



Board approves final order on FMA petition to clarify pelvic exam law

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On Friday, Oct. 2, the Florida Board of Medicine approved the Final Order to the FMA's petition for declaratory statement seeking answers surrounding ambiguities in the pelvic examination law. Fortunately, there was no additional discussion or deviation from the conclusions reached **during the August hearing**. The six questions asked by the FMA and the Board's answers are as follows:

1. **Does the written consent requirement for a pelvic examination apply to male patients?**

No. The Board found that the language of the bill itself and the supporting staff analyses from both legislative bodies indicate that the written consent requirement only applies to female patients. The Board also acknowledged

that a pelvic examination, as understood within the medical community, is performed on biologically female patients to evaluate the reproductive organs as part of a regular checkup or if the patient is experiencing abnormal symptoms.

2. **Does the written consent requirement apply to procedures performed on the pelvic area or when the pelvic area is touched for non-examination purposes?**

No. The Board did not find any evidence in the legislative staff analyses to support the need for a separate written consent for a pelvic examination other than as a procedure used to examine and diagnose diseases and conditions of the reproductive organs.

The final order states that the staff analyses of a pelvic examination "notably does not include any treatments

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or procedures that incidentally involves one of the bill's referenced body parts such as the vagina, rectum, cervix or external pelvic tissues. Simply put, there is nothing in the legislation or the accompanying staff analyses indicating that routine non-diagnostic medical care, treatments, or surgical procedures involving the bill's designated body parts were meant to constitute a 'pelvic examination.'"

Thus, the performance of a surgical procedure on the pelvic area of a patient (such as a circumcision, vasectomy, etc.), the touching of the pelvic area for non-diagnostic purposes (such as the insertion of a catheter, taking a rectal temperature, diaper changes, etc.), or the touching of the pelvic area as part of a diagnostic procedure of tissue or organs not involving the pelvic area (such as barium enemas, voiding cystourethrograms, etc.) is not considered a pelvic examination as defined by SB 698.

3. Is a separate written consent required each and every time a pelvic examination is performed or can the consent cover multiple examinations during the course of treatment (for example labor and delivery)?

The Board did not answer this question.

4. Must each and every individual health care provider be listed by name on the consent form, or can the type of provider be identified?

The Board did not answer this question. In discussions, the Board stated that the statute was clear that each practitioner *performing* the pelvic examination must be listed on the consent. This would not include other healthcare providers who may be in the room to observe or assist.

5. Does the consent requirement apply to visual examinations only?

No. The Board, relying on the same information as

discussed in previous questions, found nothing indicating that the mere visualization, whether in person or via telehealth, of the pelvic area in order to inspect for a rash, wound, etc., is not a pelvic examination under the definition of this law.

6. What are the consent requirements in an emergency situation?

The Board did not have the authority to answer this question.

Read the complete final order here. The Florida Board of Osteopathic Medicine reached similar conclusions when presented with the same questions. Identical to the allopathic process, a final order on the petition will have to be drafted and acted upon by the Board of Osteopathic Medicine at its November meeting.

As a reminder, under Florida law, a petition for declaratory statement may be used only to resolve questions as to how statutes and rules may apply to the petitioner's particular circumstances and may not be used to obtain a general policy statement from a state agency. Accordingly, the FMA brought the Petition on behalf of Doug Murphy, MD, an obstetrician/gynecologist from Ocala, and as a matter of law, the Board's response to the petition will only be applicable to his specific circumstances. The answers to the questions posed, however, provide valuable insight into how the Board might handle a disciplinary case alleging a violation of SB 698.

Even with the favorable final order, there are still unanswered questions and legal ambiguities. The FMA is exploring every option for clarification, including filing a second petition and legislative action. If you are an FMA member who has questions about how this legislation affects your practice, please contact our Legal Department at legal@FLmedical.org for assistance.