# Unauthorized Pelvic Exams Are Sexual Assault

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# Introduction

Pelvic exams are used to assess the health of female reproductive organs. As such, they involve digital penetration by a medical professional. However, in the service of medical student education, many pelvic exams are performed on unconscious patients *without authorization*.[[1]](#footnote-0) In this article, we argue that unauthorized pelvic exams (UPEs) are sexual assault. Our argument is simple: in any other circumstance, unauthorized digital penetration amounts to sexual assault. So, unless there’s a morally significant difference between UPEs and other instances of unauthorized digital penetration, UPEs are sexual assault. We consider several possible morally significant differences, but argue that none are actually morally significant. Hence, UPEs are sexual assault. So, insofar as one is against sexual assault, one should be against UPEs.

# Unauthorized Pelvic Exams

The pelvic exam is a routine diagnostic method used to assess the health of the female reproductive organs. To perform this exam, the medical practitioner inserts one or two gloved fingers into the patient’s vagina and palpates her uterus and ovaries. Pelvic exams are inherently invasive, and can understandably make patients feel vulnerable, anxious, and physically uncomfortable, particularly for patients with a history of sexual abuse or who have not been sexually active (Gina A. Taylor, Deana McDonagh, and Michael J. Hansen 2017). Yet these exams are generally considered to serve an important role in female reproductive health and can help detect potential problems early on. As such, physicians need to be well-trained, both in how to differentiate between normal and abnormal organs, and in how to administer pelvic exams in an effective and sensitive manner (so as to avoid missteps that could cause discomfort or even damage).

Physicians develop competence in administering pelvic exams by practicing on patients. One opportunity for medical students to gain this experience is by practicing on unconscious patients. In the United States, it is relatively common practice for instructors at teaching hospitals to direct students to practice pelvic exams on patients who are anesthetized for a surgical procedure (David Wahlberg 2020 and Phoebe Friesen 2018a and 2018b). Outside the United States, there have also been reports of pelvic exams on anesthetized patients (Lori Bruce 2020; Sarah Smith 2015). For example, one U.K. study from 2003 reported that only 24% of “intimate examinations” on anesthetized patients, including pelvic exams, were performed after first obtaining written consent (Yvette Coldicott, Catherine Pope, and Clive Roberts 2003, p. 98), meaning that a whopping *76%* of intimate examinations were performed without obtaining written consent.[[2]](#footnote-1) In such cases, these exams are typically performed without first obtaining any form of consent from the patient (Helena Kelly 2019; Charlotte E. Rees and Lynn V. Monrouxe 2011). One patient may undergo multiple pelvic exams while she is unconscious, depending on how many students are present and need the practice (Peter A. Ubel, Christopher Jepson, and Ari Silver-Isenstadt 2003). To distinguish this type of pelvic exam from the kind administered to a conscious, (informed) consenting patient, let’s call the type that is administered to an unconscious patient without prior (informed) consent[[3]](#footnote-2) an unauthorized pelvic exam, or UPE. UPEs are performed during both gynecological and non-gynecological surgeries (Wahlberg 2020, The Epstein Health Law and Policy Program (n.d.), and Wilson Fretwell, Robin and Anthony Michael Kreis 2018). This means that while the exam may be related to the patient’s treatment, there are also cases where it is completely unrelated to the patient’s treatment and serves a purely educational purpose.

The prevalence of UPEs in the United States is not clear, though their use as a training tool remains fairly standard within the medical community. Hospitals rarely keep records of these procedures because they are so commonplace (Wahlberg 2020). One study surveyed Philadelphia-area medical students and found that ninety percent of participants had performed UPEs as part of their training (Emma Goldberg 2020).[[4]](#footnote-3)

# Unauthorized Yoni Massages

 So, UPEs are relatively common—both in the United States and the UK. But this doesn’t make them morally permissible. Indeed, *in any other circumstance,* digital penetration without authorization would be considered sexual assault.[[5]](#footnote-4) For example, consider the following case:

*Hurt Back*: Sally hurt her back—she was working in her garden, and after pulling weeds for several hours her back flared up with pain. After this, she took a break from her gardening, but the pain didn’t go away. In fact, the pain became so bad that she went to a walk-in clinic to see if she could get any help for her pain. At the walk-in clinic, she was examined and told that she needed a therapeutic massage. She called up her local massage parlor and scheduled an appointment for the next day. At her appointment, they informed Sally that she would be receiving an intensive back massage that would help her pain. During her massage, she became relaxed—so relaxed that she fell into a deep sleep. At the end of her massage, she was woken up by her masseuse. But something felt off—she asked what happened while she was asleep. Her masseuse explained that she has an apprentice, and that her apprentice is intending to specialize in *yoni massages*—massages in which the masseuse gently massages the inside of the vagina*.* This massage, she said, can help women recover from sexual trauma and has other benefits as well.However, she continued, her apprentice has only performed a couple of yoni massages, and she needed more practice in order to perfect her method. Because of this, she invited her apprentice to practice on Sally while she was asleep—it’s easier to perfect the method on a patient who isn’t awake.

 Unauthorized yoni massages, such as in *Hurt Back*, are *paradigm* cases of sexual assault. In *Hurt Back*, the apprentice digitally penetrated Sally intentionally and without consent. We will take these conditions—non-consensual intentional digital penetration—to be sufficient for sexual assault, absent some morally relevant factor that would render it *not* sexual assault. Indeed, if non-consensual and intentional digital penetration isn’t sexual assault, then we don’t know what sexual assault is.

So, *Hurt Back* is a paradigm case of sexual assault. However, both UPEs and unauthorized yoni massages (such as in *Hurt Back*) involve intentional unauthorized digital penetration. Therefore, unless there’s a morally significant difference between UPEs and unauthorized yoni massages, UPEs are sexual assault.

## 3.1 A Caveat: The Use of Hypothetical Examples in Ethics

Perhaps the reader is wondering if a hypothetical example, such as *Hurt Back*, can tell us anything about the moral status of UPEs. After all, *Hurt Back*—and cases like it—don’t actually happen, whereas UPEs do happen.

 However, hypothetical examples do help us gain ethical insight. One very well known example of this is Judith Thomson’s (1971) story about a famous violinist. She has the reader consider a scenario in which she (the reader) is kidnapped and hooked up to a famous violinist so that his (the violinist’s) blood may be filtered through her (the reader’s) kidneys. She says that even if disconnecting oneself from the violinist will kill the violinist, that it’s permissible to disconnect oneself. And this, she thinks, shows that even if the fetus is a person, abortion is permissible in some circumstances. As the reader no doubt knows, this is a hypothetical example—no such case has ever occurred (at least to our knowledge). However, pointing out that this isn’t a regular medical practice wouldn’t be a good objection to Thomson’s argument. Indeed, if Thomson is right, then we are able to derive ethical facts about actual practices (i.e. abortion) from a hypoethical example (i.e. the famous violinist).

 Indeed, this practice is common in ethics. For example, Michael Huemer (2012) argues in favor of open borders and anarcho-capitalism (in part) by using hypothetical examples involving vigilantes. Michael Tooley (1972) makes use of a hypothetical (science-fiction) example involving kittens being injected with a special serum in his defense of abortion and infanticide. Perry Hendricks (2019) makes use of a hypothetical case involving a mother intentionally causing fetal alcohol syndrome in his argument against abortion. And so on. Obviously, this doesn’t mean that the arguments these authors make are successful. Instead, our point is just that it’s common practice to employ hypothetical examples when doing ethics, and that they can be useful.

 Of course, not all hypothetical examples are equal. Some that are too abstract or science-fiction based can be hard to judge: when we consider examples far removed from reality that involve technology far beyond what we’re familiar with, it can be hard to make ethical judgments about the scenario. However, *Hurt Back* doesn’t fall prey to this charge: the fact is that yoni massages are a real thing. And it isn’t outlandish to think that one could be performed non-consensually—while this would be unusual, it wouldn’t involve breaking any laws of nature or using any technology beyond our familiarity. As such, we don’t find it objectionable to make use of *Hurt Back*, and think that it can help us illuminate the actual practice of UPEs*.*[[6]](#footnote-5)

#  Possible Morally Significant Differences

So far we’ve argued that if unauthorized yoni massages are sexual assault, then UPEs are sexual assault, provided there isn’t a morally significant difference between the two. In this section, we’ll consider several potential morally significant differences between these two practices.

