



AMERICAN CIVIL LIBERTIES UNION

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TESTIMONY OF MEAGAN SWAY, Esq.

LD 1948 - Ought To Pass

**An Act To Prohibit, Except in Emergency Situations, the Performance  
without Consent of Pelvic Examinations on Unconscious or Anesthetized  
Patients**

JOINT STANDING COMMITTEE ON HEALTH COVERAGE,  
INSURANCE AND FINANCIAL SERVICES

January 28, 2020

Senator Sanborn, Representative Tepler, and members of the Committee on Health Coverage, Insurance and Financial Services, greetings. My name is Meagan Sway, and I am policy counsel for the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, we ask you to vote “ought to pass” on LD 1948.

The right to receive medical treatment—or to refuse treatment—consistent with a person’s expressed wishes, is based upon the fundamental civil liberties principles of autonomy and self-determination, privacy, liberty, and the freedom of thought and religion. LD 1948 recognizes that it should be a patient’s right to decide whether or not to undergo medical procedures that are deeply personal and invasive.

Pelvic exams are uniquely invasive, and without prior consent, these exams inflict a particularly unique and egregious gender-specific harm. Patients often feel vulnerable, subordinate, and nervous prior to pelvic exams.<sup>1</sup> Sexual assault survivors can find these exams particularly traumatic.<sup>2</sup> In fact, when asked, “many

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<sup>1</sup> Phoebe Friesen, *Why Are Pelvic Exams on Unconscious, Unconsenting Women Still Part of Medical Training?*, Slate, Oct. 30, 2018, <https://slate.com/technology/2018/10/pelvic-exams-unconscious-women-medical-training-consent.html>; see generally M. Larsen, CC Oleide, & K. Malterud, *Not so bad after all...*, *Women’s experiences of pelvic examinations*, 14 Fam. Pract. 148 (1997).

<sup>2</sup> Friesen, *supra* note 1.

women said they would feel ‘physically assaulted’” if they did not specifically consent to a pelvic exam performed while they were unconscious.<sup>3</sup>

In addition to giving patients peace of mind, LD 1948 would also give medical students and practitioners peace of mind that they are performing an invasive practice with the patient’s informed consent.<sup>4</sup> The American College of Obstetricians and Gynecologists’ Committee on Ethics agrees—the Committee has repeatedly affirmed that “[p]elvic examinations on an anesthetized woman that offer no personal benefit and are performed solely for teaching purposes should be performed only with her specific informed consent obtained before her surgery.”<sup>5</sup>

Because we believe that performing intimate exams on unconscious, uninformed patients is unethical, a violation of patients’ rights and is harmful to patients and practitioners alike, we support LD 1948 and encourage you to vote “ought to pass.”

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<sup>3</sup> Phoebe Friesen, *Educational pelvic exams on anesthetized women: Why consent matters*, 2018 *Bioethics* 1, 8 (2018) [hereinafter Friesen II].

<sup>4</sup> *E.g. id.* at 1 – 2 (quoting medical student, “In obstetrics and gynecology, I encountered the first act of medical training that left me ashamed. For 3 weeks, four to five times a day, I was asked to, and did, perform pelvic examinations on anesthetized women, without specific consent, solely for the purpose of my education . . . To my shame, I obeyed. As a medical student, I am all too aware of the hierarchy that exists during training. My medical education experience has reinforced the notion that the medical student should not question the practices of those above him or her. I was very conflicted about performing an act that I felt was unethical, but owing to both the culture of medicine and my own lack of courage, I did not immediately speak out . . .”); see also Lilly Sullivan, *While You Were Out*, *This Amer. Life*, Nov. 9, 2018, <https://www.thisamericanlife.org/661/but-thats-what-happened/act-two-3>; Friesen, *supra* note 1.

<sup>5</sup> *Professional Responsibilities in Obstetric-Gynecologic Medical Education and Training*, Comm. Opinion (Amer. College of Obstetricians and Gynecologists), Aug. 2011, reaffirmed 2017, at 1.