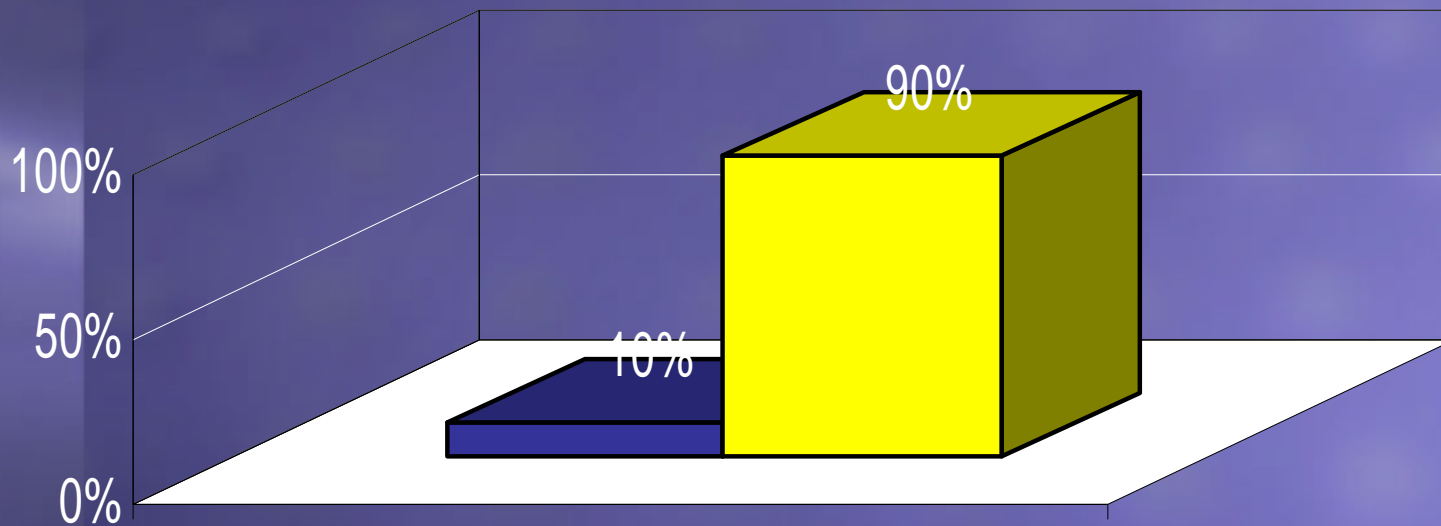


Unauthorized Practice

The Use of Anesthetized and Deceased Patients
Without Consent
to Train Medical Professionals

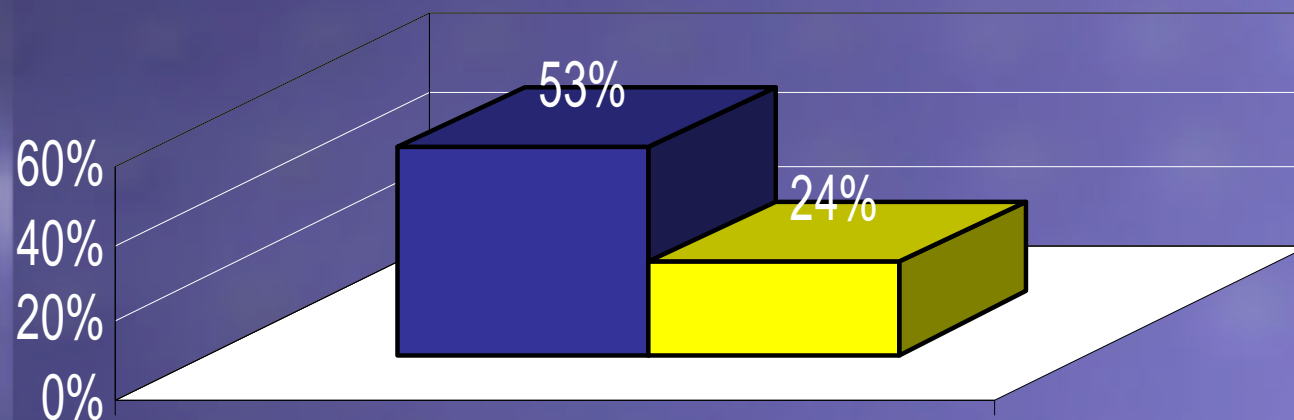
Professor Robin Fretwell Wilson
University of South Carolina
School of Law