A key difference between unauthorized yoni massages and UPEs, one might argue, is that UPEs are essential for educational purposes: without them, it would be much harder to teach medical students how to perform a pelvic exam. Indeed Tom Russell, University of Wisconsin's Health Spokesperson, says that “patients under anesthesia are relaxed, affording students the opportunity to examine and understand anatomy in ways not possible in non-relaxed, awake patients.” (Wahlberg 2020) So, the patient’s being unconscious during her pelvic exam is good for educational purposes. However, an action’s being *educational* doesn’t make it permissible, nor does it prevent it from being sexual assault. Case in point: unauthorized yoni massages might be educational, but that doesn’t make them permissible, nor does it prevent them from being sexual assault. Consider again *Hurt Back*: it’s no doubt educational for the apprentice to perform a yoni massage on Sally while she is asleep. But that wouldn’t make the yoni massage in *Hurt Back* any more permissible and it wouldn’t make it any less sexual assault: unauthorized penetration is sexual assault even if it’s educational. And so this is not a morally significant difference between UPEs and unauthorized yoni massages.[[7]](#footnote-6)

Perhaps one would argue that UPEs are beneficial, e.g. in performing the exam, one might discover an unknown health issue, and that this is a morally significant difference between UPEs and unauthorized yoni massages. But the mere fact that a procedure is *beneficial* doesn’t render it permissible, nor does it prevent it from being sexual assault. For suppose that yoni massages are beneficial: suppose that they help relax the vaginal muscles, which helps the patient’s body become less tense, and that they help those who have undergone sexual trauma recover from their experiences. This would no doubt make yoni massages beneficial, but it wouldn’t render an unauthorized yoni massage permissible, nor would it prevent it from being sexual assault. For example, even if the yoni massage was beneficial to Sally in *Hurt Back*, it was still impermissible and it was still sexual assault. In the same way, any benefits resulting from a UPE don’t render it permissible or prevent it from being sexual assault.

It might also be argued that the difference between UPEs and unauthorized yoni massages is that every woman who has undergone a UPE has consented to involvement with medical students by signing a general consent to treatment form prior to admission to a teaching hospital, whereas this is not the case with unauthorized yoni massages. Indeed, this is one justification offered by some in the American medical community to defend the use and acceptability of UPEs.[[8]](#footnote-7) For example, Russell says that “patients were not routinely asked to provide specific consent for pelvic exams while under anesthesia... [but] were, however, asked to provide consent generally, which included the involvement of medical student learners.” (Wahlberg 2020).[[9]](#footnote-8) But suppose in the case of *Hurt Back* that Sally, when signing her consent papers for her back massage, also consented to the involvement of the masseuse’s apprentice. This wouldn’t alter our verdict about *Hurt Back*: it wouldn’t make the unauthorized yoni massage performed on Sally permissible nor would it prevent it from being sexual assault. If one consents to the *involvement* of a student (whether it be medical or massage), it doesn’t follow that anything goes. For example, that a patient undergoing a colonoscopy *consents* to the involvement of a student wouldn’t make it permissible for the student to amputate the patient’s arm. Indeed, for consent to student involvement to matter morally with respect to procedure *p*, it must be the case that it is made clear to the patient that consenting to student involvement brings with it the (real and live) possibility of a student performing *p*. Anything less than this isn’t *informed* consent, which is what matters here.[[10]](#footnote-9) So, in the case of a UPE, consent to student involvement only makes a moral difference if it’s made clear to the patient that this consent brings with it the (real and live) possibility of a student performing a UPE. However, the real and live possibility of the student performing a UPE isn’t made clear to patients. For these reasons, consenting to the general involvement of a medical student isn’t a morally significant difference between UPEs and unauthorized yoni massages—to consent to student involvement isn’t to give *informed* consent for a pelvic exam.[[11]](#footnote-10) [[12]](#footnote-11)

Finally, one could suggest that UPEs are not sexual assault because UPEs are not harmful and traumatic in the same way as sexual assault is. Since UPEs are performed while the patient is unconscious, most women will never realize that they have undergone the procedure. We think that this objection is wrong for two reasons. First, UPEs can be harmful in many different ways. This harm may be physical, as in cases where a patient experiences physical trauma when the exam is executed poorly (Wahlberg 2020). This harm may also be psychological: some women have become traumatized upon discovering that they have undergone a UPE, particularly in cases where they were previous victims of sexual assault (Goldberg 2020). Furthermore, there is reason to think that UPEs are inherently harmful because they violate the autonomy of the women subjected to them. Suppose that an individual is harmed by an action if the action leaves them worse off than they were. If an individual’s right is violated, then she is—other things being equal—harmed. Since UPEs (clearly) violate womens’ autonomy, then it follows that UPEs are harmful—and this will be true even if the woman isn’t injured and even if she never finds out about the UPE.

