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# OHIO LEGISLATIVE SERVICE COMMISSION

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**H.B. 89\***  
**135<sup>th</sup> General Assembly**

## Occupational Regulation Report

[Click here for H.B. 89's Bill Analysis / Fiscal Note](#)

**Primary Sponsors:** Reps. Hillyer and Abdullahi

**Impacted Professions:** Advanced practice registered nurses, physician assistants, and physicians

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LSC is required by law to issue a report for each introduced bill that substantially changes or enacts an occupational regulation. The report must: (1) explain the bill's regulatory framework in the context of Ohio's statutory policy of using the least restrictive regulation necessary to protect consumers, (2) compare the regulatory schemes governing the same occupation in other states, and (3) examine the bill's potential impact on employment, consumer choice, market competition, and cost to government.<sup>1</sup>

## LEAST RESTRICTIVE REGULATION COMPARISON

### Ohio's general regulatory policy

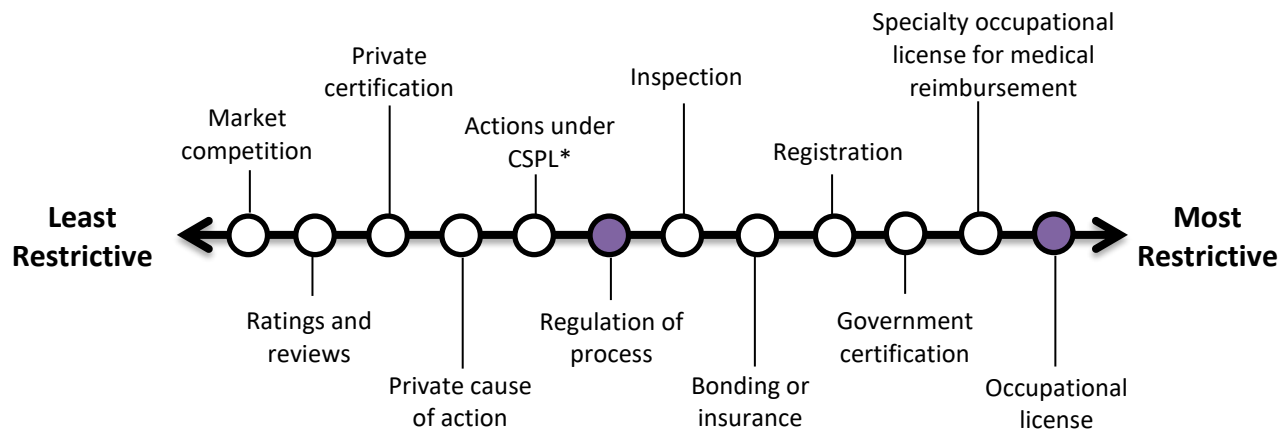
The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect consumers from "present, significant, and substantiated harms that threaten health, safety, or welfare," the state's expressed intent is to enact the "least restrictive regulation that will adequately protect consumers from such harms."<sup>2</sup>

\* This report addresses the "As Introduced" version of H.B. 89. It does not account for changes that may have been adopted after the bill's introduction.

<sup>1</sup> R.C. 103.26, not in the bill.

<sup>2</sup> R.C. 4798.01 and 4798.02, neither in the bill.

The degree of “restrictiveness” of an occupational regulation is prescribed by statute. The following graphic identifies each type of occupational regulation expressly mentioned in the state’s policy by least to most restrictive:



\*CSPL – The Consumer Sales Practices Law

H.B. 89 generally prohibits advanced practice registered nurses (APRNs), physician assistants (PAs), medical residents, or students from performing an intimate examination (defined as a pelvic, prostate, or rectal examination) on an anesthetized or unconscious patient. Certain exceptions apply, including the patient’s grant of specific, informed consent to the intimate examination.<sup>3</sup> For a violation of the prohibition, the bill authorizes the appropriate licensing board to take disciplinary action such as limiting, revoking, or suspending the license involved or refusing to issue, renew, or reinstate a license.<sup>4</sup>

## Necessity of regulations

Representative Brett Hillyer, one of the bill’s primary sponsors, testified that he was approached by a number of resident physicians who expressed concern about being asked to perform pelvic examinations on anesthetized and unconscious patients. He stated that he was surprised to learn that often the patient had not consented to the pelvic examination and was receiving medical care for a condition that in no way warranted such an examination. Furthermore, he conveyed that sometimes the patient was not even informed that the examination had occurred. He asserted that this is unacceptable, not only because it violates the patient while in a vulnerable state but also because it creates an uncomfortable environment for the medical team that distracts from the primary goal of the patient’s procedure or appointment.