Students Practice on Anesthetized Women



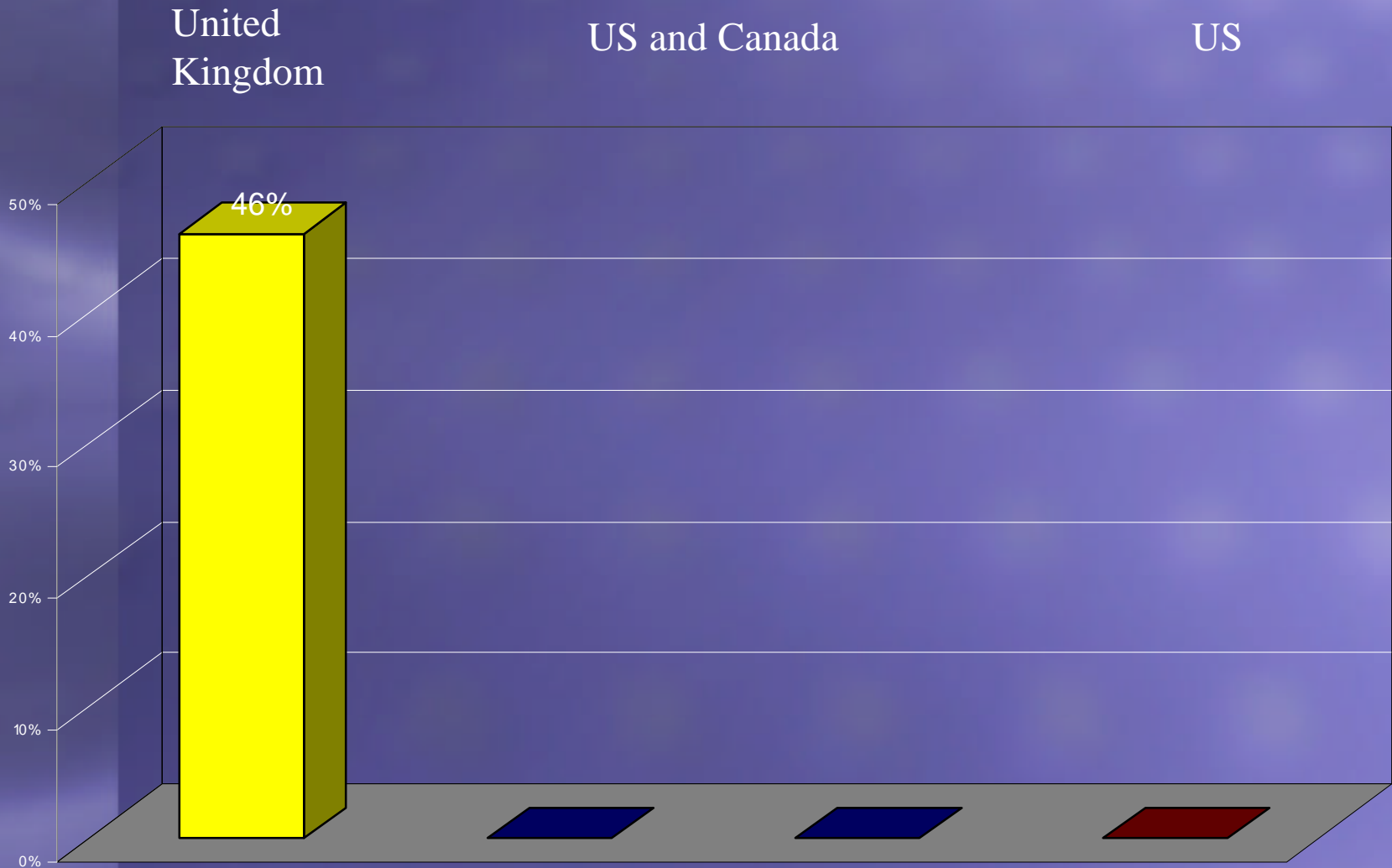
■ Did Not Perform Exam on Pt Under Anesthesia ■ Performed EUA

