepared by the Faculties of Medical and Health Science of the Universities of Auckland and Otago, Chief Medical Officers of District Health Boards, New Zealand Medical Students' Association and the Medical Council of New Zealand. N Z Med J, 128(1414), 27-35.6 Wilson, R. F. (2019). Bioethics & Health Law. Retrieved from https://robinfretwellwilson.com/legal-bioethics- health-law Teaching medical students to perform pelvic, prostate, or rectal examinations on unconscious patients who have not consented constitutes a significant violation of the autonomy, the bodily rights, and the trust of those who are subjected to these examinations 7. Autonomy refers to one's ability to self-govern, to act in accord with one's values, goals, and desires 8. This ability is not afforded to those on whom pelvic, prostate, or rectal examinations are performed while they are anesthetized and who have not been given an opportunity to consent. Consent allows patients to exercise their autonomy, to choose what is aligned with their goals and values within their medical care. Crucially, the vast majority of patients do consent to medical students performing pelvic examinations on them when asked 9. However, 100% wish to be specifically consented for such examinations beforehand 10. This shows how consent is not merely an instrumental act of gaining permission, but is an intrinsically valuable one, which respects the rationality and values of those being asked 11.Within medicine, consent also operates as a waiver of one's bodily rights; such waivers displace the usual boundaries around one's body, temporarily and in a limited way. The waiver that is given in a consent form before a surgery permits the surgical team to perform several acts on a body in order to promote the patient's wellbeing, some of which may be unanticipated and risky. In a teaching hospital, the surgical team may include the medical students, although this is not often understood by patients 12. In the case of pelvic examinations performed at the start of a gynecological surgery, however, medical students are not contributing to the care of the patient, but are merely using her body as an educational tool. This constitutes a clear violation of her bodily rights, rights that are not waived within the consent form.Finally, this practice violates trust, the foundation of medicine. When seeking care, patients are required to make themselves extremely vulnerable in order to access treatment; they admit to engaging in unhealthy or stigmatized behaviors, remove their clothing, and allow themselves to be poked and prodded, often with little understanding of why 13. It only physicians who have been given the power and privilege to treat patients who are vulnerable in this way. Such power and privilege combined with such vulnerability creates a strong obligation for doctors to seek trust and be deserving of it 14. Performing pelvic, prostate, or rectal examinations on unconscious patients without their consent significantly jeopardizes this foundation of trust, as can be demonstrated by the7 Friesen, P. (2018). Educational pelvic exams on anesthetized women: Why consent matters. Bioethics, 32(5), 298-307.8 Dworkin, G. (1988). The Theory and Practice of Autonomy (Vol. 102): Cambridge University

Press.9 Wainberg, S., Wrigley, H., Fair, J., & Ross, S. (2010). Teaching pelvic examinations under anaesthesia: what do women think? J Obstet Gynaecol Can, 32(1), 49-53. Martyn, F., & O'Connor, R. (2009). Written consent for intimate examinations undertaken by medical students in the operating theatre--time for national guidelines? Irish medical journal, 102(10), 336-337.10 Bibby, J., Boyd, N., Redman, C., & Luesley, D. (1988). Consent for vaginal examination by students on anaesthetized patients. Lancet, 2, 11511 Dworkin, G. (1988). The Theory and Practice of Autonomy (Vol. 102): Cambridge University Press.12 Goedken, J. (2005). Pelvic Examinations Under Anesthesia: An Important Teaching Tool. Journal of Health Care Law and Policy, 8(2), 232-239.13 Rhodes, R. (2001). Understanding the Trusted Doctor and Constructing a Theory of Bioethics. Theoretical Medicine and Bioethics, 22(6), 493-504.14 Ibid. shock and outrage of many who have learned about this practice 15. I have received countless emails and messages from women who are horrified that this is still occurring within medical schools. It is important to consider these responses in light of the prevalence of sexual assault. One in three women in the United States have experienced sexual violence, but this jumps to nearly one in two for American Indian / Alaska Native women or women who are multiracial. One in five women have been raped 16. Pelvic examinations can be very distressing to those with a history of sexual trauma, even when performed while patients are conscious and have consented 17. To learn that a sensitive examination has occurred, or may have occurred, while one was unconscious and without consent, can amplify this trauma, leading to significant harm and disengagement from clinical care.III. Objections to a Legal Consent RequirementSome argue that a legal requirement for specific consent for educational pelvic, prostate, or rectal examinations under anesthesia will stand in the way of medical education and prevent future clinicians from learning the skills they need. Because the majority of women consent to these examinations when asked, this is very unlikely to be the case. There are also no reports of issues related to student training in those states, and other countries, where consent is legally required.Others insist that consent to pelvic, prostate, or rectal examinations by medical students is already implied when a patient signs a consent form before a surgery 18. As has been argued, this is only the case for aspects of the surgery that are part of the clinical care and contribute to the wellbeing of the patient. As these examinations are purely educational, they serve to benefit the medical trainees and not the patient 19. Furthermore, the consent that is obtained before surgery is a legal one, but often not an informed one 20.Others argue that the law is not the appropriate tool for changing this practice and that medical professionals should be responsible 21. However, a long history of medical professionals speaking out about this practice has led to little traction in terms of changing practice. An opinion published in 2001 by the American Medical Association's Council on Ethical and15 See the comments section of: Friesen, P. (2018, October 30, 2018). Why Are Pelvic Exams on Unconscious, Unconsenting Women Still Part of Medical Training? Slate. Retrieved from https://slate.com/technology/2018/10/pelvic-exams-unconscious-women-medical-training-consent.html16 National Sexual Violence Resource Center. (2020). Statistics. Accessed Jan 28, 2020. Retrieved from https://www.nsvrc.org/node/473717 Larsen, M., Oldeide, C. C., & Malterud, K. (1997). Not so bad after all..., Women's experiences of pelvic examinations. Family Practice, 14(2), 148-152.18 See interview with William Dignam, head of OB-GYN clerkships at UCLA in: Warren, A. (2003). Using the Unconscious to Train Medical Students Faces Scrutiny. The Wall Street Journal, (March 12). Retrieved from http://www.wsj.com/articles/SB10474313725394200019 Barnes, S. S. (2012). Practicing pelvic examinations by medical students on women under anesthesia: why not ask first? Obstet Gynecol, 120 (4), 941-943.20 Wilson, R. F. (2005). Autonomy suspended: using female patients to teach intimate exams without their knowledge or consent. J. Health Care L. & Pol'y, 8, 240.21 Yale University School of Medicine. (2019). Statement of Yale University School of Medicine Concerning SB 16, An Act Prohibiting an Unauthorized Pelvic Exam on a Woman Who is Under Deep Sedation or Anesthesia. Retrieved from https://www.cga.ct.gov/2019/PHdata/Tmy/2019SB-00016-R000204- Yale%20University%20School%20of%20Medicine-TMY.PDF Judicial Affairs, a press release by the Association of American Medical Colleges in 2003, as well as an opinion from the American College of Obstetricians and Gynecologists in 2011, all asserted that explicit consent ought to be obtained for educational pelvic examinations on patients who are anesthetized 22. Given that the practice is still common, we can conclude that recommendations from professional bodies are not sufficient, and a more effective tool, such as a legal one, is needed.Others have suggested that the practice itself is trivial and that patients do not need to be consented because, in the eyes of medical professionals, these examinations are not sensitive or sexual at all; they involve parts of the body that are just like any other 23. This objection is a paternalistic one that has no place in medicine today. It is not the perspective of the clinician that matters, but that of patients, who have the right to decide what they deem sensitive and what happens to their bodies while they are unconscious.IV. ClosingIt is overwhelmingly clear that foregoing consent before educational pelvic, prostate, or rectal examinations leads to moral distress in medical students, violates the autonomy and bodily rights of women, and jeopardizes the foundation of trust on which the health care system rests. Embedding explicit consent requirements into law will not threaten educational goals, as the majority of women will consent to these examinations, and will improve the

system of medical education, as students will leave their training with more respect for patient's bodies and knowledge of the importance of informed consent.Respectfully yours,Phoebe Friesen Assistant Professor Biomedical Ethics Unit McGill University2422 American Medical Association, Medical Student Involvement in Patient Care: Report of the Council on Ethical and Judicial Affairs. Virtual Mentor, 2001. 3(3). Association of American Medical Colleges. (2003).Statement on Patient Rights and Medical Training. Committee opinion no. 500: Professional responsibilities in obstetric-gynecologic medical education and training. Obstet Gynecol, 2011. 118(2 Pt 1): p. 400-4.23 Carugno, J. A. (2012). Practicing pelvic examinations by medical students on women under anesthesia: why not ask first? Obstet Gynecol, 120(6), 1479-1480.24 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.

MISSOURI HOUSE OF REPRESENTATIVES

WITNESS APPEARANCE FORM

BILL NUMBER: **HB 1742**	DATE: **3/29/2022**
COMMITTEE: **Emerging Issues**	

TESTIFYING: ☑ IN SUPPORT OF ☐ IN OPPOSITION TO ☐ FOR INFORMATIONAL PURPOSES

WITNESS NAME

REGISTERED LOBBYIST:

WITNESS NAME: **JENNIFER CARTER DOCHLER**	PHONE NUMBER: **573-356-4109**	
REPRESENTING: **THE MISSOURI COALITION AGAINST DOMESTIC AND SEXUAL VIOLENCE (MOCADSV)**	TITLE: **PUBLIC POLICY DIRECTOR**	
ADDRESS: **217 OSCAR DR., STE. A**		
CITY: **JEFFERSON CITY**	STATE: **MO**	ZIP: **65101**
EMAIL: **jennc@mocadsv.org**	ATTENDANCE: **In-Person**	SUBMIT DATE: **3/29/2022 9:12 AM**

THE INFORMATION ON THIS FORM IS PUBLIC RECORD UNDER CHAPTER 610, RSMo.

The Missouri Coalition Against Domestic and Sexual Violence (MOCADSV) supports the intention of HB 1742 and seeks an amendment. Replace "(3) A court orders the performance of the patient examination for the collection of evidence" with "(3) Sexual assault is suspected, forensic evidence, as defined in 595.220.8(7), may be collected if the patient is not capable of informed consent due to longer term medical condition, or if forensic evidence will be lost."In addition, it may be helpful to add a section that would require the healthcare facility to notify the patient if an examination was performed.