The bill’s other primary sponsor, Representative Munira Yasin Abdullahi, discussed a recent survey regarding this issue that was published in the National Library of Medicine. She said that of 101 medical students from seven American medical schools, 92% had performed a pelvic examination on anesthetized female patients, 61% of whom reported not having obtained

<sup>3</sup> R.C. 4723.93, 4730.57, and 4731.77.

<sup>4</sup> R.C. 4723.28, 4730.25, and 4731.22.

the patient's explicit consent to do so. She also cited regional surveys from the early 2000s that reached similar conclusions.

In addition, Representative Abdullahi pointed out that these unauthorized pelvic examinations can particularly impact patient populations that already are more vulnerable due to healthcare disparities involving systemic racism, lack of insurance, and limited options for selecting a hospital.

Representative Hillyer emphasized the importance of prioritizing patient privacy and dignity in medical settings. Similarly, Representative Abdullahi highlighted the need to protect patients' autonomy and bodily rights. To accomplish this, they both advocated for requiring a patient's specific, prior, express consent to a pelvic examination unless compelling circumstances dictate otherwise.

Representative Abdullahi asserted that such a requirement would elevate Ohio's standard of health care by sensitizing students to the importance of consent and encouraging them to view patients as autonomous human individuals with liberties and rights. Further, she stated that research indicates that patients are willing to participate in students' education if explicitly asked. Thus, she said that requiring consent for pelvic examinations would not jeopardize medical education and likely would enhance it.

Representative Abdullahi added that nearly half of other states, such as California, Hawaii, Illinois, Iowa, Maryland, New York, and Utah, have enacted consent requirements for pelvic examinations.<sup>5</sup>

## **Restrictiveness of regulations**

### **Licensing provisions**

Licensure is the most restrictive of all regulatory options identified within the state's continuum of regulations. Accordingly, the state's policy prescribes a narrow range of situations in which required licensure is appropriate; specifically, when all of the following circumstances are present:

- The occupation involves providing a service regulated by both state and federal law;
- The licensing framework allows individuals licensed in other states and territories to practice in Ohio; and
- The licensing requirement is based on uniform national laws, practices, and examinations that have been adopted by at least 50 U.S. states and territories.<sup>6</sup>

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<sup>5</sup> See [Representative Brett Hillyer Sponsor Testimony \(PDF\)](#) and [Representative Munira Yasin Abdullahi Sponsor Testimony \(PDF\)](#), House Public Health Policy Committee, April 19, 2023, available on the General Assembly's website, [legislature.ohio.gov](http://legislature.ohio.gov), by searching for "HB 89" and looking under the "Committee Activity" tab.

<sup>6</sup> R.C. 4798.02, not in the bill.

Licensure of APRNs, PAs, and physicians under continuing law unchanged by the bill appears to satisfy the state policy's first criterion. Each of these types of licenses authorize the licensee to prescribe controlled substances, a service that is regulated by both state law and the Federal Comprehensive Drug Abuse Prevention and Control Act.<sup>7</sup>

The state policy's second criterion regarding licensure of out-of-state individuals appears to be satisfied by continuing law unchanged by the bill. Currently, the Board of Nursing (with respect to APRNs) and State Medical Board (with respect to PAs and physicians) have laws governing issuing licenses to out-of-state applicants. And, beginning December 29, 2023, the Board of Nursing or the State Medical Board must grant a license to an applicant in accordance with the Occupational License Reciprocity Law if either of the following applies:

- The applicant holds a license in another state; or
- The applicant has satisfactory work experience, a government certification, or a private certification as described in the Occupational License Reciprocity Law as an APRN, PA, or physician, as applicable, in a state that does not issue that license.<sup>8</sup>

As for the state policy's third criterion, continuing law unchanged by the bill does not appear to satisfy it because licensure laws governing APRNs, PAs, and physicians are not consistent across the nation.<sup>9</sup>

The bill does not impose any new licensure requirements or extend the reach of existing licenses. It does, however, establish new grounds for disciplinary action involving licensure of APRNs, PAs, and physicians.