Students Do Exams Without Consent

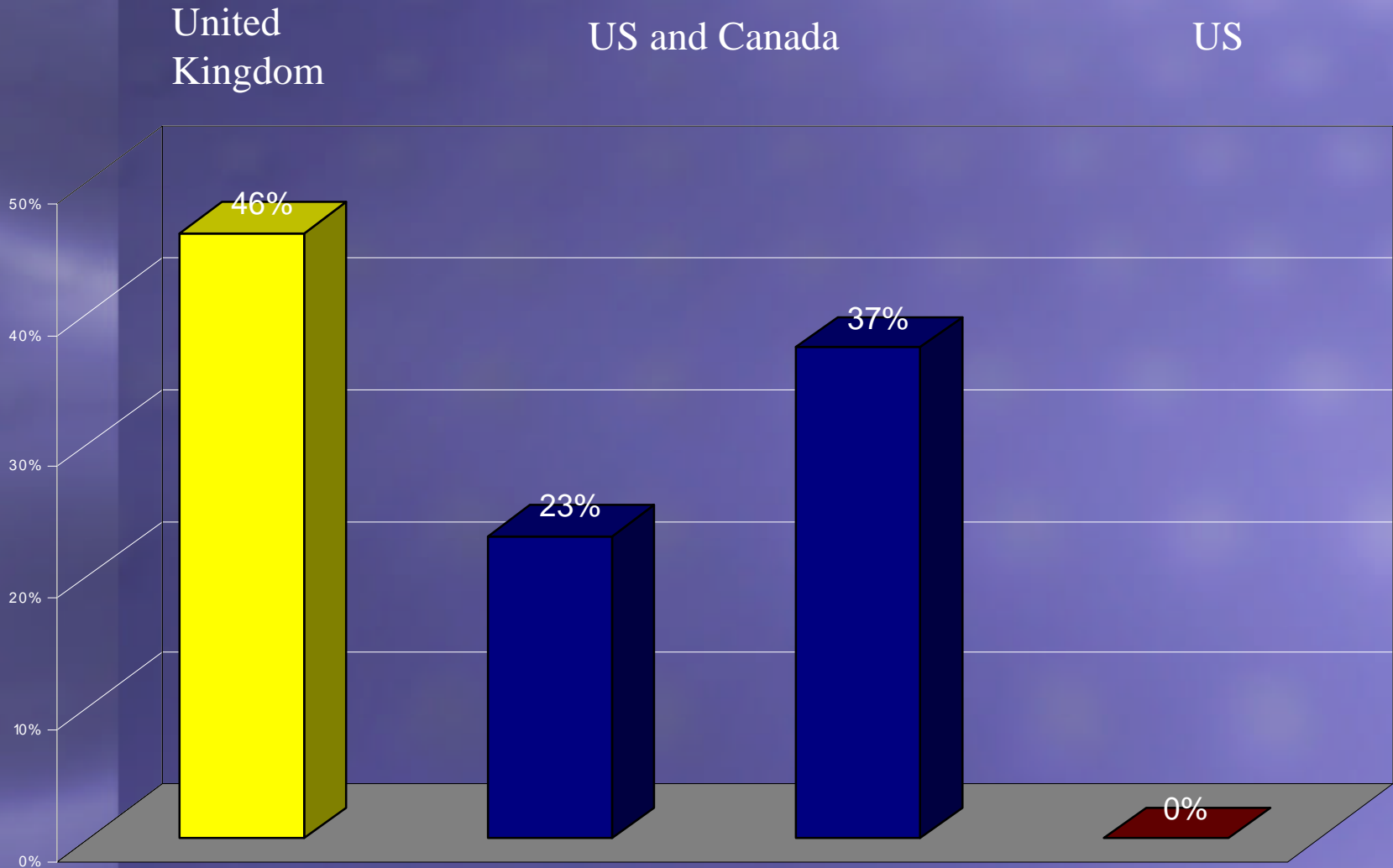


- Performed Exam on Patient Under Anesthesia