MISSOURI HOUSE OF REPRESENTATIVES

WITNESS APPEARANCE FORM

BILL NUMBER: **HB 1742**	DATE: **3/29/2022**
COMMITTEE: **Emerging Issues**	

TESTIFYING: ☑ IN SUPPORT OF ☐ IN OPPOSITION TO ☐ FOR INFORMATIONAL PURPOSES

WITNESS NAME

INDIVIDUAL:

WITNESS NAME: **JILL B. DELSTON**	PHONE NUMBER:	
BUSINESS/ORGANIZATION NAME:	TITLE:	
ADDRESS:		
CITY:	STATE:	ZIP:

EMAIL: **delston@gmail.com**	ATTENDANCE: **In-Person**	SUBMIT DATE: **3/29/2022 9:36 AM**

THE INFORMATION ON THIS FORM IS PUBLIC RECORD UNDER CHAPTER 610, RSMo.

Dear Missouri House of Representatives, My name is Jill B. Delston and I'm a bioethicist, philosophy professor, and Missouri voter. I am writing in my personal capacity and the views I express here do not represent my employer or anyone else. The purpose of this testimony is to support House Bill number 1742. HB 1742 requires specific informed consent for patient examinations like prostate, anal, or pelvic exams. These examinations are the subject of my scholarship on bias in medicine. What follows is adapted from my book, Medical Sexism: Contraception Access, Reproductive Medicine, and Health Care (Lexington Books, 2019).1 What is a pelvic exam?A pelvic exam generally includes a visual exam, a speculum exam, and a manual exam, in which doctors insert two fingers into the vagina and use the other hand to feel the abdomen, and sometimes a Pap test as well.2 Pelvic exams are a necessary component of health for many patients and can even be lifesaving interventions when they help detect cervical cancer or help a physician identify the shape and location of the uterus during a gynecological surgery. However, just because a medical intervention can sometimes be lifesaving does not mean that it should be used at any interval or in any context. Pelvic exams can also be coercive and HB 1742 aims to address the coercive manner of some pelvic exams. In Missouri it is Legal for Training Hospitals to Perform Extra Exams on Anesthetized Patients for Educational Purposes At issue is a policy by medical schools in the United States to allow students and residents to perform pelvic exams on unconscious patients without first obtaining informed consent and without informing patients. 3 The aim of these policies is educational to allow medical students and residents the experience of performing a pelvic exam for training purposes. One reason the practice of pelvic exams on non-consenting unconscious patients continues without patient pushback is because by its very nature, patients simply do not know it occurs.4 After news coverage of a survey finding that 72 percent of Canadian doctors had performed pelvic exams on anesthetized patients without their consent in 2010, The Society of Obstetricians and Gynaecologists of Canada (SOGC) and The Association of Professors of Obstetrics and Gynaecology of Canada (APOG) updated their clinical practice guidelines to require consent for these examinations.5 A recent New York Times expose on the practice helped draw attention to the fact that it still occurs.6 However, scholars including myself have been trying to draw attention to this issue for a long time.7 The Exams Have No Medical Benefit for the PatientSince the stated purpose of performing pelvic exams on unconscious patients is to improve medical training, it goes without saying that these exams do not benefit the patient. The purpose of the exam is to help the trainee, not to help the patient. Although illegal in twenty states, the practice is standard in some places of the United States, including Missouri.8 Educational Goals are an Insufficient Reason to Override Patient Rights The stated purpose of students and residents performing exams on unconscious patients is educational practice. However, service to the profession is not a permissible justification for overriding patient consent. For example, if performing a controversial heart transplant would provide great service to the profession, but no patient was available to undergo the transplant,

medical schools may not proceed with the procedure on unwilling patients. Furthermore, according to surveys, a significant portion of patients would provide consent for these exams if asked.9 Thus, even if the benefit in training medical students and residents somehow justified performing the exams against the wishes of the patient, performing exams on unwilling patients would still be impermissible given the availability of willing participants.Educational Goals Are Ill-Served by Unconsented Intimate ExamsService to the medical profession does not justify performing the exams, then. Yet it is worth noting that performing pelvic exams on unconscious patients does little service to the profession because after students and residents finish their training, they will have to perform pelvic exams on conscious patients. Doctors who learn how to perform an intimate exam on an unconscious patient do not learn how they might be hurting the patient, what they might be saying that offends the patient, or whether their bedside manner causes harm to patients.10 In addition, doctors who learn how to perform an intimate exam on a patient who may not know that they are doing so or who may not be consenting are learning a dangerous lesson. Performing the exams on standardized, conscious, and consenting patients not only preserves moral legitimacy, then, but also ensures that the training is useful and beneficial.Invasive Exams without Consent are Morally Impermissible Vaginal penetration using a speculum or the insertion of two fingers into a patient's vagina or anus is morally impermissible without first obtaining consent because doing so would violate a patient's bodily autonomy.11 Informed consent is the gold standard for medical interventions. To lift a policy of informed consent for pelvic and other intimate exams would be inconsistent and fail to treat like cases alike. If doctors generally need to obtain consent for invasive procedures, but do not need to for vaginal or anal exams.In fact, these moral evaluations would apply even where patients are informed in advance that conditional on an unrelated procedure, they must undergo pelvic exams by trainees during anesthesia. Based on a standard definition of informed consent,12 this offer would still be coercive. For example, on informed consent, Onora O'Neill writes that, "Patients are manipulated if they are 'made offers they cannot refuse', given their actual cognitive and volitional capacities. For example, patients who think they may be denied further care or discharged without recourse if they refuse proposed treatment may be unable to refuse it."13 Patients in teaching hospitals may be subject to these restrictions, undermining their autonomy even where they are made aware of hospital practices. Invasive Exams Without Consent are Physically Harmful When medical providers perform extra exams on patients, those patients need to be under anesthesia longer than they otherwise would be and in the operating room for longer than they need to be for strictly medical purposes. These consequences have associated risk and patients need to be informed of and consent to taking on any extra risk.Medical Sexism and Medical Racism Unconsented exams are a phenomenon that hurts men and women alike. In fact, a recent survey found that men and women are equally impacted by the practice.14 However, the idea that doctors can override patient choice and act in ways that serve their own interests instead of their patients' is consistent with a hierarchy in the doctor's office that hurts women and has a racial bias.15 When doctors hold this attitude towards patients, it can have a differential impact on historically oppressed communities. For example, the same survey found that Black patients were four times as likely as White patients to report that they received an intimate exam without consent in the last five years.16 Thank you for allowing me to share my perspective as a bioethicist and philosophy professor. I hope it has provided a context that helps flesh out the need for respecting patients and giving all Missourians respect. We can end this practice with a simple law aimed at achieving informed and explicit consent of pelvic exams as well as other exams like prostate and anal exams. HB 1742 does just that. It is my strong recommendation that the Missouri legislature protect patients and doctors by passing this law today. Footnites: 1 Delston, Medical Sexism, 199–201. 2 Heitz, "Pelvic Exam." 3 Friesen, "Educational Pelvic Exams on Anesthetized Women." 4 Goldstein, "Practice vs. Privacy on Pelvic Exams"; Hsieh, "Pelvic Exams On Anesthetized Women Without Consent"; Friesen, "Educational Pelvic Exams on Anesthetized Women." 5 Picard, "Time to End Pelvic Exams Done without Consent." 6 Goldberg, "She Didn't Want a Pelvic Exam. She Received One Anyway." 7 Caplan, "Pelvic Exams Done on Anesthetized Women Without Consent"; Friesen, "Educational Pelvic Exams on Anesthetized Women"; Delston, Medical Sexism; Delston, "When Doctors Deny Drugs"; Bruce, "A Pot Ignored Boils On"; Fenske, "Missouri Rep. Seeks To Require Consent For Pelvic Exams Of Unconscious Women"; Wilson, "Unauthorized Practice"; Wilson and Kreis, "#JustAsk"; Friesen et al., "Consent for Intimate Exams on Unconscious Patients." 8 Caplan, "Pelvic Exams Done on Anesthetized Women Without Consent." 9 Wainberg et al., "Teaching Pelvic Examinations Under Anaesthesia."; Chor, "Consenting for Pelvic Exams under Anesthesia with Learners," paper presented at the 33rd Annual MacLean Center Conference, Chicago, IL, November 13, 2021, https://www.youtube.com/ watch?v=wbFWn0K1lVI. 10 Harrison, "It Happened To Me." 11 Goldstein, "Practice vs. Privacy on Pelvic Exams.", Caplan, "Pelvic Exams Done on Anesthetized Women Without Consent"; Caplan, "Med Students Still Do Pelvic Exams on Women Under Anesthesia." 12 Delston, Medical Sexism. 13 O'Neill, "Paternalism and Partial Autonomy," 176. 14 Hannikainen, Earp, and Bruce, "New Findings on Unconsented Intimate Exams Suggest Racial Bias

and Gender Parity." 15 Delston, Medical Sexism; Delston, "When Doctors Deny Drugs." 16 Hannikainen, Earp, and Bruce, "New Findings on Unconsented Intimate Exams Suggest Racial Bias and Gender Parity."

