

2020 Regular Session

HOUSE BILL NO. 435

BY REPRESENTATIVES JORDAN AND IVEY

1 AN ACT

2 To enact Subpart B-1 of Part II of Chapter 5-D of Title 40 of the Louisiana Revised Statutes
3 of 1950, to be comprised of R.S. 40:1160.1 through 1160.4, relative to
4 nonconsensual pelvic and rectal examinations; to provide methods by which consent
5 shall be obtained by the patient or personal healthcare representative; to provide for
6 definitions; to provide for exceptions to obtaining informed consent from the patient
7 or personal healthcare representative; to provide for penalties; to provide for learners
8 in a clinical setting; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Subpart B-1 of Part II of Chapter 5-D of Title 40 of the Louisiana Revised
11 Statutes of 1950, comprised of R.S. 40:1160.1 through 1160.4, is hereby enacted to read as
12 follows:

13 SUBPART B-1. CONSENT TO MEDICAL EXAMINATIONS

14 §1160.1. Title

15 This Subpart shall be known and may be cited as the "Consent to Medical
16 Examinations Act".

17 §1160.2. Definitions

18 As used in this Subpart, the following terms have the meanings ascribed to
19 them unless otherwise provided for or unless the context otherwise indicates:

20 (1) "Anesthesia" means a drug-induced loss of consciousness, by use of any
21 anesthetic induction agent or otherwise, during which patients are not arousable even
22 by painful stimulation, as defined by the Louisiana State Board of Medical
23 Examiners.

24 (2) "Examination" means a pelvic or rectal examination.

1 (3) "Healthcare provider" means a physician or other healthcare practitioner
 2 licensed, certified, registered, or otherwise authorized to perform specified
 3 healthcare services consistent with state law.

4 (4) "Learner" means any person enrolled in a medical, nursing, or allied
 5 health education program. "Learner" shall also mean a medical resident, intern, or
 6 student undergoing a course of instruction or participating in a clinical training or
 7 residency program.

8 (5) "Patient" means a person who receives or has received medical treatment
 9 or services from an individual or institution licensed to provide medical treatment
 10 in this state.

11 (6) "Pelvic examination" means the physical examination of an individual's
 12 reproductive organs.

13 (7) "Rectal examination" means an examination relating to or affecting the
 14 rectum.

15 (8) "Personal healthcare representative" has the meaning as ascribed in R.S.
 16 40:1155.2(7).

17 (9) "Teaching purposes" means a nondiagnostic or nontherapeutic
 18 examination that is solely for the education of the learner.

19 §1160.3. Consent to medical examinations; anesthetized patients; penalties
 20 A. A healthcare provider licensed or certified to practice a profession shall
 21 not perform a pelvic or rectal examination, hereinafter referred to as "examination",
 22 on an anesthetized or unconscious patient unless at least one of the following
 23 conditions is met:

24 (1) The patient or the personal healthcare representative provides written
 25 consent to the examination, and the examination is necessary for instructional,
 26 preventive, diagnostic, or treatment purposes.

27 (2) The patient or the personal healthcare representative has provided
 28 informed consent to a surgical procedure or examination to be performed on the
 29 patient, and the performance of an examination is within the scope of care ordered
 30 for the surgical procedure or examination.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 (3)(a) The patient is unconscious and incapable of providing consent, and the
2 examination is medically necessary.

3 (b) A healthcare provider who performs an examination pursuant to this
4 Paragraph shall inform the patient that an additional examination was performed and
5 the nature of the examination. The healthcare provider shall notify the patient of the
6 examination at a reasonable time before the patient is discharged from his care.

7 B. Any violation of the provisions of this Section may constitute grounds for
8 adverse licensure action by the applicable professional licensing board exercising
9 jurisdiction over the healthcare provider.

10 §1160.4. Requirement for examinations performed by learners

11 A. Learners in a clinical setting, including but not limited to an operating
12 room, when the patient is under general anesthesia, shall perform an examination for
13 teaching purposes only when all of the following conditions are met:

14 (1) The examination is explicitly consented to by the patient.

15 (2) The examination is medically related to the planned or performed
16 procedure.

17 (3) The examination is performed by a learner who has been recognized by
18 the patient as a part of his care team.

19 (4) The examination is conducted under direct supervision by the educator.

20 B. Any violation of the provisions of this Section may constitute grounds for
21 adverse action by the medical educational program for any learner and may
22 constitute grounds for adverse licensure action by the appropriate professional
23 licensing board for any licensed individual.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____