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Op-Ed

Pelvic Exams Performed on Anesthetized Women

Performing a pelvic exam without consent on an anesthetized woman, even for teaching purposes, is unethical and considered sexual battery in some jurisdictions.

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Recent revelations in the news media about unconsented pelvic exams performed on anesthetized patients by medical students for the education of the students, not the medical benefit of the patient, highlighted a stunning chasm in communication and thought between 2 groups: medical educators and potential patients. I first found out about this issue when a member of a bioethics "chat group," hosted by the Medical College of Wisconsin, posted an article about the practice. The responses by chat group members were astounding: nonphysicians (primarily female) reacted with shock and outrage. Physicians and physician educators often responded by saying, "This is the way everyone learns to do pelvic exams. What's the problem?"

Although I am not usually a proponent of resorting to law as a way to cross communication barriers, sometimes the "teaching function of the law" can be the most effective way of opening the eyes of one group of people to the way in which the world is experienced by another group. The evolution of rape law in the US is a good example of this. Defining rape as unconsented sexual intercourse, with or without physical violence, helps people (men and women) to understand how damaging to the victims such practices as "date rape" or marital rape truly are, and says in unequivocal ways that the community has ruled such behavior to be so offensive that perpetrators will be subject to legal penalties.

In the case at hand, therefore, it is useful to point out that unconsented pelvic exams on anesthetized patients are subject to both civil and criminal penalties. First, such behavior constitutes the tort of battery. Battery is defined as harmful or offensive contact. These pelvic exams clearly constitute offensive contact. The student (or the institution) might claim that she or he could not have known that the person would regard it as offensive, but that defense will not wash. For one thing, if the medical faculty assumed that most patients would consent, they would just ask; the resistance to asking permission suggests that they know that at least some patients would refuse. (Further, even among the number of patients who would give permission if asked, there are certainly many who would be outraged to discover that they had been handled in this way without their knowledge and consent.)

In the realm of criminal law, the Ohio Criminal Code tracks many other states when it defines "sexual conduct" as "without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another" (Sec. 2907.01(A)). "Without privilege to do so," clearly implies the necessity of consent. The definition of rape (Sec. 2907.02) includes sexual conduct with another when…the other person's ability to resist or consent is substantially impaired because of a mental or physical condition. Sexual battery (Sec. 2907.03) includes sexual conduct when the "offender knows that the other person submits because the other person is unaware that the act is being committed."

Defining the offense as a sexual one is understandably distressing to physicians, who have gone to great lengths to define pelvic (and mammary) exams in nonsexual ways. But medical practice cannot abstract itself from the culture in which it operates; thus we have the persistent preference of many patients for female gynecologists, the practice of requiring chaperones when male doctors perform pelvic exams even on conscious patients, and other ways in which

the medical establishment acknowledges the special status and concerns that attach to the reproductive parts of our bodies, parts that used to be colloquially referred to as "our privates." Our community expresses that heightened concern by surrounding offensive touching of one's reproductive parts with heightened protection and heightened penalties for infractions.

Finally, and at the risk of distracting readers and falling prey to the charge of sensationalism, I need to remind physicians of the rare but highly publicized cases of health care providers who have exploited unconscious patients by, for example, inserting a penis in the mouth of an anesthetized patient. These cases reinforce in the minds of women that they are sexually unsafe when powerless and unconscious, even in a medical setting.

It is wonderful that the objections to the practice of unconsented pelvic exams came primarily from medical students. All that training in ethics is clearly paying off! As a staff editorial in the Washington University student newspaper said, "If a student were to have performed that same procedure on an unconscious, intoxicated woman, it would certainly have been labeled sexual assault. It is horrifying that when a WU teaching doctor ordered a medical student to do the same thing to an anesthetized hospital patient, it was instead labeled a pelvic exam."

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