Works CitedBruce, Lori. "A Pot Ignored Boils On: Sustained Calls for Explicit Consent of Intimate Medical Exams." HEC Forum: An Interdisciplinary Journal on Hospitals' Ethical and Legal Issues 32, no. 2 (June 2020): 125–45. https://doi.org/10.1007/s10730-020-09399-4.Caplan, Arthur L. "Med Students Still Do Pelvic Exams on Women Under Anesthesia." Medscape, May 25, 2018. http://www.medscape.com/viewarticle/896847.———. "Pelvic Exams Done on Anesthetized Women Without Consent: Still Happening." Medscape, May 2, 2018. http://www.medscape.com/viewarticle/894693.Delston, J. B. "When Doctors Deny Drugs: Sexism and Contraception Access in the Medical Field." Bioethics 31, no. 9 (November 2017): 703–10. https://doi.org/10.1111/bioe.12373.Delston, Jill B. Medical Sexism: Contraception Access, Reproductive Medicine, and Health Care. Lexington Books, 2019. https://rowman.com/ISBN/9781498558211/Medical-Sexism-Contraception-Access-Reproductive-Medicine-and-Health-Care?fbclid=IwAR1D8q3nt6LPEWiG16T9sQD1NluwBXFFQemNVnElHKnWO13sOhw7qvUfGn0.Fenske, Sarah. "Missouri Rep. Seeks To Require Consent For Pelvic Exams Of Unconscious Women." Saint Louis Public Radio, March 6, 2020. https://news.stlpublicradio.org/post/missouri-rep-seeks-require-consent-pelvic-exams-unconscious-women.Friesen, Phoebe. "Educational Pelvic Exams on Anesthetized Women: Why Consent Matters." Bioethics 32, no. 5 (June 1, 2018): 298–307. https://doi.org/10.1111/bioe.12441.Friesen, Phoebe, Robin Fretwell Wilson, Soyoon Kim, and Jennifer Goedken. "Consent for Intimate Exams on Unconscious Patients: Sharpening Legislative Efforts." Hastings Center Report, February 2022, 28–31. https://doi.org/10.1002/hast.1337.Goldberg, Emma. "She Didn't Want a Pelvic Exam. She Received One Anyway." The New York Times, February 17, 2020, sec. Health. https://www.nytimes.com/2020/02/17/health/pelvic-medical-exam-unconscious.html.Goldstein, Avram. "Practice vs. Privacy on Pelvic Exams." Washington Post, May 10, 2003. https://www.washingtonpost.com/archive/politics/2003/05/10/practice-vs-privacy-on-pelvic-exams/4e9185c4-4b4c-4d6a-a132-b21b8471da58/.Hannikainen, Ivar Rodríguez, Brian D. Earp, and Lori Bruce. "New Findings on Unconsented Intimate Exams Suggest Racial Bias and Gender Parity," March 5, 2022. https://osf.io/hm84d/.Harrison, Jami Kath. "It Happened To Me: I Teach Pelvic Exams to Med Students (On Myself)." xoJane: Women's Lifestyle & Community Site - xoJane, October 17, 2012. https://www.xojane.com/it-happened-to-me/it-happened-to-me-i-teach-pelvic-exams-to-med-students-on-myself.Heitz, David. "Pelvic Exam: Preparation, Process, and More." Healthline, November 21, 2013. https://www.healthline.com/health/pelvic-exam.Hsieh, Paul. "Pelvic Exams On Anesthetized Women Without Consent: A Troubling And Outdated Practice." Forbes, May 14, 2018. https://www.forbes.com/sites/paulhsieh/2018/05/14/pelvic-exams-on-anesthetized-women-without-consent-a-troubling-and-outdated-practice/.O'Neill, Onora. "Paternalism and Partial Autonomy." Journal of Medical Ethics 10 (1984): 173–78.Picard, Andre. "Time to End Pelvic Exams Done without Consent." The Globe and Mail, January 28, 2010. https://www.theglobeandmail.com/life/health-and-fitness/time-to-end-pelvic-exams-done-without-consent/article4325965/.Wainberg, Sara, Heather Wrigley, Justine Fair, and Sue Ross. "Teaching Pelvic Examinations Under Anaesthesia: What Do Women Think?" Journal of Obstetrics and Gynaecology Canada 32, no. 1 (January 1, 2010): 49–53. https://doi.org/10.1016/S1701-2163(16)34404-8.Wilson, Robin Fretwell. "Unauthorized Practice: Teaching Pelvic Examination on Women under Anesthesia." Journal of the American Medical Women's Association (1972) 58, no. 4 (2003): 217–20; discussion 221-222.Wilson, Robin Fretwell, and Anthony Michael Kreis. "#JustAsk: Stop Treating Unconscious Female Patients like Cadavers." chicagotribune.com. Accessed March 28, 2022. https://www.chicagotribune.com/opinion/commentary/ct-perspec-pelvic-nonconsensual-exam-medical-students-vagina-medical-1203-story.html.

MISSOURI HOUSE OF REPRESENTATIVES

WITNESS APPEARANCE FORM

BILL NUMBER: **HB 1742**	DATE: **3/29/2022**
COMMITTEE: **Emerging Issues**	

TESTIFYING: ☑ IN SUPPORT OF ☐ IN OPPOSITION TO ☐ FOR INFORMATIONAL PURPOSES

WITNESS NAME

INDIVIDUAL:

WITNESS NAME: **KATELYN BRADY**	PHONE NUMBER:	
BUSINESS/ORGANIZATION NAME:	TITLE:	
ADDRESS:		
CITY:	STATE:	ZIP:

EMAIL: **katybrady14@gmail.com**	ATTENDANCE: **Written**	SUBMIT DATE: **3/28/2022 9:01 PM**

THE INFORMATION ON THIS FORM IS PUBLIC RECORD UNDER CHAPTER 610, RSMo.

Katelyn Brady 2345 Hunters Crest DriveWildwood, MO 63038Dear Members of the House Emerging Issues Committee:I write in support of Missouri House Bill 1742, which states that "A health care provider, or any student under the supervision of a health care provider, shall not knowingly perform a patient examination upon an anesthetized or unconscious patient in a health care facility…" This law accords patients the respect to decide what happens with their bodies. This long has been a given in the medical field for procedures generally. Justice Cardozo famously observed in 1914 that "[e]very human being of adult years and sound mind has a right to determine what shall be done with his body" (Schloendorff v Society of N.Y. Hosp., (N.Y., Apr. 14, 1914)).News accounts in Missouri show that patients are being practiced upon without consent. ADD JILL story.There is no reason why patients cannot be asked for consent. Hospitals already have HIPAA consent forms and in-patient admission forms. Asking for consent for the teaching of intimate exams—which benefits the students, not the patients—should be made part of every surgical encounter when patients are admitted for gynecological surgery. It is that simple.Hospitals and doctors may balk, saying it is too burdensome.But financial institutions, like the one I work for, are regulated heavily, too. We do this precisely to protect people's financial security and privacy. If financial institutions can be asked to respect privacy and people's need for security in their financial affairs, surely hospitals and doctors can be asked to respect women, and men, in the integrity of their bodies.Thank you for making good on Justice Cardozo's promise that each of us has the right "to determine what shall be done with his body." Very Truly Yours,Katelyn Brady

MISSOURI HOUSE OF REPRESENTATIVES

WITNESS APPEARANCE FORM

BILL NUMBER: **HB 1742**	DATE: **3/29/2022**
COMMITTEE: **Emerging Issues**	

TESTIFYING: ☑ IN SUPPORT OF ☐ IN OPPOSITION TO ☐ FOR INFORMATIONAL PURPOSES

WITNESS NAME

INDIVIDUAL:

WITNESS NAME: **LIVIA FRY**	PHONE NUMBER:	
BUSINESS/ORGANIZATION NAME:	TITLE:	
ADDRESS:		
CITY:	STATE:	ZIP:

EMAIL: **liviaann1@gmail.com**	ATTENDANCE: **Written**	SUBMIT DATE: **3/28/2022 9:14 PM**

THE INFORMATION ON THIS FORM IS PUBLIC RECORD UNDER CHAPTER 610, RSMo.

Testimony in Support of House Bill 1742House Emerging Issues CommitteeMarch 26, 2022Submitted by Livia FryDear Members of the House Emerging Issues Committee:I write to you in support of House Bill 1742, which would require a healthcare provider or any student under the supervision of a healthcare provider to obtain specific informed consent to patient examinations.The passage of this important legislation would bring the great state of Missouri into the growing group of states (21 in total with bills pending in several others) that are proactively recognizing and protecting bodily autonomy vis-a-vis medical education while also ensuring medical students are being given a holistic education without being subjected to the moral and psychological stress of being forced to conduct an intimate examination on patients' without their consent. As a survivor of non-consensual teaching practices, it makes me so happy to see Missouri taking this step, and I think it really speaks to the concern and care your state's legislators have for the dignity, autonomy, and well-being of Missourians. I give this testimony as someone who has experienced firsthand the harm that non-consensual teaching practices in medical schools cause, and is therefore somewhat uniquely able to speak to the acute need for the passage of this bill. For me, it began when I was about nine years old, and lasted several years until I was thirteen or fourteen. It happened at the hands of an attending physician, in the name of educating the next generation of doctors. It was justified, much the same way unauthorized pelvic and rectal examinations are, as a necessary component of medical education and an "invaluable" experience for the physicians-in-training who participated in it. It was allowed because there were no laws in place to protect me. And it has left me with PTSD. I hope that by sharing my story, I can convince you of the need for this legislation. Its passage will protect countless Missourians from the humiliation and degradation of having one's body reduced to a teaching tool without their explicit and informed consent, and from the short and long-term trauma and distress - and negative mental health outcomes - that result from non-consensual examinations. When I was a young child, my family was referred to a physician who practiced out of a prominent teaching hospital to get me treatment for a skin condition called vitiligo. We were given the impression that because of my age, we needed someone who specialized in treating the condition in children. We were told this teaching hospital was the only option - whether we wanted a teaching institution or not, this was where we had to go. And when students entered with the attending physician, my family was under the impression we had to let them stay. Nobody asked her if their presence made us uncomfortable - certainly nobody asked me. The language allowing them to be there was vague and buried in the middle of consent forms - much the same way language allowing intimate exams under anesthesia or sedation or while unconscious often is currently. We didn't understand what we were signing up for - much the same way many of today's victims of non-consensual intimate examinations do not. That was the first time I was forced to show my naked body to strangers for the purpose of furthering their education. The first time I was reduced from a human being to a teaching tool - an object, or an exhibition. The first time I

