

[First Reprint]

ASSEMBLY, No. 1489

STATE OF NEW JERSEY
219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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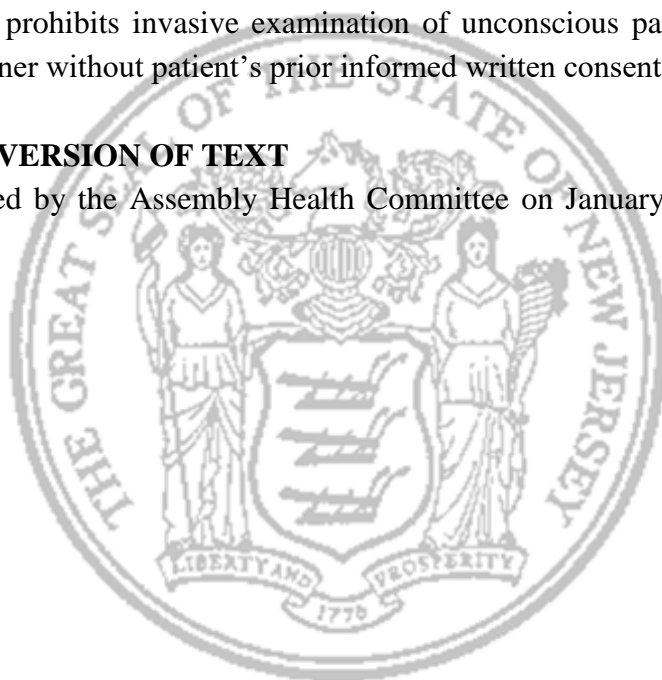
Assemblyman Calabrese, Assemblywoman Murphy, Assemblyman Zwicker, Assemblywoman Lopez, Assemblyman Freiman and Assemblywoman Swain

SYNOPSIS

Expressly prohibits invasive examination of unconscious patient by health care practitioner without patient's prior informed written consent.

CURRENT VERSION OF TEXT

As reported by the Assembly Health Committee on January 3, 2022, with amendments.



(Sponsorship Updated As Of: 1/10/2022)

1 AN ACT concerning the practice of medicine and supplementing
2 Title 45 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. a. Except as provided in subsection b. of this section, no
8 individual licensed or certified to practice health care pursuant to Title
9 45 of the Revised Statutes shall conduct an invasive examination of
10 any patient while the patient is under general anesthesia or otherwise
11 unconscious without the patient's informed written consent to the
12 invasive examination. ¹**【If the patient is a minor, unconscious,**
13 **unresponsive, or otherwise lacks the capacity to provide informed**
14 **written consent to an invasive examination at the time informed**
15 **consent is sought, consent may be provided by any individual**
16 **authorized to make health care decisions on behalf of the patient,**
17 **provided that the health care practitioner shall make reasonable efforts**
18 **to obtain informed consent directly from the patient whenever**
19 **possible.】¹ If a health care practitioner authorized to perform an**
20 **invasive examination of a patient while the patient is under general**
21 **anesthesia or otherwise unconscious determines that an additional**
22 **invasive examination is required that is different in nature from the**
23 **invasive examination to which the patient ¹**【or the patient's authorized**
24 **representative】¹ previously consented, the health care practitioner**
25 **shall obtain a separate informed written consent prior to performing**
26 **the additional invasive examination.****

27 b. The requirements of subsection a. of this section shall not
28 apply in the case of emergency in which the patient is unconscious or
29 unresponsive and it reasonably appears that immediate medical
30 treatment is necessary to prevent severe or worsening injury to the
31 patient or to save the patient's life, in which case a health care
32 practitioner may render any appropriate emergency treatment services
33 as are necessary, including performing any invasive examinations of
34 the patient as shall be necessary to evaluate and determine the
35 appropriate course of emergency treatment for the patient. ¹The health
36 care practitioner shall notify the patient as soon as practicable that an
37 invasive examination has been performed.¹ Nothing in this subsection
38 shall authorize the provision of emergency treatment in any case in
39 which the practitioner ¹**【knows or has reason to know the patient has】**
40 is provided, prior to emergency treatment, actual verification of an¹
41 executed ¹**【a】¹ do not resuscitate order ¹**【or has otherwise****
42 proscriptively refused emergency treatment】¹ . ¹Nothing in this
43 subsection shall authorize the provision of emergency treatment that
44 conflicts with a patient's verified Practitioner Orders for Life-
45 Sustaining Treatment documentation.¹

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AHE committee amendments adopted January 3, 2022.

1 c. In no case shall any invasive examination of a patient who is
2 under general anesthesia or otherwise unconscious be undertaken for
3 educational or training purposes unless the patient has provided
4 separate, informed consent, verbally and in writing, to the invasive
5 examination. When requesting separate informed consent to conduct
6 an invasive examination of a patient while the patient is under general
7 anesthesia or otherwise unconscious for educational or training
8 purposes, the health care practitioner requesting informed consent
9 shall advise the patient of the exact nature of the invasive examination,
10 of the estimated number of students and other individuals who will be
11 performing or participating in the invasive examination, and that no
12 medical care or treatment will be denied to the patient if the patient
13 withholds consent to an invasive examination for educational or
14 training purposes. In the event that the invasive examination for
15 educational or training purposes would take place during, or in
16 association with, a medical procedure, the consent required pursuant to
17 this subsection shall be obtained independently of, and in addition to,
18 any informed consent provided by the patient to undergo the medical
19 procedure; provided that nothing in this subsection shall be deemed to
20 prohibit a practitioner from obtaining informed consent to both the
21 medical procedure and the invasive examination for educational or
22 training purposes at the same time, provided that it is clear to the
23 patient that the consents are being requested for distinct and
24 independent purposes.

25 d. ¹A patient providing informed written consent for an invasive
26 examination shall provide the consent to the health care practitioner
27 using a form prescribed by the Commissioner of Health. In addition to
28 any other requirements set forth by the Commissioner of Health, each
29 form shall meet the following requirements:

30 (1) each form shall have a heading clearly stating the nature of the
31 examination;

32 (2) each form shall contain a full description of the nature,
33 purpose, and attendant risks associated with the proposed invasive
34 examination;

35 (3) each form shall indicate if the proposed invasive examination
36 will be used for educational or training purposes; and

37 (4) each form shall be separate from any other document, consent
38 form, notice, or agreement.

39 e. A health care practitioner who fails to obtain a patient's
40 informed written consent prior to conducting an invasive examination
41 of the patient while the patient is under general anesthesia or otherwise
42 unconscious, except in the instances provided in subsection b. of this
43 section, shall be subject to discipline for professional misconduct
44 pursuant to section 8 of P.L.1978, c.73 (C.45:1-21).

45 f.¹ As used in this section:

46 “Informed consent” means the affirmative authorization provided
47 by a patient ¹**【or the patient’s authorized representative】**¹ to a health
48 care practitioner to perform an invasive examination of the patient,

1 which authorization shall not be valid unless the health care
2 practitioner first provides the patient ¹【or the patient’s
3 representative】¹ with a full description of the nature and attendant
4 risks associated with the proposed invasive examination.

5 “Invasive examination” means any visual, tactile, or mechanical
6 inspection of the patient’s reproductive organs, rectal cavity, or
7 breasts.

8

9 2. This act shall take effect immediately.