### **Disciplinary action**

The bill appears to increase restrictiveness by adding a new reason for which the appropriate licensing board may take disciplinary action against an APRN, PA, or physician. (Under the bill, it appears possible that the State Medical Board likewise may discipline a medical resident holding a training certificate for this new reason; however, the bill is somewhat unclear on this point.) Specifically, the bill authorizes the Board of Nursing (with respect to APRNs) or the State Medical Board (with respect to PAs and physicians and potentially with respect to medical residents) to do any of the following for a violation of the bill's prohibition against conducting an intimate examination on an unconscious or anesthetized patient:

- Limit, revoke, or suspend a license to practice;

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<sup>7</sup> R.C. 4723.50, 4730.53, 4731.052, and 4731.056, not in the bill; 21 United States Code (U.S.C.) 801 *et seq.*

<sup>8</sup> R.C. 4723.41(B), 4730.10(C), 4730.11, and 4731.299, not in the bill; R.C. Chapter 4796.

<sup>9</sup> [Practice Information by State](#), available by searching "practice information by state" on the American Association of Nurse Practitioners website: [aanp.org](#); [State Laws and Regulations](#), available by searching "state laws" on the American Academy of Physician Associates website: [aapa.org](#); and [State Specific Requirements for Initial Medical Licensure](#), available by searching "state specific" on the Federation of State Medical Boards website: [fsmb.org](#).

- Refuse to issue, renew, or reinstate a license; or
- Reprimand or place on probation the licensee.

With respect to a student enrolled in an APRN or PA educational program or a medical student, if the student violates the bill's prohibition, it is possible the student will not be issued a license.<sup>10</sup>

### **Regulation of process**

The state's general policy does not specify when a process regulation is the appropriate means of protecting consumers. Presumably, process regulations are preferred when market competition, ratings and reviews, private certifications, private causes of action, and actions under the Consumer Sales Practice Act are not sufficient to achieve the intent of the regulation.<sup>11</sup>

Whether these mechanisms are a sufficient means of protecting consumers is a policy decision. However, to protect the health and safety of patients, continuing Ohio law unchanged by the bill establishes many process regulations that govern the providing of medical services. For example, certain APRNs must practice in collaboration with a licensed physician, and PAs must practice under physician supervision.<sup>12</sup>

### **Intimate examinations**

The bill appears to increase restrictiveness by creating a new process regulation. Specifically, the bill generally prohibits APRNs, PAs, physicians, medical residents, or students actively pursuing an education to become an APRN, PA, or physician from performing, or authorizing another to perform, an intimate examination on an anesthetized or unconscious patient unless at least one of the following exceptions apply:

- The intimate examination is within the scope of care for the surgical procedure or diagnostic examination being performed;
- The patient or the patient's legal representative gives specific, informed consent for the intimate examination;
- The intimate examination is required for diagnostic purposes or treatment; or
- A court orders the intimate examination for purposes of collecting evidence.<sup>13</sup>

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<sup>10</sup> R.C. 4723.28, 4730.25, and 4731.22 (and potentially R.C. 4731.291, not in the bill).

<sup>11</sup> R.C. 4798.01, not in the bill.

<sup>12</sup> R.C. 4723.431 and 4730.02, neither in the bill.

<sup>13</sup> R.C. 4723.93, 4730.57, and 4731.77.

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## IMPACT STATEMENT

### Opportunities for employment

The employment effects of the bill are minor. The bill does not increase the requirements for employment in a licensed health care profession, so the burden of gaining such a position would be unchanged. Violating APRNs, PAs, or physicians (including any such students) could lose a state license, and thus this bill has a negative effect on employment for these professionals. However, the effect is expected to be very small.

### Consumer choice

The consumer choice effects of the bill are negligible. To be sure, removing the license of a health care professional found to be in violation of the conditions of the bill would reduce the number of choices available to consumers, but the number of such license removals would presumably be very low.

### Market competition

The reliance on market competition to protect consumers would produce a suboptimal outcome in this situation for a few reasons. First, consumers only become aware of a problem after a violation, which means some consumers will have been provided the services. Second, the health care market does not contain what economists call complete information, as not all violations are reported, not all reported violations become news items, and not all news items are known to all consumers. Third, the nature of unwanted pelvic, prostate, and rectal examinations is such that most consumers would rather be protected from the possibility of being provided the services rather than take their chances that a violating professional will not also violate them.