learned what it felt like to be violated.A typical appointment went like this: after being taken back to an exam room, I was told to remove all my clothes, except for my underwear, and put on a paper gown. Then, the doctor would walk in with whatever doctors-in-training would be viewing my naked body that day. They were oftentimes men - whether someone of the opposite sex staring at the naked body of a little girl was humiliating or scary for me was never considered. At each examination, the doctor looked at my full body, to see if any new patches of skin showed signs of having lost their pigment, which is how my condition manifests. By itself, an examination is innocuous - a necessary part of providing healthcare. But during these examinations he put my full, naked body on display for his students - like an exhibit or a sideshow. And when I say my full body, I mean exactly that. I was forced to lie on a table while he pulled back the flimsy paper gown I was wearing to expose my chest, my back, my belly - and everything else one typically does not show publicly. The part I hated most was when he would pull down my underwear. To this day I feel his hands on me, pulling down the thin piece of cloth that protected me from the strange eyes standing behind him, staring at my most private areas. I was so acutely aware of those eyes - gaping at me like someone usually gawks at an animal in a zoo - that I could physically feel them on my skin. They had no regard for my dignity, my privacy, or my feelings. They only cared about how they could use me - how the use of my body was furthering their education. On one or two occasions, they photographed me. To this day, I live with the fact that naked photos of my prepubescent body have been viewed by who knows how many students, interns, and residents. I was made to feel lower than an animal every time I stepped into that institution's exam rooms, and I have been left with a lifetime of pain and anxiety - and even Post Traumatic Stress Disorder - because of what was done to me. Because of what happened - because I learned at such a young age how it feels to have one's bodily autonomy taken away and one's body used for the benefit of others, I am terrified of healthcare settings and healthcare professionals. I have flashbacks, nightmares, and panic attacks. And do you remember the story I told earlier, about my least favorite part of examinations being when the doctor would pull down my underwear and allow his students to view my buttocks and genitalia? Because of that, I can't allow anyone to touch my belly - it is excruciating to me, under any circumstances. His hands would always graze my lower belly when he would move to pull my underwear down - and I still feel them there. The mere sensation of fingertips on the skin triggers a flashback and causes me to involuntarily recoil - even to scream involuntarily. If that is the impact that photographs and examinations that were not physically invasive can have, imagine the suffering someone subjected to an unauthorized pelvic or rectal examination for the purpose of student practice must endure. Even if someone is unconscious, the body remembers. And - horrifyingly enough - some people wake up during these exams, or learn about them later from providers who let the information slip in the course of follow up conversations. What must it feel like to enter a hospital for, let's say, a stomach surgery, only to wake up and learn that you were digitally penetrated without your consent - without knowing that this was even a possibility - so that a student (or even multiple students, several in a row) could tick a box on the list of their required clinical experiences. What must it feel like to learn, after this sickening revelation, that because there is no legislation in place to protect you, a loophole and overly broad and vague language in one of the many consent forms you had to sign in order to access critical treatment means that you have no legal recourse? Worse yet - you have no way to ensure it won't happen again. Some medical practitioners and medical societies may try to argue that by seeking treatment at a teaching hospital, patients are giving "implied consent." The fact is, that argument does not hold up, even under the most superficial scrutiny. Patients often do not have a choice regarding the hospital they are brought to for care. In emergency situations when patients are unconscious or otherwise cannot speak for themselves they cannot choose where they are brought. In such situations consent to lifesaving treatment is implied - but consent to the use of their bodies for practice by medical students or trainees is not. And then there are the cases like mine. The cases in which patients or caregivers are told a particular specialist is the only one that can help them or their loved ones, and that specialist happens to practice exclusively out of a teaching institution. Should we be denied the opportunity to receive care just because we do not want our bodies used as specimens or teaching tools? Medical care exists to serve the needs of patients - not students, not trainees, and not the attending physicians teaching them. We should not be required to pay for the services we need with our bodies, and regardless of the circumstances consent to the use of our bodies for educational purposes cannot and should not ever be assumed. Medical schools and medical societies may also argue that the passage of this bill would endanger or impede high-quality medical education in Missouri. That is simply not true. If anything, this bill stands to not only protect medical students along with patients but also to ensure that they are equipped with the tools they need to become better clinicians. Many medical students express a great deal of psychological and moral distress at having to perform intimate examinations without patient consent, but fear repercussions from attending physicians and school administrators should they refuse. A 2019 survey found that nearly ? of the medical students surveyed felt they could not opt out or insist on patient consent without jeopardizing their careers. Anecdotally, I once spoke with a medical student who did refuse to perform a pelvic exam

on an unconscious woman without her consent, only for the attending physician to threaten to block the student from completing their OBGYN rotation and, in doing so, impede their ability to complete medical school and become a doctor. And in a 2019 interview with Dr. Jennifer Tsai, a medical student called Dominic recalled feeling sick after being required to perform a prostate examination on an anesthetized man without that man's consent. His exact words were "I feel like I just sexually assaulted a patient" and "That I had to violate a patient's bodily autonomy in order to check off a requirement for a pass/fail one-week rotation is absurd." The fact is - Dominic didn't have to violate that patient's bodily autonomy. He only did so because his school forced him to, for no other reason than it was more convenient than taking an additional few minutes to obtain the patient's consent. Studies and surveys have shown that up to 90% of patients would consent to practice examinations by students if asked - but those same patients report they would feel violated if those examinations were done without their direct and informed consent. Even doctors recognize that teaching students to get informed consent doesn't detract from medical education, but adds to it. In testimony on a similar bill to this, Dr. Ari Silver-Isenstadt stated "ensuring patients' autonomy is respect will not tax our profession…quite the contrary, it will allow us to safeguard the wellbeing of all of our patients and the integrity of our profession." Finally, also according to Dr. Silver-Isenstadt, there is significant literature showing "that the ethical judgments of aspiring doctors get worse as they progress through their medical education…first and second year students identify more ethical concerns than in later years…this suggests that their sensibilities harden." In other words, medical education as it stands is actually harming the ability of future doctors to make sound ethical judgements, rather than equipping them with the skills to do so. In the long run, that produces clinicians who are out less able to build provider-patient relationships based on trust and mutual respect, and therefore to provide appropriate individualized care. The passage of this legislation would correct that flaw, and ensure that Missouri takes a leading role in educating future generations of doctors who are not only well-versed in the science of medicine, but also the art of holistic patient care. Until this bill becomes law, every Missourian runs the risk of undergoing a non-consensual intimate examination at the hands of medical students. Current laws and policies dealing with consent to teaching examinations are not sufficient. Your constituents are counting on you to pass legislation that will protect them when they are at their most vulnerable. And residents of other states - including myself and my fellow residents of Connecticut - are looking to you to set an example for those states in which the legislature still has yet to codify the right to dignity and bodily autonomy in healthcare in law. Missouri has the opportunity to join the states setting the standard for safe, dignified, patient-centered healthcare for the rest of our country - please take it, and pass this crucial bill. Sincerely,Livia Fry

MISSOURI HOUSE OF REPRESENTATIVES

WITNESS APPEARANCE FORM

BILL NUMBER: **HB 1742**	DATE: **3/29/2022**
COMMITTEE: **Emerging Issues**	

TESTIFYING: ☑ IN SUPPORT OF ☐ IN OPPOSITION TO ☐ FOR INFORMATIONAL PURPOSES

WITNESS NAME

INDIVIDUAL:

WITNESS NAME: **ROBERT GATTER**	PHONE NUMBER:	
BUSINESS/ORGANIZATION NAME:	TITLE:	
ADDRESS:		
CITY:	STATE:	ZIP:

EMAIL: **robert.gatter@slu.edu**	ATTENDANCE: **Written**	SUBMIT DATE: **3/29/2022 9:09 AM**

THE INFORMATION ON THIS FORM IS PUBLIC RECORD UNDER CHAPTER 610, RSMo.

March 28, 2022Missouri House of RepresentativesHouse Emerging Issues CommitteeJefferson City, MissouriRe: House Bill 1742Dear Committee Members,I write in support of H.B. 1742. It prohibits a physician (and anystudent the physician supervises) from conducting a prostate, anal or pelvic examination on any patient who is anesthetized or otherwise unconscious unless the "patient or a person authorized to make health care decisions for the patient has given specific informed consent to the physical examination."I have expertise in informed consent law and its role in promoting medical trust. I havetaught courses and published academic works on health law for the last 25 years. Fornearly ten years, I also directed the Center for Health Law Studies at Saint Louis University, one of the nation's premiere health law programs. Additionally, my work has included teaching and research on informed consent law.The trustworthiness of health care providers is an essential component of an effectivehealth care system. Patients who trust their physicians are less likely to delay seeking care than are others when they experience initial symptoms of illness.1 Additionally, increased patient trust in physicians is associated with greater compliance with treatment plans and better health outcomes.2Additionally, the informed consent doctrine is clearest way the law protects the liberty of patients to control their medical treatment.3 It requires physicians first to inform patients of their treatment options and the risks associated with those options. Second, it prohibits physicians from treating a patient without first obtaining the patient's consent. Patients experience autonomy in health care because of this doctrine.Moreover, the legal requirement to obtain a patient's informed consent to treatment is essential to promoting the trustworthiness of health care providers. Physicians who inform1 Robert Gatter, The Mysterious Survival of the Policy Against Informed Consent Liability for Hospitals, 81 Notre Dame L. Rev. 1203, 1263 (2006).2 Id.3 Robert Gatter, Informed Consent Law and the Forgotten Duty of Physician Inquiry, 31 Loy. U. Chi. L.J. 557, 581 (2000) ("The doctrine of informed consent is founded on a principle of autonomy").their patients of the nature and risks of a particular treatment plan and who ask their patients whether they consent to undergoing the treatment display their trustworthiness to patients. They encourage "a patient, already vulnerable as a result of an illness or injury, [to] choose[] to make herself more vulnerable by placing her health interests in the hands of health professionals . . . in the belief that they will help her achieve improved health."4It is hard to imagine a patient more vulnerable than a patient who is anesthetized or otherwise unconscious. And it is hard to imagine an examination more personally invasive than a prostate, anal or pelvic exam. Performing such an exam without the knowledge and permission of the patient is a profound violation of the very trust that is essential to just and effective medical care. Thus, it is vital that state law assures the application of the informed consent doctrine in this circumstance.For these reasons, I encourage the Committee to vote in favor of H.B. 1742. It will promote patient autonomy, foster trust in health care, and help secure just and effective health care in Missouri.Sincerely,Robert GatterSaint

Louis University Professor of Law

MISSOURI HOUSE OF REPRESENTATIVES

WITNESS APPEARANCE FORM

BILL NUMBER: **HB 1742**	DATE: **3/29/2022**
COMMITTEE: **Emerging Issues**	

TESTIFYING: ☑ IN SUPPORT OF ☐ IN OPPOSITION TO ☐ FOR INFORMATIONAL PURPOSES

WITNESS NAME

INDIVIDUAL:

WITNESS NAME: **ROBIN FRETWELL WILSON**	PHONE NUMBER:	
BUSINESS/ORGANIZATION NAME:	TITLE:	
ADDRESS:		
CITY:	STATE:	ZIP:

EMAIL: **wils@illinois.edu**	ATTENDANCE: **In-Person**	SUBMIT DATE: **3/28/2022 9:58 PM**

THE INFORMATION ON THIS FORM IS PUBLIC RECORD UNDER CHAPTER 610, RSMo.