- Without Verbal or Written Consent

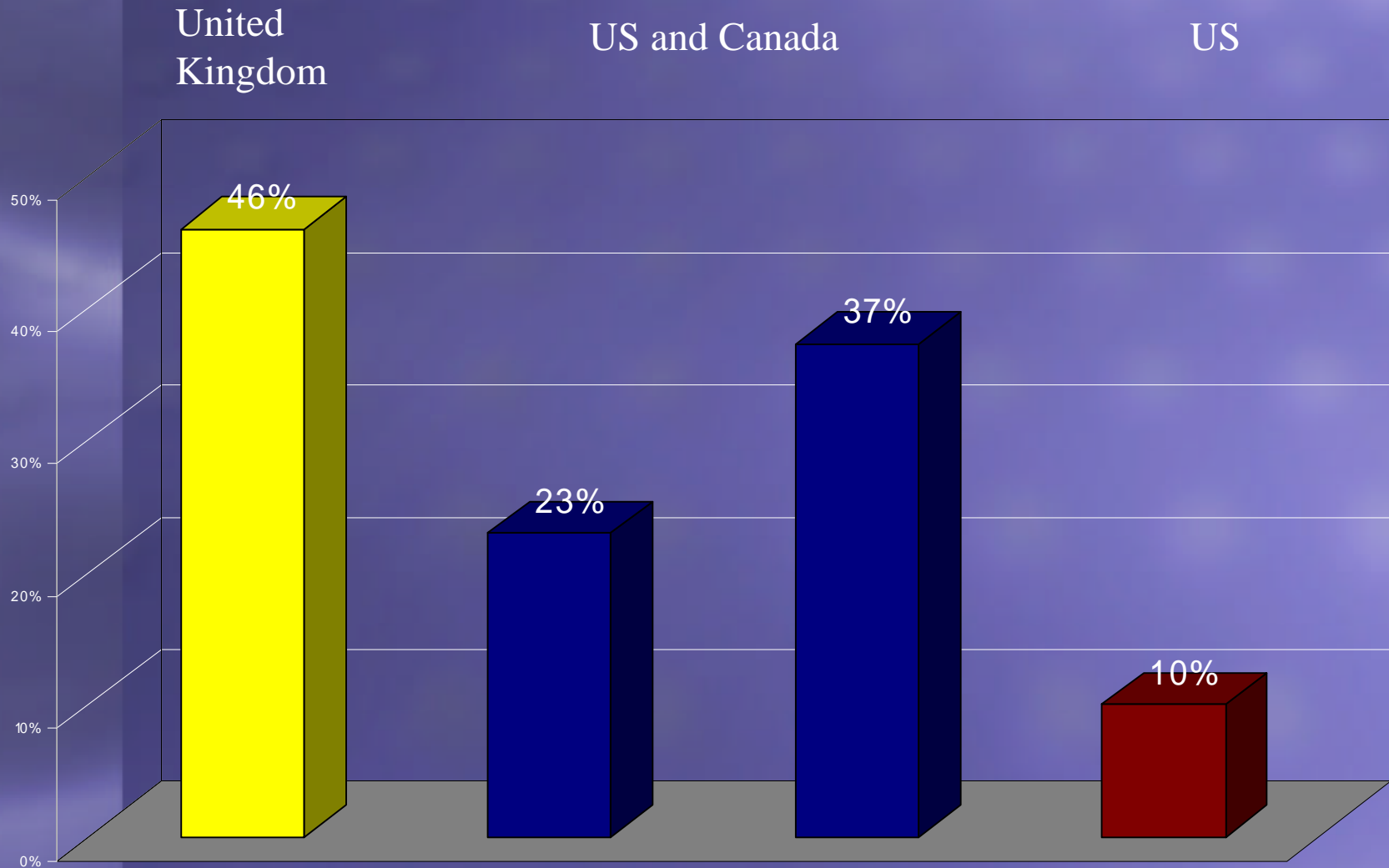
Anesthetized Women Are Used to Teach Pelvic Examinations