### Cost to government

For an analysis of the bill's cost to government, please refer to the [LBO fiscal note \(PDF\)](#).

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## COMPARISON TO OTHER STATES

None of the states surrounding Ohio appear to have enacted legislation to prohibit performing pelvic (or similarly intimate) examinations without express consent. However, other states have enacted similar prohibitions and the table below provides information about those laws from the following states: Ohio (as proposed under H.B. 89), California, Illinois, Iowa, Oregon, and Virginia.

State	Consent Requirement	Medical Professionals Subject to Requirement	Penalty
Ohio (under the bill)	Prohibits performing a pelvic, prostate, or rectal examination on an anesthetized or	APRNs, PAs, physicians, medical residents, and students	License limitation, revocation, or suspension;

State	Consent Requirement	Medical Professionals Subject to Requirement	Penalty
	<p>unconscious patient unless the patient gives specific, informed consent or other specified circumstances apply</p> <p><i>(R.C. 4723.93, 4730.57, and 4731.77)</i></p>	<p><i>(R.C. 4723.93, 4730.57, and 4731.77)</i></p>	<p>Refusal to issue, renew, or reinstate a license; or</p> <p>Reprimand or placement on probation of the licensee</p> <p><i>(R.C. 4723.28, 4730.25, and 4731.22)</i></p>
California	<p>Prohibits performing a pelvic examination on an anesthetized or unconscious female patient unless the patient gave informed consent to the pelvic examination or other specified circumstances apply</p> <p><i>(Cal. Bus. &amp; Prof. Code 2281)</i></p>	<p>A physician and surgeon or a student completing a professional instruction course or clinical training program</p> <p><i>(Cal. Bus. &amp; Prof. Code 2281)</i></p>	<p>Misdemeanor (punishable by up to six months imprisonment and a fine of up to \$1,000)</p> <p><i>(Cal. Penal Code 19)</i></p> <p>Public reprimand, probation, or license suspension or revocation</p> <p><i>(Cal. Bus. &amp; Prof. Code 2314(a), 2227, and 2234(a))</i></p>
Illinois	<p>Does not require the patient's explicit consent to a pelvic examination</p> <p>Requires medical professionals to inform the patient of his or her profession when performing a pelvic examination</p> <p>Requires the pelvic examination to be related to an unconscious patient's illness, condition, or disease</p> <p><i>(410 Ill. Comp. Stat. 50/7)</i></p>	<p>Physicians, medical students, residents, APRNs, registered nurses, or PAs</p> <p><i>(410 Ill. Comp. Stat. 50/7)</i></p>	<p>None specified</p>
Iowa	<p>Prohibits performing a pelvic examination on an anesthetized or unconscious patient unless the patient provides prior</p>	<p>Physicians, PAs, and nurses (and many other specified professions) or a student in a course of instruction or a</p>	<p>Serious misdemeanor (punishable by up to one year imprisonment and a fine between \$430 to \$2,560)</p>

State	Consent Requirement	Medical Professionals Subject to Requirement	Penalty
	written informed consent and the pelvic examination is necessary for preventative, diagnostic, or treatment purpose or unless other specified circumstances apply <i>(Iowa Code 147.114)</i>	clinical training or residency program <i>(Iowa Code 147.1(6) and 147.114)</i>	Professional disciplinary action (license suspension or revocation) <i>(Iowa Code 903.1, 147.114, 147.55, and 147.86)</i>
Oregon	Prohibits knowingly performing a pelvic examination on a female patient who is anesthetized or unconscious in a hospital or medical clinic unless the patient gave specific informed consent to the examination or other specified circumstances apply <i>(Or. Rev. Stat. 676.360)</i>	Any person <i>(Or. Rev. Stat. 676.360)</i>	Unspecified discipline by any licensing board that licenses the person <i>(Or. Rev. Stat. 676.360)</i>
Virginia	Prohibits performing a pelvic examination on an anesthetized or unconscious female patient unless the patient gives informed consent or other specified circumstances apply <i>(Va. Code 54.1-2959)</i>	Students in a course of professional instruction or clinical training program <i>(Va. Code 54.1-2959)</i>	None specified