



Analysis of Florida's New Law Regarding Pelvic Examinations

SB 698 creates new requirements for physicians but presents unanswered questions.

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The original purpose of SB 1470 was to ensure that a pelvic examination could not be performed on an anesthetized female patient without her consent. As this bill stalled in the Senate during the 2020 Florida Legislative Session, the issue was grafted onto a different bill, SB 698, and the language changed. The FMA, the Florida Obstetric and Gynecological Society, the medical schools and other groups met with the bill sponsors and all felt there was an agreement to ensure that the bill would be limited in its scope and focused on the perceived problem. Unfortunately, the House amended the bill during the last week of session without considering the input of organized medicine.

The final version of SB 698 is a poorly drafted piece of legislation that presents a whole set of unanswered questions while straying far from the original intent of SB 1470. On the surface, the bill appears straightforward: A physician has to obtain a

patient's written consent prior to performing a pelvic examination. When you look closely, the problems become apparent.

SB 698 defines "pelvic examination" as the "series of tasks that comprise an examination of the vagina, cervix, uterus, fallopian tubes, ovaries, rectum, or external pelvic tissue or organs using any combination of modalities, which may include, but need not be limited to, the health care provider's gloved hand or instrumentation."

The first question that presents itself upon reading this definition is whether the bill applies only to female patients, or includes pelvic examinations performed on male patients. Prior to SB 1470 being heard in the Senate Health Policy Committee, the understanding of everyone involved was the bill only required consent for female pelvic examinations. This bill however, stalled and eventually died in the Judiciary Committee.

Another question is whether this bill applies to all pelvic examinations, including well-woman exams and GYN examinations on conscious patients, or just for pelvic examinations on anesthetized or unconscious patients.

The content of SB 1470 was picked up and added to SB 698, but the initial language defined “pelvic examination” as the “direct palpation of the organs of the female internal reproductive system.” On SB 698’s third committee stop, however, the bill was amended again to change the definition of “pelvic examination” substantially to its current form. The key change was the deletion of the reference to the female internal reproductive system, and the addition of the term “rectum.” Because there is no gender referenced in the definition of pelvic examination in the final version of SB 698, the Florida Department of Health (DOH) has indicated that the provisions of the bill apply to both female and male patients.

Another question is whether this bill applies to all pelvic examinations, including well-woman exams and GYN examinations on conscious patients, or just for pelvic examinations on anesthetized or unconscious patients. The initial version of SB 1470 stated that a “health care provider may not perform a pelvic examination on an anesthetized or unconscious patient” unless consent is obtained. SB 698, however, did not pick up this language, and provides only that a health care practitioner “may not perform a pelvic examination on a patient without the written consent of the patient . . .” The answer thus is relatively clear that the written consent requirement applies to all pelvic examinations, even if the patient is fully aware that the purpose of their visit to their physician is to have a pelvic examination.

SB 698, however, applies only to pelvic *examinations*, not to *procedures* performed on pelvic organs or tissues. Thus surgery on the pelvic area or any type of procedure not performed for diagnostic purposes would not appear to require specific written consent under this new law. Of course, the examination to determine if surgery or the procedure to be performed is necessary would require written consent.

The most common question we have received so far is whether written consent can be obtained one time to cover all future exams, or if consent has to be obtained prior to each and every

exam. SB 698 provides that the exam may not be performed without the written consent of the patient “**executed specific to, and expressly identifying the pelvic examination.**” Based on this language, DOH has advised that consent appears to be required for each examination. While it would certainly be easier and logical to obtain consent that would cover future examinations, such does not appear to be allowed based on the language of the bill. If, however, there will be multiple pelvic examinations during the course of a single visit, for example during labor and delivery, it appears reasonable to obtain a single written consent to cover the multiple examinations.

SB 698 is an unfortunate example of the unintended consequences that result when legislation is changed at the last minute without the involvement of those affected. The FMA agrees with the American College of Obstetricians and Gynecologists that the “actual impact will be to interfere in the patient-physician relationship,” and we endorse their statement opposing this new law, **which can be accessed here**. The FMA is committed to ensuring the sanctity of the physician-patient relationship, and will work with the OBGYN society and other groups next session to repeal the onerous requirements imposed by this bill. We will also continue to seek as narrow an interpretation as possible from the Department of Health and the Board of Medicine.

The FMA has developed a **simple written consent form** that we believe satisfies the written consent requirement for a pelvic examination. This form is designed only for the purpose of complying with SB 698 and does not constitute informed consent which may or may not be required under the standard of care for the particular type of pelvic examination performed.

The FMA has responded to a multitude of questions regarding SB 698 and will continue to answer our member’s questions as best we can. If you need assistance or if you have any questions regarding how this legislation affects your practice, please contact the General Counsel’s Office at jscott@flmedical.org.

