SPONSOR: Rep. Griffith & Rep. Heffernan & Rep. Longhurst &
Rep. Minor-Brown & Sen. Lopez
Reps. K. Johnson, Michael Smith

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL NO. 239
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO INFORMED CONSENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 12, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter III. Medical Examinations

§ 1220. Definitions.

As used in this subchapter

(a) "Health-care practitioner" means as defined in §701 of Title 16.

(b) "Health-care professional" means as defined in §701 of Title 16.

(c) "Informed consent" means the signing of a consent form by the patient or a person authorized to make health care decision on behalf of the patient that satisfies all of the following conditions:

(1) Is written in plain language.

(2) Is dated.

(3) Includes a description of the procedure to be performed.

(4) States if there will be a student or resident that will perform or be present at the patient's examination.

§1221. Pelvic, rectal, or prostate examinations.

(a) A health-care practitioner or a health-care professional may not knowingly perform or supervise the performance of a pelvic, rectal, or prostate examination on a patient who is anesthetized or unconscious unless one of the following applies:

(1) The patient or the person authorized to make health care decisions for the patient has given informed consent to the examination.

(2) The examination is necessary for diagnostic or treatment purposes.

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(3) An emergency exists and it and it is impracticable to obtain consent and the examination is necessary for diagnostic or treatment purposes.

(4) A court of competent jurisdiction orders the performance of the examination for the collection of evidence and such order must be issued in compliance with all of the following provisions:

a. The court must find that there is a compelling need for such examination, which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for the examination and the disclosure of the results against the privacy interest of the individual to be examined.

b. Pleadings pertaining to the ordering of the examination shall substitute a pseudonym for the true name of the subject of the examination. The true name shall be communicated confidentially to the court and kept under seal of the court.

(b) A health-care practitioner or health-care professional shall notify the patient as soon as reasonably practical that an examination was performed pursuant to § 1221(a)(3) and (4).

(c) Any health-care practitioner or health-care professional who violates §1221(a) is subject to discipline by the appropriate professional licensing board.

Section 2. This Act takes effect 60 days after its enactment into law.

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