U N I V E R S I T Y O F I L L I N O I S AT URBANA-CHAMPAIGN

March 28, 2022BY EMAIL Re: House Bill 1742 Dear Members of the Emerging Issues Committee:We write to support House Bill 1742 which would prohibit intimate prostate, anal or pelvic examinations on anesthetized or unconscious patients for medical teaching purposes, without the patient's informed consent. The passage of House Bill 1742 will ensure that norms of autonomy for all persons are honored and that no one is treated as a means to an end. As we explain below, requiring informed consent for intimate exams guarantees the dignity and respect that patients deserve without jeopardizing the quality of medical education in Missouri.Part A of this letter applauds this important legislation, which when signed into law, would place Missouri squarely within the growing number of states, most recently Nevada, giving patients the right to decide whether medical or nursing students will perform intimate exams on them for the students' learning. Part B addresses the claim that lawmakers should not act because unconsented exams simply do not occur. If unconsented exams do occur, asking for specific consent gives patients the dignity and autonomy all patients deserve—and if teaching exams never occur without consent, House Bill 1742 still reinforces the norm that all patients should be respected in deciding what happens with their bodies. Part C details the extent of intimate examinations for medical training without the patient's consent. Part D describes legislation in twenty states that requires consent. The consensus of medical ethics groups is that such intimate exams should not occur without consent. Parts E, F, and G refute common justifications for performing such intimate exams without permission. Specifically, Parts E and F rebut the unfounded justification that patients have impliedly or expressly consented upon admission to the hospital. Part G shows empirically, that when asked, patients consent to practice exams in overwhelming numbers and consequently, should be enlisted as "respected partners" in medical teaching. Part H remarks on the thoughtful construction of the bill's language. A. House Bill 1742 Would Provide Crucial Protections Passage of House Bill 1742 would place Missouri within an emerging legislative trend to require healthcare providers to ask permission before using patients as tools for teaching intimate exams. Arizona, Arkansas, California, Delaware, Florida, Hawaii, Illinois, Iowa, Louisiana, Maine, Maryland, New Hampshire, New York, Oregon, Utah, Virginia, Washington, Texas, Nevada and most recently, New Jersey all require explicit consent for intimate examinations performed on unconscious patients for teaching purposes. Fourteen of these states enacted laws in the last thirty-six months. See Table 1.Table 1Features of Enacted Intimate Exam Legislation * "Healthcare System" refers to hospitals and institutions. Even if trainees are not explicitly mentioned in the language of the bill, the bill applies to them if there is mention of a health care professional "supervising" an exam. Like the laws of those states, House Bill 1742 would ensure thatA health care provider, as such term is defined in section 191.900, or any student under the supervision of a health care provider, shall not knowingly perform a patient examination upon an anesthetized or unconscious**

patient in a health care facility unless:(1) The patient or a person authorized to make health care decisions for the patient has given specific informed consent to the patient examination;(2) The patient examination is necessary for diagnostic or treatment purposes; or(3) A court orders the performance of the patient examination for the collection of evidence. This duty can be fulfilled with no added cost. Hospitals already facilitate the duty by physicians to obtain informed consent to medical procedures. Thus, hospitals can facilitate informed consent.Bioethicists see this as a given. The former director of the Center for Bioethics and Medical Humanities at the Medical College of Wisconsin, Robyn Shapiro, said: "I would be very surprised to run across a state that didn't have that sort of a law." B.

Answering The It "Does Not Happen Here" ClaimSome medical educators and hospital administrators reflexively assume that unconsented to exams never occur. As we show below, intimate teaching exams without consent have persisted for the two decades that one of us has worked on this question. As McGill University Bioethics Professor Phoebe Friesen states, medical students widely report being asked to do such exams without the specific consent of the patients. Against this evidence, some medical educators contend that laws are unnecessary because the communication about the educational nature of the exam is already transparent. Yet, in the recent months, patients have come forward after discovering that they have been used for medical teaching without permission, as we show below. The patients say they were never asked. Without disclosure, how would they have ever known? By their very nature, teaching intimate exams, whether prostate or pelvic, occur while the patient is under anesthesia or unconscious. Asking patients to police what is happening to them while they are asleep is asking them to do the impossible. And asking medical students to act as whistleblowers to end this practice is unrealistic and unfair.Given the fast pace of medical education and teaching on the wards, teaching faculty may simply be unaware when a student or faculty member forgets to ask for specific permission, whether advertent or inadvertent. Further, given the rise of community teaching hospitals, it is difficult for medical schools and their principal teaching hospitals to know whether their rigorous consent practices are adhered to at smaller, far-flung hospitals where medical teaching occurs. Hence the need for this bill.Take as an example the stock disclosure given by a significant teaching hospital elsewhere, Yale University Hospital. Yale's hospital admission form shows that the educational nature of exams is anything but transparent. The form vaguely provides:"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 procedure."9Helping care for the patient and training by using the patient are two different things.This sentence does not alert the patient that a pelvic or prostate examination may be performed for somebody else's educational benefit. House Bill 5278 asks that the involvement of everyone, especially medical trainees, be explicitly explained.Consider the experience of the state of Maryland. Maryland recognized that while the state's teaching hospitals have informed consent policies, an explicit state law would protect patients and assure students that they would not be asked to do something unethical. The sponsor of New York's recent law, Senator Jessica Ramos, put it this way: "The importance of instilling the value of informed consent on medical students cannot be underestimated." Maine lawmakers enacted a specific consent law precisely so that "medical students asked to perform the procedure know they are acting ethically." Trust in the health care system and professions is vital as it affects patient satisfaction, willingness to seek care, and treatment compliance. Moreover, trust is essential to the physician-patient relationship because of the inherent risk and uncertainty of medical care. In 2018, only 34% of Americans reported a positive view of the healthcare industry. This is a staggering decrease from 1975, when 80% reported a positive view.More fundamentally, House Bill 1742 is valuable and should be enacted, whether or not strong evidence shows that unconsented exams are occurring. If unconsented exams do occur, asking for specific consent gives patients the dignity and autonomy all patients deserve. And if such exams never occur without consent, House Bill 1742 will reinforce the norm that all patients should be respected in deciding what happens with their bodies. And it will teach students that consent is non-negotiable.House Bill 1742 is a no-harm-no-foul proposition, even as to facilities that have already instituted policies that respect patient autonomy and will ensure that specific consent is afforded to all people, men and women.C. The Extent of the PracticeDespite widespread ethical condemnation that "the practice of performing pelvic examinations on women under anesthesia, without their knowledge and approval, [is] unethical and unacceptable," experience shows that unauthorized exams continue across the U.S. One of us recently wrote about a woman in Arizona who discovered she received an unauthorized pelvic exam after stomach, not gynecological surgery.21 In testimony to the Utah Senate Health and Human Services Committee, Ms. Ashley Weitz, testified that she had an unauthorized pelvic exam while sedated in the emergency room.22 Medical students from Duke and other institutions say that they have been asked to do exams without consent.23Unconsented pelvic examinations occur in Missouri. A Professor of Philosophy at the University of Missouri-St. Louis, Jill Delston, documents the practice of intimate exams in her book, "Medical Sexism Contraception Access, Reproductive Medicine, and Health Care." She notes how the practice is still present to this day despite medical schools, claiming that they "do not perform such

