

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

Senate Bill 769

BY SENATORS CHAPMAN AND RUCKER

[Originating in the Committee on Health and Human

Resources; reported February 21, 2024]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §30-3-21, relating to prohibiting certain medical practices; prohibiting medical
3 providers from performing pelvic, rectal, or breast exams on an anesthetized or
4 unconscious patient except in specified circumstances; providing criminal penalties;
5 providing medical license penalties; and establishing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-21. Prohibited examination; penalty.

1 (a) A medical practitioner, a student in training in a medical school, an intern, a resident,
2 a graduate student, or an individual participating in a clinical training or resident program may not
3 perform a pelvic, rectal, or breast examination on an anesthetized or unconscious patient unless
4 one of the following conditions is met:

5 (1) The patient, the patient's guardian, or the patient's health care representative provides
6 prior written informed consent to the pelvic, rectal, or breast examination.

7 (2) The performance of a pelvic, rectal, or breast examination is within the scope of care
8 ordered for the surgical procedure or diagnostic examination to be performed on the patient and
9 the patient, patient's guardian, or patient's health care representative has given prior written
10 informed consent.

11 (3) A medical emergency exists and the pelvic, rectal, or breast examination is
12 immediately necessary for diagnostic examination or treatment of the patient. The examination
13 must be documented in all necessary medical charting and the patient, patient's guardian, or
14 patient's health care representative must be informed of the examination in writing with
15 explanation of necessity.

16 (4) A court has ordered the performance of the pelvic, rectal, or breast examination for
17 the purposes of the collection of evidence.

18 (b) A person who violates this section is guilty of a felony and, upon conviction thereof,
19 shall be imprisoned in a state correctional facility not less than 10 nor more than 25 years, or fined
20 not less than \$1,000 nor more than \$10,000 and imprisoned in a state correctional facility not less
21 than 10 nor more than 25 years.

22 (c) A person who violates this section is subject, upon conviction, to suspension of his or
23 her license or other authorization to practice medicine and surgery for no less than five years,
24 including limiting the practice of that person to, or by the exclusion of, one or more areas of
25 practice, including limitations on practice privileges.

26 (d) The provisions of this section are effective upon passage.