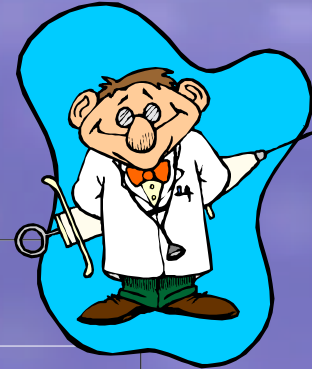
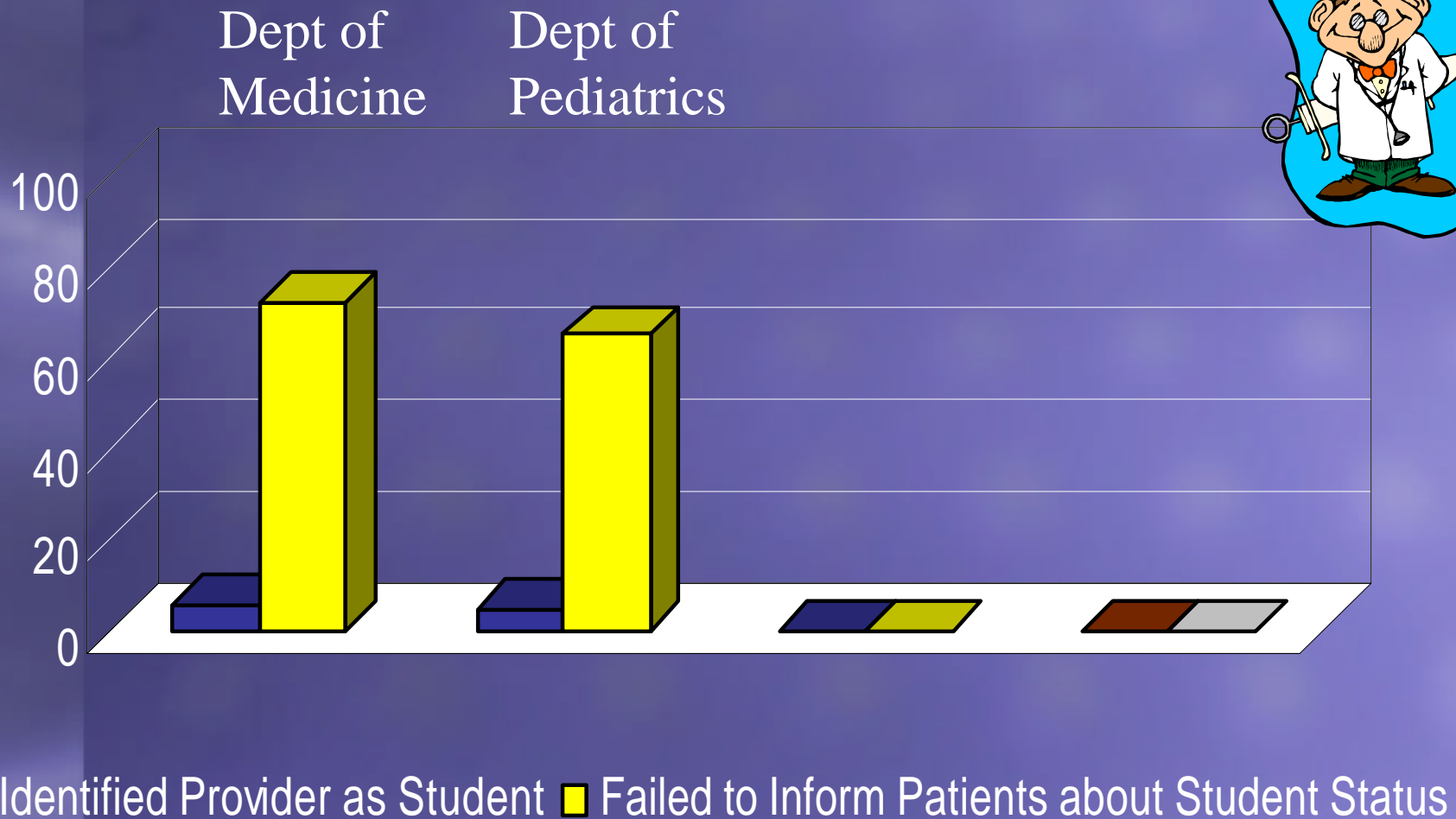
Anesthetized Women Are Used to Teach Pelvic Examinations



