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Client Alert: Florida Imposes New Pelvic Exam Consent Requirement on Physicians

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In response to Florida's new pelvic exam laws, recently, several physician groups, including the Florida Medical Association, Inc., The Florida Academy of Family Physicians, Inc., The Florida Chapter of the American Academy of Pediatrics, Inc., The Florida Chapter of the American College of Physicians, Inc., and The Florida Society of Dermatologists and Dermatologic Surgeons, Inc., filed a petition for declaratory statement with the Board of Medicine (the "Board"). The petition seeks clarification from the Board regarding what constitutes a "pelvic examination" under the new law (including whether visual inspections or pelvic procedures are included in the definition), the applicability of the law to male patients, and the scope of the written consent requirement. Pursuant to rule 28-105.003, F.A.C., the Board may hold a hearing to consider the petition. The hearing must comply with certain Florida statutes. See §§ 120.565 and 120.57, Florida Statutes. Within 90 days of the filing of the petition, the Board shall render a final order denying the petition or granting the declaratory statement. Practitioners can check for updates on the petition with these organizations.

By way of background, as of July 1, 2020, a new law, section 456.51, Florida Statutes, which imposes additional consent requirements on health care providers performing pelvic examinations, goes into effect. Under the plain language of the new statute, a health care provider must have the written consent of a patient or their representative before performing a "pelvic examination." A "pelvic examination" means the series of tasks that comprise an examination of the vagina, cervix, uterus, fallopian tubes, ovaries, rectum, or external pelvic tissue or organs using any combination of modalities, which may include, but need not be limited to, the health care provider's gloved hand or instrumentation. The new law also applies to students studying to be a health care provider. The law specifies two exceptions to the consent requirements – 1) when the pelvic examination is court ordered, or 2) the pelvic examination is necessary to avert a serious, imminent, and irreversible impairment to a patient's bodily function.

We note that this new statute has an interesting legislative history. It was one of several similar proposed bills, and this legislation seems targeted to protect sexual assault victims from forced examination and to prevent "reproductive battery," i.e., the fraudulent transfer into the body of a recipient human reproductive material or a human embryo of a donor knowing that the recipient has not consented to the use of materials from that donor. Based on the foregoing, the intended purpose of the law seems to have a somewhat narrow focus. However, the law itself is written broadly. Thus, from the statute's plain language alone, it appears to

apply to all medical practices and pelvic examinations. Accordingly, until the Legislature or a regulating agency issues clarification or additional guidance, health care providers should seek to minimize risk by complying with the statute. If you have questions about complying with this statute, please consult with your compliance officer or a health care lawyer.