examinations without meeting a strict set of guidelines, including full consent." Professor Delston in radio interviews has said that I do have medical professionals come up to me and say, 'Yes, this is something I've experienced or I have done,'" Delston said. "So yes, I think it's still occurring." Missouri's eleven teaching hospitals, where medical students train, cross-cross Missouri. Empirical studies document the persistent nature of unauthorized pelvic examinations. A recent 2020 survey accepted by the 2021 Council on Resident Education in Obstetrics and Gynecology & The American College of Obstetricians and Gynecologists Annual Meeting reported that 83.6% of the medical students surveyed across five medical schools attached to large academic medical centers performed a pelvic exam on a patient under anesthesia. When asked how often patients were explicitly told that an educational pelvic examination would take place under anesthesia, only 17% of surveyed students replied "every time." Notably, 22.3% replied "rarely" and 20.3% replied "never." Clearly, ethics pronouncements and media attention have not sufficed to ensure that patients are asked to be used for teaching purposes. Historic studies show the same pattern. A 2005 survey of medical students at the University of Oklahoma found that a large majority had performed educational pelvic examinations on patients under anesthesia—in nearly three of four instances, consent was not obtained. In 2003, Peter Ubel and Ari Silver-Isenstadt reported that 90% of medical students at five Philadelphia-area medical schools performed pelvic examinations on anesthetized patients for educational purposes during their obstetrics/gynecology rotation. In 1992, Charles Beckmann reported that 37.3% of United States and Canadian medical schools reported using anesthetized patients to teach pelvic exams. D. The Legislative and Professional ResponseIn response to this unauthorized use of patients, twenty U.S. states by legislation now require explicit consent for pelvic examinations on unconscious patients for medical teaching purposes. This legislation reflects the consensus of professional medical organizations that healthcare providers should obtain explicit for intimate teaching exams. In the "Statement on Patient Rights and Medical Training" in 2003, the American Association of Medical Colleges, which-- represents 144 accredited U.S. and 17 accredited Canadian medical schools; nearly 400 major teaching hospitals and health systems, including 51 Department of Veterans Affairs medical centers; and 90 academic and scientific societies described—"pelvic examinations on women under anesthesia, without their knowledge and approval ... [as] unethical and unacceptable." The organization has maintained this position since.In an August 2011 Committee on Ethics ruling reaffirmed in 2020, the American College of Obstetricians and Gynecologists provided that "[r]espect for patient autonomy requires patients be allowed to choose to not be cared for or treated by [medical student] learners when this is feasible." The Ethics Committee ruling applied this ethical tenant to pelvic examinations specifically: "Pelvic examinations on an anesthetized woman that offer her no personal benefit and are performed solely for teaching purposes should be performed only with her specific informed consent before her surgery." An American Medical Association Forum in January 2019, authored by Professor of Medical Science Eli Y. Adashi at Brown University's Warren Alpert Medical School, called unconsented exams "a lingering stain on the history of medical education." A growing chorus of bioethicists challenge the need for unconsented exams. Pelvic examinations have a "different moral significance than suturing a wound." Even when pelvic examinations are done with a woman's knowledge, women are "frequently nervous before [the procedure], reporting feeling vulnerable, embarrassed, and subordinate." Significantly, the feelings of distress are heightened for victims of sexual assault. Pelvic examinations are especially sensitive experiences. As the next Parts of this letter demonstrate, however, some teaching faculty offer a number of falsifiable justifications for dispensing with the simple step of asking for permission. E. Patients Have Not Implicitly Consented to Intimate Educational ExamsThe first justification that teaching faculty advance is that patients have implicitly consented by accepting care at a teaching hospital. Empirical evidence suggests that many patients do not consciously choose teaching facilities or even know they are in one. Indeed, in the U.S., a large number of facilities give little indication to prospective patients of the hospital's teaching status. Public disclosure of hospitals' teaching status varies drastically. Some hospitals, like Duke University Medical Center and The Johns Hopkins Hospital, indicate their medical school affiliation in their name. Of the approximately 400 members of the Association of American Medical Colleges Hospital/Health System Members, only 94 —less than 25%—contain the word "college" or "university" in their name. University of Missouri Health Care consists of University Hospital and Clinics, Ellis Fischel Cancer Center, Women's Hospital, Children's Hospital, the Missouri Orthopaedic Institute and the Missouri Psychiatric Center, all based in Columbia, as well as 51 clinics, centers and institutes. Many of these institutions' names do not suggest any affiliation with the University of Missouri School of Medicine or otherwise tip patients off to their status as a teaching hospital. Consider the hospital affiliations of Saint Louis University School of Medicine. While some names suggest an affiliation with the School of Medicine—such as the SSM Health Saint Louis University Hospital —others, like Mercy Hospital St. Louis or St. Luke's Des Peres Hospital would be harder to recognize. While a hospital's name or website may not relay its teaching mission to patients, physical proximity to a medical school can, arguably, give patients constructive notice of a hospital's teaching status. Reasonably, a patient

may know that New York-Presbyterian Hospital, located less than sixty feet from the Columbia Medical University College of Physicians & Surgeons, is a teaching hospital. However, patients at the 11 facilities associated with Columbia's medical school throughout New York, Connecticut, and New Jersey cannot possibly know on constructive notice without doing their own research online. F. Patients Have Not Expressly Consented to Intimate Educational ExamsMany teaching faculty assert that the patient has consented to educational exams upon admission. This claim takes two forms: In the stronger form, teaching faculty assert that the student's pelvic exam is an ordinary component of the surgery to which the patient has consented. A variant on this claim holds that if consent was obtained for one procedure, it encompasses consent for additional, educational procedures. This is just not so as a matter of contract interpretation. In a typical consent form, patients will:[A]gree and give consent to [teaching hospital], its employees, agents, the treating physician ... medical residents and Housestaff to diagnose and treat the patient named on this consent to any and all treatment which includes, but might not be limited to ... examinations and other procedures related to the routine diagnosis and treatment of the patient. The typical admission form authorizes care for the patient's benefit, not for student educational purposes.Some teaching faculty and residents believe that additional exams by students are, in fact, for the patient's benefit because the student might detect something missed by others. Yet, a patient would not receive multiple exams in a non-teaching facility context and the better practice would be to ask for permission for all exams—both those needed to reconfirm a diagnosis before surgery and any additional educational exam.Yale's hospital consent form, quoted previously in Part C, would lead a reasonable patient to believe that the exams and procedures are needed for the patient's benefit. Consider the following provisions from the consent form48:I understand the purpose and potential benefits of the procedure in relation to my goals.I give permission to my responsible practitioner to do whatever may be necessary if there is a complication or unforeseen condition during my procedure.The former provision states the procedure is to further the patient's personal goals.The latter provision only gives permission to the "responsible practitioner" in the course of the patient's procedure. As previously mentioned in Part C, those in training "may help." However, this description of their role should not encompass educational exams conducted for their own learning experience.This authorization should encompass only the treatment that patients would expect to receive when checking into a health care facility— treatment that provides the patients with a direct benefit.Some teaching faculty and residents believe that additional exams by students are, in fact, for the patient's benefit because the student might detect something missed by others. Yet, a patient would not receive multiple exams in a non-teaching facility context and the better practice would be to ask for permission for all exams—both those needed to reconfirm a diagnosis before surgery and any additional educational exam.G. Exaggerated Fears of Widespread RefusalSome members of the medical education community argue that performing educational exams without specific consent is necessary. Their argument is essentially that "we can't ask you, because if we ask, you won't consent." However, studies have shown that women will consent to pelvic examinations for educational purposes. These include not only "hypothetical" studies—asking patients how they would respond if asked to do a variety of things—but also studies of actual women giving consent to real exams.A 2010 Canadian study found that 62% of women surveyed said they would consent to medical students doing pelvic examinations, 5% would consent for female students only, and only 14% would refuse. In a private practice setting, another study found refusal rates of approximately 5% to perform educational pelvic exams. In yet another study, 61% of outpatients reported that they would definitely allow, probably allow, or were unsure whether they would allow a pelvic examination. Even more women consent to examinations before surgery. In one study in the U.K., 85% of patients awaiting surgery consented to educational exams by students while the patient was under anesthesia. These studies involved actual patients giving actual consent to real exams by real students. Responding to hypothetical questions, more than half of the patients surveyed in another study (53%) would consent or were unsure if they would consent to pelvic exams, if asked prior to surgery. H. Thoughtful Construction of House Bill 1742 and The Need for RegulationSelf-regulation in the medical field is prized. But states, in fact, regulate healthcare and physicians in particular when important societal values are at stake. Consider medical records. Along with the federal medical records protections, Missouri enacted "The Privacy Rule & Protected Health Information ("PHI")" to guide privacy protection. Such Missouri statutes limits the sharing of protected health information and sets standards to protected health information. The sponsors of this bill have put much thought into constructing the language of House Bill 1742 so that its implementation does not become a burden. The bill was tailored so it would be feasible in practice and not hinder the medical processes. Most importantly, House Bill 1742 promotes accountability by requiring that "[a] health care provider who violates the provisions of this section, or who supervises a student who violates the provisions of this section, shall be subject to discipline by any licensing board that licenses the health care provider." I. ConclusionWithout adequate safeguards to protect the autonomy of women and men to consent to medical teaching, many will be reduced into acting as "medical