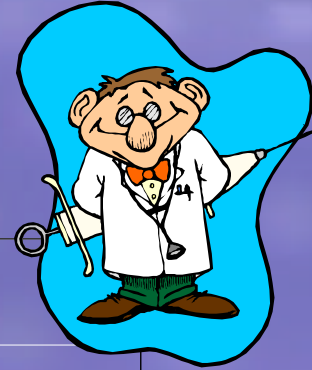
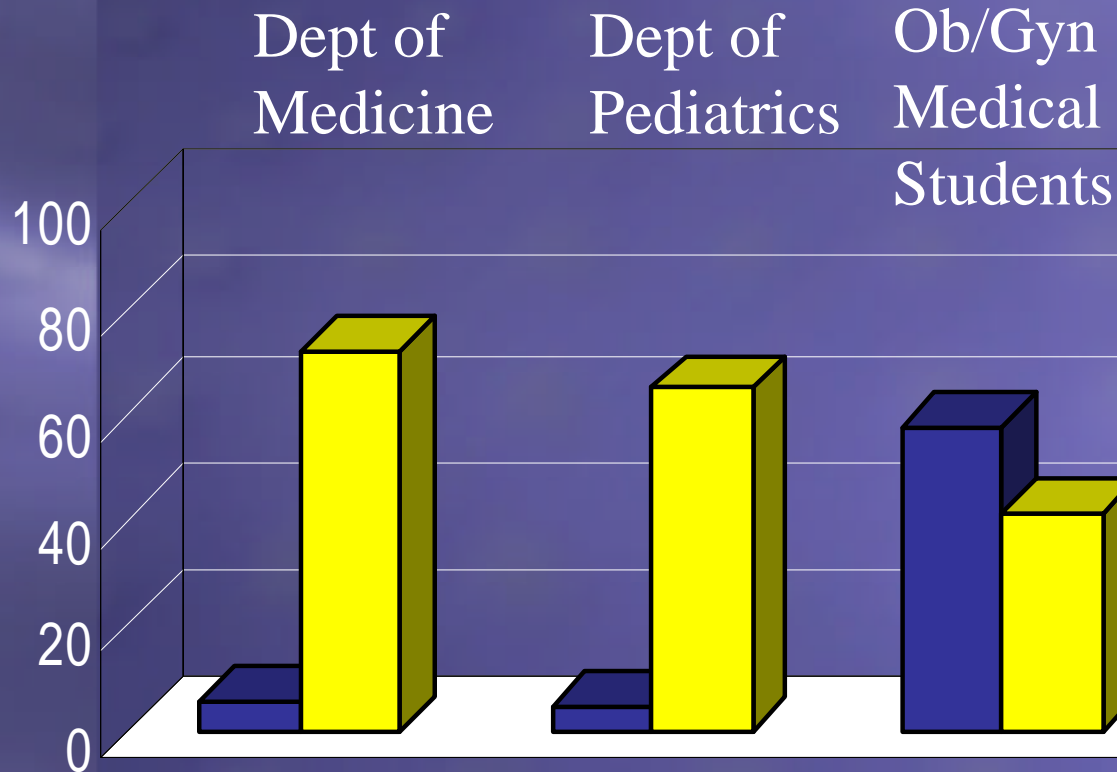
Anesthetized Women Are Used to Teach Pelvic Examinations