Second, this objection misrepresents the core issue with sexual assault. Whether an act is sexual assault depends crucially on whether the act was consented to, as well as other relevant facts (e.g. that the act was performed on a sex organ). The victim of the act *may* experience trauma and physical harm as a result, but they also might not, such as in cases in which the victim is unconscious during the assault and doesn’t realize (and isn’t informed about) what happened upon waking up. In other words, whether an act is sexual assault doesn’t depend on whether the victim becomes aware of what happened to them or whether it was beneficial. We can see this in *Hurt Back* as well: the yoni massagedoesn’t physically harm Sally but it is still sexual assault. In fact, even if the unauthorized yoni massage is *overall* *beneficial* to the victim (e.g. the massage helps the victim feel relaxed and no worse harm comes from it), it would still be sexual assault. Similarly, in the case of UPEs, even if the act is overall beneficial to the victim (e.g. because the doctor detects something and they can start treatment for it) and she never finds out about it, it’s still sexual assault. Consequently, the fact that a UPE or an unauthorized yoni massage may be beneficial to the victim doesn’t prevent it from being sexual assault.[[13]](#footnote-12)

So, there are several possible morally significant differences between UPEs and unauthorized yoni massages. However, none of them make any moral difference. Therefore, even if UPEs are educational or beneficial, even if the woman has consented to the involvement of medical students, and even if she never finds out that she’s had a UPE, it doesn’t make UPEs permissible or prevent them from being sexual assault.

## 4.1 Is *Hurt Back Too* Similar to UPEs?

Above, we’ve argued that there aren’t any morally significant differences between UPEs and *Hurt Back*. However, one might think that *Hurt Back* can’t give us any ethical insight about UPEs precisely because it’s *too similar* to a UPE. Indeed, this is what a reviewer suggests. This is because the student practicing a yoni massage in *Hurt Back* is learning a therapeutic procedure, and therefore is—in a significant sense—a medical practitioner, just like medical students performing UPEs.

 What are we to make of this charge? First, far from being an objection, we see this similarity *as a strength*. The fact that these cases are so similar *supports* our argument: we’re claiming that since unauthorized yoni massages are sexual assault, so are UPEs—unless there’s a morally significant difference. But—we’ve argued—there isn’t. Hence UPEs are sexual assault. Again, this makes the similarity of *Hurt Back* and UPEs a *strength*. Indeed, we often see arguments that use analogies *rejected* because they aren’t sufficiently similar. For example, some have objected to Thomson’s violinist analogy because, they think, there are morally significant differences between her analogy and abortion (e.g. Kaczor 2014). So, again, we see the similarity as a strength, not a weakness.

But perhaps you wonder how *Hurt Back* can be useful if it’s *exactly* like UPEs. That is, if they are so similar, then our judgment about both cases is bound to be the same, making it such that one case can’t illuminate the other. We think *Hurt Back* is useful because—in our experience—people are willing to give medical doctors more leeway when it comes to issues like this. For example, one might be tempted to say that UPEs are necessary for teaching medical students, and that this justifies them. But—in our experience—we find that people *aren’t* willing to give any leeway to massage students: people are unlikely to defend an unauthorized yoni massage by saying that it’s necessary to teach massage students, after all.[[14]](#footnote-13) That is the crucial difference between UPEs and *Hurt Back*: the former involves medical doctors (and medical students) whereas the latter involves massage therapists and massage students. We are less likely to give the benefit of the doubt to the latter (massage therapists) than to the former (medical doctors). This is why *Hurt Back* can help illuminate the ethics of UPEs: since unauthorized yoni exams (such as in *Hurt Back*) are just like UPEs *and* we readily judge them to be sexual assault, we are thereby committed to judging UPEs as sexual assault.

