

Blog Post

Pelvic Examination Law – Florida Takes a Second Look

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The Florida medical community was left concerned and confused by the passage of the original 2020 pelvic examination law. As we discussed in our past [blog](#), practitioners believed the law was overly burdensome, and they were unsure how to implement it. Senator Lauren Book's new bill, [SB 716](#), sought to make consent clear through an amendment to the original law. It became effective July 1, 2021.

The updated law revises the definition of "pelvic examination" and the situations in which consent is required for pelvic examinations. Unfortunately, the new law still misses the mark on clarifying when consent is and is not required. Due to the continued lack of clarity, it is essential that providers review policies and consent forms to ensure they understand what is required of them when conducting pelvic examinations. If appropriate policies and consent forms have *not* been implemented, now is the time to put them in place.

Definitions and Requirements

The policy and procedures need to specifically address the definitions and requirements that are outlined below.

1. What constitutes a pelvic examination?

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The definition of a pelvic examination has been clarified to indicate that it refers to “an examination of the organs of the **female** internal reproductive system using the health care provider’s gloved hand or instrumentation.” The term does **not** include “visual assessment, imaging, or a nondiagnostic medical or surgical procedure.” The law does not define what is meant by the term “nondiagnostic medical or surgical procedure.” This may cause providers to obtain consents for procedures which were not meant to require consents.

2. When is consent required?

Consent is required prior to conducting any pelvic examination. That is, unless an exception applies, as discussed below.

Verbal consent and **written consent** are required prior to performing a pelvic examination on a conscious, female patient. Verbal consent alone is **never** sufficient.

Only **written consent** is required prior to performing a pelvic examination on an anesthetized or unconscious female patient, and for the initial pelvic examinations performed on a pregnant woman having contractions in a hospital or other facility licensed under Florida Chapter 395 (e.g., urgent care center or ambulatory surgical center).

3. Who may provide the consent?

Verbal and written consent (unless only written consent is required as noted above) must be obtained from the female patient or her legal representative.

4. Who is responsible for obtaining the required consent?

A health care practitioner, medical student, or any other student receiving training as a health care practitioner may **not** perform a pelvic examination

on a female patient unless the necessary consent was obtained, as discussed in Section 2 above. Florida Statute 456.001(4) defines “healthcare practitioner” very broadly, as it includes, but is not limited to, various licensed professionals such as physicians, optometrists, massage therapists, physical therapists, osteopathic physicians, and allopathic physicians.

As with the original law, the updated law does not specify whether the practitioner is required to personally obtain the consent, or if it can be obtained by another individual. A conservative approach is for the performing practitioner to discuss the examination with female patients prior to the patient’s written consent being obtained. As we discussed in our prior blog, this practice mirrors Florida Administrative Code 64B8-9.007(1) for surgical consents, wherein the physician who will perform surgery must explain the procedure to the patient and has the duty to obtain the patient’s informed consent prior to performing the surgery. The physician is not required, however, to be the individual who obtains or witnesses the signature of the patient on the written form evidencing informed consent, which can be done by other medical personnel. As the updated pelvic examination law does not specify who is required to obtain the consent, we recommend using the surgical consent regulation as guidance.

5. When is consent NOT required?

Written consent is not required when the pelvic examination is:

- Ordered by a court for the collection of evidence;
- Necessary for the provision of emergency services and care, as defined in Florida Statute 395.002(9), which is defined as the medical screening, examination, and evaluation by a physician, or, to the extent permitted by applicable law, by other appropriate personnel under the supervision of a physician, to

determine if an emergency medical condition exists and, if it does, the care, treatment, or surgery by a physician necessary to relieve or eliminate the emergency medical condition, within the service capability of the facility;

- Necessary for a female patient who has an emergency medical condition, as defined in Florida Statute 395.002(8);
- Administered pursuant to a child protective investigation by the Department of Children and Families under Florida Chapter for Proceedings Relating to Children; or
- Administered pursuant to a criminal investigation of an alleged violation related to child abuse or neglect, under Florida's Human Trafficking Statute, or Florida's Chapters for Sexual Battery, Prostitution, Lewdness and Indecent Exposure, Abuse of Children, or Obscenity.

A Specific Consent Form is Required

The consent form for a pelvic examination must be ***specific to, and expressly identify, the pelvic examination***. In addition, for an initial pelvic examination performed on a pregnant woman having contractions, the consent form must “inform the patient that ***multiple*** pelvic examinations may be conducted during the course of her care and treatment at the facility.”

Penalties

Failure to obtain informed consent may lead to criminal penalties if it is determined to be battery. Administrative penalties also may be brought against the health care practitioner, including revocation or suspension of his or her license, administrative fines, and corrective action.

Policies and Procedures are required NOW

We recommend health care practitioners review their policies and procedures immediately to ensure they correspond with the updated law. Staff will also

need to be trained to ensure they understand the requirements.

The written policies and procedures will need to clearly outline:

- When written and verbal consent are required, and when only written consent is needed;
- Who is responsible for obtaining consent; and
- How the health care practitioner performing the examination, if not directly obtaining the written consent, will be notified that the consent has been successfully obtained before beginning the examination.

We are available for consultations if a healthcare organization would like guidance regarding interpreting the statute, implementing compliant policies or procedures, providing appropriate training, and generating consent forms that comply with the law.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.