

56 health, safety, or welfare.

57 (3) An individual whose license has been suspended, revoked, or restricted may apply  
58 for reinstatement of the license at reasonable intervals and upon compliance with any  
59 conditions imposed upon the license by statute, committee rule, or the terms of the suspension,  
60 revocation, or restriction.

61 (4) In addition to taking disciplinary action under Subsection (1), the department may  
62 impose sanctions in accordance with Section 26-23-6.

63 Section 2. Section **58-1-509** is enacted to read:

64 **58-1-509. Patient consent for certain medical examinations.**

65 (1) As used in this section:

66 (a) "Health care provider" means:

67 (i) an individual who is:

68 (A) a healthcare provider as defined in Section 78B-3-403; and

69 (B) licensed under this title;

70 (ii) emergency medical service personnel as defined in Section 26-8a-102; or

71 (iii) an individual described in Subsection 58-1-307(1)(b) or (c).

72 (b) "Patient examination" means a medical examination that requires contact with the  
73 patient's sexual organs.

74 (2) A health care provider may not perform a patient examination on an anesthetized or  
75 unconscious patient unless:

76 (a) the health care provider obtains consent from the patient ~~§~~ **→** or the patient's  
76a **representative** ~~←~~ **§** in accordance with

77 Subsection (3);

77a **§** **→** (b) a court orders performance of the patient examination for the collection of  
77b **evidence;** ~~←~~ **§**

78 **§** **→** ~~(b)~~ (c) ~~←~~ **§** the performance of the patient examination is within the scope of care for a  
79 procedure or diagnostic examination scheduled to be performed on the patient; or

80 **§** **→** ~~(c)~~ (d) ~~←~~ **§** the patient examination is immediately necessary for diagnosis or treatment  
80a of the  
81 patient.

82 (3) To obtain consent to perform a patient examination on an anesthetized or  
83 unconscious patient, before performing the patient examination, the health care provider shall:

84 (a) provide the patient ~~§~~ **→** or the patient's representative ~~←~~ **§** with a written ~~§~~ **→** or  
84a **electronic** ~~←~~ **§** document that:

85 (i) is provided separately from any other notice or agreement;

86 (ii) contains the following heading ~~§~~ **→** **[printed]** ~~←~~ **§** at the top of the document in not  
86a smaller

87 than 18-point bold face type: "CONSENT FOR EXAMINATION OF PELVIC REGION";

88 (iii) specifies the nature and purpose of the patient examination;

89 (iv) names ~~§~~ [the] one or more ~~§~~ primary health care ~~§~~ [provider that the patient

89a authorizes to] providers whom the patient or the patient's representative may authorize to ~~§~~  
 89b perform the

90 patient examination;

91 (v) states whether there may be a student or resident that the patient ~~§~~ or the patient's

91a representative ~~§~~ authorizes to:

92 (A) perform an additional patient examination; or

93 (B) observe or otherwise be present at the patient examination, either in person or

94 through electronic means; and

95 (vi) provides the patient ~~§~~ or the patient's representative ~~§~~ with a series of check

95a boxes that allow the patient ~~§~~ or the patient's representative ~~§~~ to:

96 (A) consent to the patient examination for diagnosis or treatment and an additional

97 patient examination performed by a student or resident for an educational or training purpose;

98 (B) consent to the patient examination only for diagnosis or treatment; or

99 (C) refuse to consent to the patient examination;

100 (b) obtain the signature of the patient or the patient's representative on the written

100a ~~§~~ or electronic ~~§~~

101 document while witnessed by a third party; and

102 (c) sign the written ~~§~~ or electronic ~~§~~ document.

103 Section 3. Section **78B-3-406** is amended to read:

104 **78B-3-406. Failure to obtain informed consent -- Proof required of patient --**

105 **Defenses -- Consent to health care.**

106 (1) (a) When a person submits to health care rendered by a health care provider, it is  
 107 presumed that actions taken by the health care provider are either expressly or impliedly  
 108 authorized to be done.

109 (b) For a patient to recover damages from a health care provider in an action based  
 110 upon the provider's failure to obtain informed consent, the patient must prove the following:

111 [(a)] (i) that a provider-patient relationship existed between the patient and health care  
 112 provider;

113 [(b)] (ii) the health care provider rendered health care to the patient;

114 [(c)] (iii) the patient suffered personal injuries arising out of the health care rendered;

115 [(d)] (iv) the health care rendered carried with it a substantial and significant risk of  
 116 causing the patient serious harm;

117 [(e)] (v) the patient was not informed of the substantial and significant risk;

149 the consent lacked capacity to consent or shows by clear and convincing evidence that the  
 150 execution of the written consent was induced by the defendant's affirmative acts of fraudulent  
 151 misrepresentation or fraudulent omission to state material facts.

152 (5) This act may not be construed to prevent any person 18 years of age or over from  
 153 refusing to consent to health care for ~~[his]~~ the patient's own person upon personal or religious  
 154 grounds.

155 (6) Except as provided in Section 76-7-304.5, the following persons are authorized and  
 156 empowered to consent to any health care not prohibited by law:

157 (a) any parent, whether an adult or a minor, for the parent's minor child;

158 (b) any married person, for a spouse;

159 (c) any person temporarily standing in loco parentis, whether formally serving or not,  
 160 for the minor under that person's care and any guardian for the guardian's ward;

161 (d) any person 18 years of age or over for that person's parent who is unable by reason  
 162 of age, physical or mental condition, to provide such consent;

163 (e) any patient 18 years of age or over;

164 (f) any female regardless of age or marital status, when given in connection with her  
 165 pregnancy or childbirth;

166 (g) in the absence of a parent, any adult for the adult's minor brother or sister;

167 (h) in the absence of a parent, any grandparent for the grandparent's minor grandchild;

168 (i) an emancipated minor as provided in Section 78A-6-805;

169 (j) a minor who has contracted a lawful marriage; and

170 (k) an unaccompanied homeless minor, as that term is defined in the McKinney-Vento  
 171 Homeless Assistance Act of 1987, Pub. L. 100-77, as amended, who is 15 years of age or older.

172 (7) A person who in good faith consents or authorizes health care treatment or  
 173 procedures for another as provided by this act may not be subject to civil liability.

174 (8) Notwithstanding any other provision of this section, if a health care provider fails to  
 175 comply with the requirement in Section ~~§~~→ [58-67-809 or 58-68-809] 58-1-509 ←~~§~~ , the health care  
 175a provider is  
 176 presumed to have lacked informed consent with respect to the patient examination, as defined  
 177 in Section ~~§~~→ [58-67-809 or 58-68-809] 58-1-509 ←~~§~~ .