# Conclusion

 Unauthorized Pelvic Exams (UPEs) are sexual assault: in any other situation, digital penetration without authorization is sexual assault. That UPEs are educational or benefical and that the patient has consented to the general involvment of a medical student doesn’t render them permissible, nor does it prevent them from being sexual assault. Therefore, insofar as one is against sexual assault, one should be against UPEs. And while we have not made any legal argument in this article—we haven’t argued that UPEs should be *illegal*—we hold that insofar as governments should concern themselves with preventing sexual assault, they should also concern themselves with preventing UPEs.[[15]](#footnote-14)

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1. In this article, we will be using “authorization” and “consent” synonymously. [↑](#footnote-ref-0)
2. While we emphasize that UPEs aren’t unique to the United States, much of our data comes from there. [↑](#footnote-ref-1)
3. Hereafter, we will drop the qualification “informed.” All references to consent should be understood as references to *informed* consent. [↑](#footnote-ref-2)
4. Notably, UPEs are currently legal in thirty-one states (The Epstein Health Law and Policy Program n.d.). [↑](#footnote-ref-3)
5. To be clear, we aren’t making a legal argument in this article—different countries have different laws and different legal standards, making it very difficult to make a general legal argument. However, we think that it’s worth noting that UPEs and *Hurt Back* fits the United States’ legal definition of *rape*, which holds that “the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim” is rape (An Updated Definition of Rape N.d.). Again, we aren’t concerned with matters of legality in this article. [↑](#footnote-ref-4)
6. Two reviewers suggested that we address the issue raised in this section. [↑](#footnote-ref-5)
7. It’s worth noting that there’s reason to think that pelvic exams on unconscious patients *don’t* provide an optimal educational experience. Though the unconscious patient is more relaxed, she cannot inform the student of any discomfort or pain during the exam (Peter A. Ubel, Christopher Jepson, and Ari Silver-Isenstadt 2003). This deprives the student of crucial feedback on their administration of the exam, as well as exposing the patient to potential injury. Furthermore, even if it is better to teach pelvic exams (or yoni massages) on unconscious patients, it doesn’t follow that it’s permissible to do so without explicit authorization. Authorization (or lack thereof) is precisely what is needed to turn a pelvic exam from an act of sexual assault to a medical procedure: consent may be morally magic (Heidi Hurd 1996), but it must be there for its magic to work. [↑](#footnote-ref-6)
8. This justification draws on a legal ambiguity in American medicine about what general consent to student involvement includes. However, this ambiguity does not exist in countries like the U.K. (General Medical Council 2016). Consequently, this kind of objection won’t work for anyone wanting to defend UPEs as a general practice. Thanks to an anonymous reviewer for bringing this to our attention. [↑](#footnote-ref-7)
9. Much of the debate over the moral permissibility centers over this issue of whether a woman’s general consent to treatment is sufficient to entail her specific consent to her body being used for pelvic exam practice. Those who argue that UPEs do not violate informed consent hold that it is sufficient. Our example below shows that general consent isn’t sufficient. [↑](#footnote-ref-8)
10. No doubt for one to give informed consent to undergo procedure *p*, she must know more than just that she will undergo *p*, e.g. she must know the risks involved with *p*, and so on. But informed consent requires *at least* this. [↑](#footnote-ref-9)
11. It’s also worth noting that, unlike other procedures performed by medical students such as drawing blood or suturing a wound, UPEs are purely educational and are completely unrelated to the patient’s treatment (Friesen 2018a and 2018b). UPEs would thus not be covered under a general consent to treatment and so would constitute a violation of consent. [↑](#footnote-ref-10)
12. To be clear, consenting to student involvement is (i) not to consent to having a pelvic exam if one is not already scheduled and (ii) not to consent to having a student *perform* a pelvic exam if one has been scheduled. [↑](#footnote-ref-11)
13. For further discussion of issues pertaining to unconscious victims, see Heyes (2016). [↑](#footnote-ref-12)
14. A reviewer has suggested that a better example would be this:

*Drunk*: David and Sarah and kissing at a party. Sarah is drunk and passes out. David proceeds to digitally penetrate her.

Everyone agrees that *Drunk* is a case of sexual assault and that it bares some similarity to UPEs. While we agree that *Drunk* is a case of sexual assault, we think it’s less illuminating than *Hurt Back*: it’s too *dissimilar* to UPEs to do much ethical work. This is because the defenses that can be used for UPEs clearly aren’t applicable in the case of *Drunk*: one can’t claim that David digitally penetrating Sarah is beneficial for Sarah, that it serves educational purposes for David, etc. And so we think *Hurt Back* is far more useful than *Drunk*. [↑](#footnote-ref-13)
15. For comments on this article, thanks to Reviewer 3. And thanks especially to G.L.G.—Colin Patrick Mitchell—for particularly insightful comments. [↑](#footnote-ref-14)