

# Public Health Committee JOINT FAVORABLE REPORT

**Bill No.:** HB-5278

AN ACT PROHIBITING AN UNAUTHORIZED INTIMATE EXAMINATION ON A PATIENT WHO IS UNDER DEEP SEDATION OR ANESTHESIA OR

**Title:** UNCONSCIOUS.

**Vote Date:** 3/18/2022

**Vote Action:** Joint Favorable

**PH Date:** 3/9/2022

**File No.:** 231

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## **SPONSORS OF BILL:**

The Public Health Committee

## **REASONS FOR BILL:**

This bill addresses the right of the patient to either consent to or refuse an intimate exam while under deep sedation. Frequently, these procedures are used as training for medical students and deemed necessary as part of their education. This bill prohibits providers, including those in training, from performing these exams on a patient who is unconscious, under deep sedation, or anesthesia without prior written consent from the patient or his/ her designee. The consent form must be clear with bolded letters that explain what it contains. The bill also requires DPH to investigate any alleged violations and to take disciplinary action if such a violation is deemed to have occurred.

## **RESPONSE FROM ADMINISTRATION/AGENCY:**

### **The State of CT Division of Criminal Justice:**

The Division of Criminal Justice takes no position on the underlying concept of the bill but expressed concerns that the bill will obstruct a medical provider from collecting evidence of a sexual assault crime where the victim is either unconscious or injured requiring deep sedation. The Division suggests changing the language to address this instance.

**Christine Conley, State Representative, 40<sup>th</sup> District**

The legislation will provide transparency to patients and promote trust in our healthcare institutions by making patients aware of the specifics of a procedure and giving them the option to decline. The alternative is deceptive and causes harm to patients and students.

**Rob Sampson, State Senator, 16<sup>th</sup> District, CGA**

One can understand how teaching programs would want to use established medical procedures as teaching moments for their students, but this does not negate the responsibility, and the ethical obligation to have obtained informed consent from the patient. This bill will help create an environment between patients and providers, and their students, that is transparent, explicitly defined, and safe.

**NATURE AND SOURCES OF SUPPORT:**

**Kathleen Callahan, Chair, National Association of Social Workers, CT Chapter**

While supporting intimate exams through a medical lens, NASW-CT opposes the use of these exams without patient consent, recognizing the exam as a violation of trust and a traumatic experience for the patient. NASW-CT believes a transparency concerning such a procedure would be safe, trustworthy and collaborative. The invasion of privacy is a clear breach of these principles.

**Connecticut Hospital Association**

CHA agrees that intimate exams should not be performed without informed consent, unless there is an overriding clinical purpose. The bill should consider emergencies, unexpected developments during surgery, and labor. After meeting with bill proponents, CHA is working on substitute language to help clarify instances where clinical necessity is recognized.

**Amanda Carrington, Assistant Director, YWCA of NB Sexual Assault Crisis Service**

Survivors seek the YWCA's services for many reasons, but most all involve a violation of consent. Patients who have intimate exams during surgery are not given detailed information on the exams before or after the procedure, which is a contradiction of informed consent principles. Yet, current state law allows this to occur. Patients should not have to question if unauthorized exams were conducted on them while under deep sedation.

**Amanda Moreau, The Susan B. Anthony Project**

The unethical practice of intimate exams without consent has been widely documented in the country and is occurring in CT. By placing trust in a medical provider's hands can seem intimidating and a loss of personal autonomy, the added anxiety caused by learning that intimate exams may be performed by students, without informed consent, is unnecessary and the practice should be abolished.

**Other Testimony in Support**

Kassandra Banks, UConn  
Lois Chenard, Watertown, CT  
Deborah Kirby, Ledyard, CT  
Terry Tsang, Groton, CT

## **NATURE AND SOURCES OF OPPOSITION:**

### **Connecticut State Medical Society (CSMS):**

Intimate exams under deep sedation, when performed strictly for educational purposes, should require informed consent. CSMS supports the vitally important conversation between the patient and the provider regarding an explanation of the procedure, its benefits and risks. It is the underlying tenet of informed consent and the foundation of trust between patient and provider. However, CSMS believes this legislation is an attempt by government to influence medical procedures and could have the unintended consequence of negatively impacting physician participation in medical student education.

### **Mark Edney, MD, MBA, Chair, State Advocacy Committee, American Urological Association**

As written this bill may prohibit an exam performed for diagnostic or therapeutic purposes to the detriment of the patient. When performed for purely educational purposes, an intimate exam should require informed consent. A procedure performed for diagnostic or therapeutic purposes requires the surgeon to be familiar with anatomical normality. It is the responsibility of the surgeon to make the decision as to whether the intimate exam is warranted. Finally, the Urological Association is concerned with the potential impact on training this bill may have.

**Reported by: David Rackliffe, Asst Clerk**

**Date: March 31, 2022**