practice dummies" without their permission. Patients would gladly consent if only asked. House Bill 1742 would bring Missouri into line with other states that give women the autonomy to decide to participate in medical teaching. It would affirm the dignity of persons at a time of great vulnerability, building trust in the healthcare system.We welcome any opportunity to provide further information or analysis or testimony to the Missouri General Assembly.Respectfully Yours, Robin Fretwell WilsonMildred Van Voorhis Jones Chair in LawUniversity of Illinois College of Law Katja BrutusEpstein Health Law and Policy Program LiasionBachelor of ScienceFlorida International University Aurelia CarulliInterdisciplinary Health Sciences InternBachelor of Science, Expected May 2022University of Illinois Urbana-Champaign 1 House Bill 1742. 2 Jennifer Goedken, Pelvic Examinations Under Anesthesia: An Important Teaching Tool, 8 J. HEALTH CARE L.& POL'Y 234, 235 (2005).3 See infra Part C. 4 House Bill 1742. 5 Alan Meisel, Canterbury v. Spence: The Inadvertent Landmark Case, HEALTH LAW AND BIOETHICS: CASES IN CONTEXT (Sandra H. Johnson, Joan H. Krause, Richard S. Saver, & Robin Fretwell Wilson, eds., Aspen Publishers, 2009).6 Lorelei Laird, Pelvic exams performed without patients' permission spur new legislation, AMER. BAR. ASSN. J. (Sept. 1, 2019), https://www.abajournal.com/magazine/article/examined-while-unconscious. 7 Phoebe Friesen, Why Are Pelvic Exams on Unconscious, Unconsenting Women Still Part of Medical Training?, SLATE (Oct. 30, 2018), https://slate.com/technology/2018/10/pelvic-exams-unconscious-women-medical-training-consent.html.88 Julia Cron & Shefaly Pathy, 2 Ob-Gyns, on Pelvic Exams and Patients' Consent, THE N.Y. TIMES (Feb. 24, 2020), https://www.nytimes.com/2020/02/24/opinion/letters/pelvic-exams-consent.html. 9 Robin Fretwell Wilson, Autonomy Suspended: Using Female Patients to Teach Intimate Exams without Their Knowledge or Consent, 8 J. Health Care L. & Pol'y 240 (2005).10 Jennifer McDermott & Carla K. Johnson, States Seek Explicit Patient Consent for Pelvic Exams, NBC CONN. (May 12, 2019, 1:48PM), https://www.nbcconnecticut.com/news/local/bills-seek-special-consent-for-pelvic-exams-under-anesthesia/153538/.11 2019 New York S. 3353.12 Associated Press, States seek explicit patient consent for pelvic exams, NEWS CTR. ME. (May 12, 2019), https://www.newscentermaine.com/article/news/nation-world/states-seek-explicit-patient-consent-for-pelvic-exams/417-03352df8-4979-4152-8b58-26e7b7e205a4.13See generally Oswald A.J. Mascarenhas et al., Hypothesized Predictors of Patient-Physician Trust and Distrust in the Elderly: Implications for Health and Disease Management, 1 CLINICAL INTERVENTIONS AGING 175 (2006). 14 Katrina Armstrong et al., Racial/Ethnic Differences in Physician Distrust in the United States, 97 AMERICAN J. PUB. HEALTH 1283, 1283 (2007). 15Daniel Wolfson, Commentary: Erosion of trust threatens essential element of practicing medicine, MOD. HEALTHCARE (Mar. 9, 2019, 1:00AM), https://www.modernhealthcare.com/opinion-editorial/commentary-erosion-trust-threatens-essential-element-practicing-medicine.16 Am. Ass'n of Med. Colls., AAMC Statement on Patient Rights and Medical Training (June 12, 2003).17 Jill B. Delston, Medical Sexism Contraception Access, Reproductive Medicine, and Health Care, LEXINGTON BOOKS (2019). 18 Sarah Fenske, Missouri Rep. Seeks To Require Consent For Pelvic Exams Of Unconscious Women, St. Louis Public Radio (March 6, 2020), https://news.stlpublicradio.org/show/st-louis-on-the-air/2020-03-06/missouri-rep-seeks-to-require-consent-for-pelvic-exams-of-unconscious-women. 19 Id. 20Missouri Teaching Hospitals, HEALTH GUIDE USA, https://www.healthguideusa.org/teaching_hospitals_missouri.htm (last visited March 28, 2022).21Hannah Millimet et al., Medical Student Perspective on Pelvic Exams Under Anesthesia: A multi-Institutional Study (2020) (unpublished manuscript) (on file with author).22 S. Schniederjan G.K. Donovan, Ethics versus education: pelvic exams on anesthetized women, 98(8) J Okla State Med Assoc 386 (2005).23 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, 635635 AM. J. OBSTETRICS & GYNECOLOGY 575, 579 (2003).24Charles R. B. Beckmann et al., Gynaecological Teaching Associates in the 1990s, 26 MED. EDUC. 105, 106 (1992). 25Unauthorized Pelvic Exams: Public Engagement Initiative, THE EPSTEIN HEALTH LAW AND POLICY PROGRAM, https://www.epsteinprogram.com/pelvic-exams (last visited March 29, 2021). 26See, e.g., Am. Ass'n of Med. Colls., AAMC Statement on Patient Rights and Medical Training (June 12, 2003); American College of Obstetricians and Gynecologists Committee on Ethics, Professional Responsibilities in Obstetric-Gynecologic Medical Education and Training, Ruling No. 500 (August 2011), http://www.acog.org/~/media/Committee%20Opinions/Committee%20on%20Ethics/co500.ashx?dmc=1&ts=20120112T1021153539; Joint Statement of The Association of Academic Professionals in Obstetrics and Gynaecology of Canada and Society of Obstetricians and Gynaecologists of Canada, No. 246 (Sept. 2010) ("[P]atient autonomy should be respected in all clinical and educational interactions. When a medical student is involved in patient care, patients should be told what the student's roles will be, and patients must provide consent. Patient participation in any aspect of medical education should be voluntary and non-discriminatory"). 27Am. Ass'n of Med. Colls., AAMC Statement on Patient Rights and Medical Training (June 12, 2003).28American College of Obstetricians and Gynecologists Committee on Ethics, Professional Responsibilities in Obstetric-Gynecologic Medical Education and Training, Ruling No. 500 (August 2011),

http://www.acog.org/~/media/Committee%20Opinions/Committee%20on%20Ethics/co500.ashx?dmc=1&ts=20120112T1021153539. 29 Id.30Eli Y. Adashi, Teaching Pelvic Examination Under Anesthesia Without Patient Consent, JAMA F. (Jan. 16, 2019), https://newsatjama.jama.com/2019/01/16/jama-forum-teaching-pelvic-examination-under-anesthesia-without-patient-consent/.31 Phoebe Friesen, Why Are Pelvic Exams on Unconscious, Unconsenting Women Still Part of Medical Training?, SLATE (Oct. 30, 2018), https://slate.com/technology/2018/10/pelvic-exams-unconscious-women-medical-training-consent.html.32 Id.; Robin Fretwell Wilson et al., #JustAsk: Stop treating unconscious female patients like cadavers, CHI. TRIB. (Nov. 29, 2018, 3:25PM), https://www.chicagotribune.com/opinion/commentary/ct-perspec-pelvic-nonconsensual-exam-medical-students-vagina-medical-1203-story.html.33 Robin Fretwell Wilson, Unauthorized Practice: Regulating the Use of Anesthetized Recently Deceased, and Conscious Patients in Medical Training, 44 IDAHO L.REV. 423, 427 (2008) (presenting comments by faculty at George Washington University Hospital, UCLA Medical Center, and the Medical University of South Carolina).34 D. King et al., Attitudes of Elderly Patients to Medical Students, 26 MED. EDUC. 360 (1992) (reporting on results of survey, prior to discharge, of patients whose average age was 80 years old).35AAMC Hospital/Health System Members, ASSOCIATION OF AMERICAN MEDICAL COLLEGES, https://members.aamc.org/eweb/DynamicPage.aspx?site=AAMC&webcode=AAMCOrgSearchResult&orgtype=Hospital/Health%20System.36PATIENT CARE, SCHOOL OF MEDICINE UNIVERSITY OF MISSOURI, https://medicine.missouri.edu/patient-care (last visited March 28, 2022).37Facilities and Affiliated Hospitals, SAINT LOUIS UNIVERSITY SCHOOL OF MEDICINE, https://www.slu.edu/medicine/about/facilities/index.php (last visited March 28, 2022).38 SSM Health Saint Louis University Hospital, SSM HEALTH, https://www.ssmhealth.com/locations/saint-louis-university-hospital (last visited March 28, 2022).39 Mercy Hospital St. Louis, MERCY.NET, https://www.mercy.net/practice/mercy-hospital-st-louis/ (last visited March 28, 2022).40 St. Luke's Des Peres Hospital, STLUKES-STL.COM, https://www.stlukes-stl.com/desperes/ (last visited March 28, 2022).41 UW Health and Affiliates, SCHOOL OF MEDICINE AND PUBLIC HEALTH UNIVERSITY OF WISCONSIN-MADISON, https://www.med.wisc.edu/education/graduate-medical-education/uw-health-and-affiliates/ (last visited July 28, 2021). 42 Google Maps gives the distance from Columbia's location at 630 W. 168th Street to New York Presbyterian's location at 622 W. 168th Street as less than 0.01 miles, maps.google.com.43 Affiliated Hospitals and Institutions, COLUMBIA VAGELOS COLLEGE OF PHYSICIANS AND SURGEONS, https://www.ps.columbia.edu/about-us/explore-vp-s/affiliated-hospitals-and-institutions (last visited Mar. 15, 2021). 44 AM. COLL. OF OBSTETRICIANS AND GYNECOLOGISTS (ACOG), COMM. OPINION 181: ETHICAL ISSUES IN OBSTETRIC-GYNECOLOGICAL EDUCATION 2 (1997).45 Liv Osby, MUSC May Change Pelvic Exam Practice, GREENVILLE NEWS (S.C.), Mar. 13, 2003 (quoting the OB/GYN clerkship director at the Medical University of South Carolina, who indicated that "no specific permission" is sought for educational pelvic exams and acknowledged, "maybe this is something we need to revisit").46 See e.g., Michael Ardagh, May We Practise Endotracheal Intubation on the Newly Dead?, 23 J. MED. ETHICS 289, 292 (1997) (making this observation with respect to practicing resuscitation procedures on the recently deceased); A.D. Goldblatt, Don't Ask, Don't Tell: Practicing Minimally Invasive Resuscitation Techniques on the Newly Dead, 25 ANNALS EMERGENCY MED. 86, 87 (1995) (analogizing to "construed consent," which authorizes related tests or diagnostic procedures).47 About Prisma Health, PALMETTO HEALTH RICHLAND, https://www.palmettohealth.org/patients-guests/about-prisma-health.48 S. Wainberg et al., Teaching pelvic examinations under anaesthesia: what do women think?, 32 J OBSTET. GYNAECOL CAN 49 (2010).49 Lawton et al., Patient Consent for Gynaecological Examination, 44 BRIT. J. HOSP. MED. 326, 329 (1990) 50 Peter A. Ubel & Ari Silver-Isenstadt, Are Patients Willing to Participate in Medical Education?, 11 J. CLINICAL ETHICS 230, 232-33 (2000)51`Lawton, supra n. 46, at 329.52 Ubel & Silver-Isenstadt, supra note 47, at 234.53 Roger Collier, Professionalism: The Privilege and Burden of Self-regulation, 184 CAN. MED. ASS'N J. 1559(2012).54 45 C.F.R. § 164.508 Uses and disclosures for which an authorization is required.55 IS AUTHORIZATION REQUIRED TO SHARE INFORMATION WITH PUBLIC HEALTH?, MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES, https://health.mo.gov/information/hipaa/pdf/PublicHealthandHIPAA.pdf (last visited March 28, 2022).56 House Bill 1742. 57 Academic affiliation is for identification purposes only. We write in our individual capacities and our universities take no position on this or any other bill.

MISSOURI HOUSE OF REPRESENTATIVES

WITNESS APPEARANCE FORM

BILL NUMBER: **HB 1742**	DATE: **3/29/2022**
COMMITTEE: **Emerging Issues**	

TESTIFYING: ☑ IN SUPPORT OF ☐ IN OPPOSITION TO ☐ FOR INFORMATIONAL PURPOSES

WITNESS NAME

INDIVIDUAL:

WITNESS NAME: **SAMANTHA MCCOY**	PHONE NUMBER:	
BUSINESS/ORGANIZATION NAME:	TITLE:	
ADDRESS:		
CITY:	STATE:	ZIP:

EMAIL: **mccoysamantha6@gmail.com**	ATTENDANCE: **Written**	SUBMIT DATE: **3/29/2022 8:44 AM**

THE INFORMATION ON THIS FORM IS PUBLIC RECORD UNDER CHAPTER 610, RSMo.

Testimony in Support of House Bill 1742House Emerging Issues Committee March 29, 2022Submitted by Samantha McCoyTo the respected members of the House Emerging Issues Committee:My name is Samantha McCoy, and I am writing today in favor of House Bill 1742. This bill prohibits the practice of non-consensual intimate examinations on unconscious patients. While still permitting students to practice their clinical skills through explicit and informed consent, this bill ensures autonomy and dignity to the patient while facilitating a standard of consent.This bill poses no threat to the quality of education and ensures a minimum level of respect and care toward patients. If asked and informed ahead of time, there are patients in which would consent. This is the proper and only permissible route in which a physician should perform intimate examinations.Clinicians travel to Missouri to practice from throughout the United States with a variety of educational and professional backgrounds. And there is certainly evidence of this practice running rampant throughout the United States.The issue was so perpetual that Dr. Silver -Isenstandt co-authored a study called "Don't Ask, Don't Tell" where he surveyed 401 students at five Pennsylvania schools, ultimately finding that 90 percent of medical students had performed pelvic exams on anesthetized patients and subsequently found that there was a reduced appreciation of the importance of consent by the students. That is simply frightening.It raises the question, why is there so much resistance on simply getting explicit consent? It is a simple ask to a patient that will not only maintain respect and trust for medical professionals, but also ensure a standard of consent throughout the entire medical community. Approximately twenty states have now outlawed this practice, including but not limited to, Texas, New York, Virginia, Iowa, Hawaii, Utah, and Delaware. Recently, the Association of Professors of Gynecology and Obstetrics released a statement recommending that students perform exams on anesthetized patients ONLY when given explicit consent to. Why would these well-respected state legislatures and medical associations be so outspoken if this was not a genuine concern throughout the medical community? The ONLY explanation is that it IS a genuine concern and the repercussions have devastating effects on the patients who are impacted.Missouri law defines sexual abuse when "he or she subjects another person to sexual contact when that person is incapacitated, incapable of consent, or lacks the capacity to consent, or by the use of forcible compulsion." Simply put, not obtaining informed and explicit consent from patients before they are unconscious is sexual assault, as they are unable to and did not consent. Emma Goldberg, She Didn't Want a Pelvic Exam. She Received One Anyway, Feb. 17, 2021, New York Times, https://www.nytimes.com/2020/02/17/health/pelvic-medical-exam-unconscious.html.I am not the only voice in support of this bill and banning this practice entirely. Although created in support of a Connecticut bill, the issue remains the same in Missouri and, significantly, an overwhelming 107 thousand 595 individuals across the United States have signed in favor of banning such an abhorrent practice. Each signature signifies a human being who is frankly horrified by the idea that such a practice continues to date. Each signature is further calling on the respected members

of the Missouri legislature to protect its constituents and ensure medical staff are respecting their patient's rights to say no. Thank you for your time and consideration and I look forward to your favorable votes on HB 1742.Sincerely,Samantha McCoy RSMo Section 566.100. https://www.change.org/p/connecticut-state-house-end-forced-pelvic-exams-in-connecticut?utm_content=cl_sharecopy_30519831_en-US%3A7&recruiter=550101743&utm_source=share_petition&utm_medium=copylink&utm_campaign=share_petition.

MISSOURI HOUSE OF REPRESENTATIVES

WITNESS APPEARANCE FORM

BILL NUMBER: **HB 1742**	DATE: **3/29/2022**
COMMITTEE: **Emerging Issues**	

TESTIFYING: ☑ IN SUPPORT OF ☐ IN OPPOSITION TO ☐ FOR INFORMATIONAL PURPOSES

WITNESS NAME

INDIVIDUAL:

WITNESS NAME: **TIFFANY BRADY**	PHONE NUMBER:	
BUSINESS/ORGANIZATION NAME:	TITLE:	
ADDRESS:		
CITY:	STATE:	ZIP:

EMAIL: **Tifbrady101210@yahoo.com**	ATTENDANCE: **Written**	SUBMIT DATE: **3/28/2022 8:55 PM**

THE INFORMATION ON THIS FORM IS PUBLIC RECORD UNDER CHAPTER 610, RSMo.

Dear Members of the House Emerging Issues Committee,I write to urge the Missouri Legislature to enact House Bill 1742. This bill is sorely needed. It protects the rights of all patients to decide what happens to them while they are in a healthcare facility that trains medical students.I first learned of this issue in the New York Times article, but later read that it happens in Missouri (Sarah Fenske, Missouri Rep. Seeks To Require Consent For Pelvic Exams Of Unconscious Women, St. Louis Public Radio, The Takeaway, March 6, 2020) too. One in six women in America are sexual assault survivors (Victims of Sexual Violence: Statistics, Rape, Abuse & Incest National Network). Can you imagine how devastating it would be for someone who survived a sexual assault, and has put their lives back together, to learn that they had been practiced upon—literally touched in an intimate region without ever having consented? This happens (Emma Goldberg, She didn't want a pelvic exam but got one anyway while under anesthesia, THE NEW YORK TIMES, FEB 18, 2020).Even worse, unconsented training occurs during a procedure when patients cannot protect themselves, speak for themselves, or object—they lose total control because they are sedated or anesthetized.To be sure, many women, including those who are sexual assault survivors, would willingly agree to assist students with their training. I myself just finished training in the healthcare field. We all need those opportunities.But patients should be given the voice and agency to decide for themselves what they are willing to facilitate and what they are not. The whole point of informed consent is the right to consent, or not. Otherwise, informed consent is nothing more than fiction.My son, Blake, was born in Farmington at Parkland Health Center. It is part of the larger BJC HealthCare (BJC HealthCare, https://www.bjc.org/About-Us/BJC-Locations/Parkland-Health-Center), I have no idea if it is a teaching hospital, like Barnes-Jewish Hospital, Washington University School of Medicine's teaching hospital. If Wash U students are given clinical rotations at Parkland, I would have wanted to know if I was being used for their training. And I would have wanted to be asked.I gave birth when I was roughly twenty years old. Nurses and a future doctor were being taught while I was in the hospital with Blake's birth. It made me VERY uncomfortable at the time but I had no idea what to say about my discomfort. I suppose I could have objected but I was in no shape to be doing so at the time. The protocols I believe may be different now, but whatever documents that patients sign upon admission, this needs to be made exceedingly clear.In the Show Me state, certainly, we can show respect, as HB 1742 does.Sincerely,Tiffany Brady

MISSOURI HOUSE OF REPRESENTATIVES

WITNESS APPEARANCE FORM

BILL NUMBER: **HB 1742**	DATE: **3/29/2022**
COMMITTEE: **Emerging Issues**	

TESTIFYING: ☐ IN SUPPORT OF ☐ IN OPPOSITION TO ☑ FOR INFORMATIONAL PURPOSES

WITNESS NAME

BUSINESS/ORGANIZATION:

WITNESS NAME: **MALLORY SCHWARZ**	PHONE NUMBER:	
BUSINESS/ORGANIZATION NAME: **PRO-CHOICE MISSOURI**	TITLE: **EXECUTIVE DIRECTOR**	
ADDRESS:		
CITY: **ST. LOUIS**	STATE: **MO**	ZIP: **63110**
EMAIL: **mallory@prochoicemissouri.org**	ATTENDANCE: **Written**	SUBMIT DATE: **3/29/2022 10:51 PM**

THE INFORMATION ON THIS FORM IS PUBLIC RECORD UNDER CHAPTER 610, RSMo.

HB 1742– Prohibition of Pelvic Examinations on Anesthetized Patients With Exceptions Chairman Patterson, Vice-Chairman Davidson, members of the committee; thank you for the opportunity to submit testimony today for informational purposes on HB 1742 which would prohibit pelvic examinations on anesthetized patients with exceptions.Pro-Choice Missouri works to protect and expand every Missourian's right to bodily autonomy, to access essential reproductive healthcare, to access accurate information in order to make the best decisions for ourselves and our families, and to parent our children in safety and dignity. Moreover, we work to ensure reproductive justice for all Missourians, which includes advocating where our bodily autonomy, family security and physical/mental/spiritual safety connect with our sexual and reproductive lives. Consent is key to dignified, respectful and accurate health care. The American College of Obstetricians and Gynecologists (ACOG) notes that certain examinations, such as pelvic examinations under anesthesia, require "specific consent." However, informed consent has been the standard of care for decades. Medically unnecessary pelvic exams on anesthetized patients without specific consent are already prohibited. Medically unnecessary pelvic exams without specific consent are already prohibited, period. It is unclear whether this legislation is necessary; There has been limited evidence of this practice at specific schools. Pro-Choice Missouri is unaware of evidence of this phenomena in Missouri therefore requiring this legislation. At the same time, the Missouri Department of Health and Senior Services actively requires medically unnecessary pelvic exams for all patients seeking abortions. State mandated, medically unnecessary pelvic examinations imposed on Missouri patients prior to accessing medication abortion violate medical, moral, and personal ethics. Abortion providers in Missouri refuse to take part in this state-sanctioned sexual assault and as a result Missourians do not have access to the safest and earliest method of legal abortion in their home state. Pro-Choice Missouri urges this Committee to prioritize addressing this gross political intrusion by the DHSS while researching the breadth of this issue's impact in Missouri. That said, should HB1742 move forward, Pro-Choice Missouri urges this committee to address and eliminate the exception outlined in this bill for the purpose of fulfilling a court order for the collection of evidence. The experience of medically unnecessary pelvic exams while under anesthesia is not universal and some research suggests Black women and people with vaginas, people of color and those surviving economic insecurity are disproportionately impacted.A 2003 study of 400 medical students, "Don't Ask, Don't Tell," published in the American Journal of Obstetrics and Gynecology recounted an example of racial and economic disparities between patients who are expected to undergo medically unnecessary pelvic exams; medical student Ryan O'Keefe noted, "It leaves a strange feeling in your gut, because it's the most obvious example of how there's different standards of care depending on your insurance status… It's like a tale of two clinics." Due to the disproportionate impositions of these exams on the very same

communities that are disproportionately policed, Black women and people with vaginas, people of color and those surviving economic insecurity, Pro Choice Missouri is gravely concerned with the implications of the exemption outlined in this bill for the purpose of fulfilling a court order for the collection of evidence. It is unclear whether this legislation is necessary. Pro-Choice Missouri urges this Committee to prioritize addressing this gross political intrusion by the DHSS before moving forward with this legislation. However if it moves forward, Pro-Choice Missouri urges the committee to make necessary amendments to this bill to reflect the named concerns.