Providers Hide Student's Status When Doing Pelvic Exams

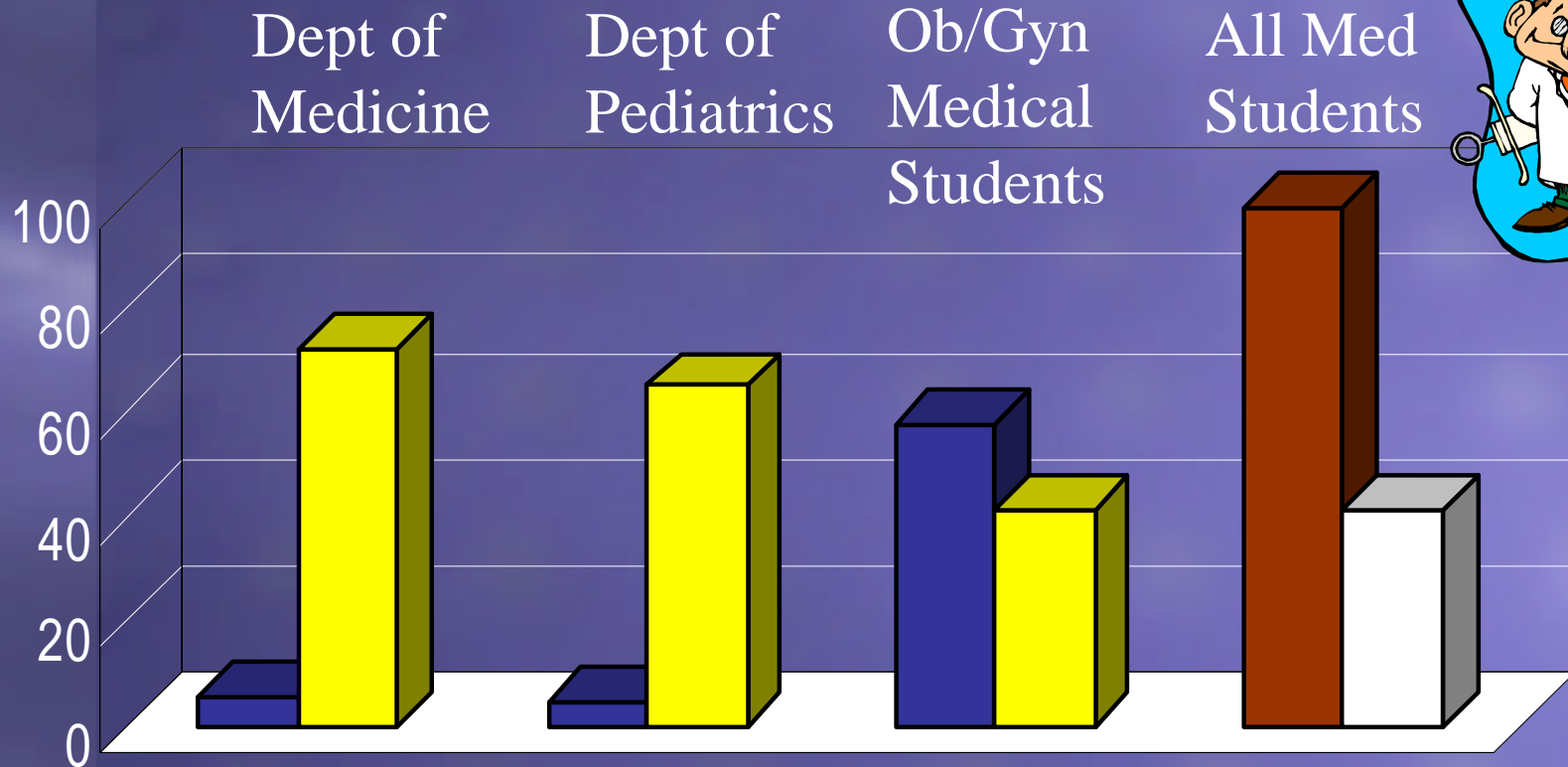


Providers Hide Student's Status When Doing Pelvic Exams



■ Identified Provider as Student ■ Failed to Inform Patients about Student Status

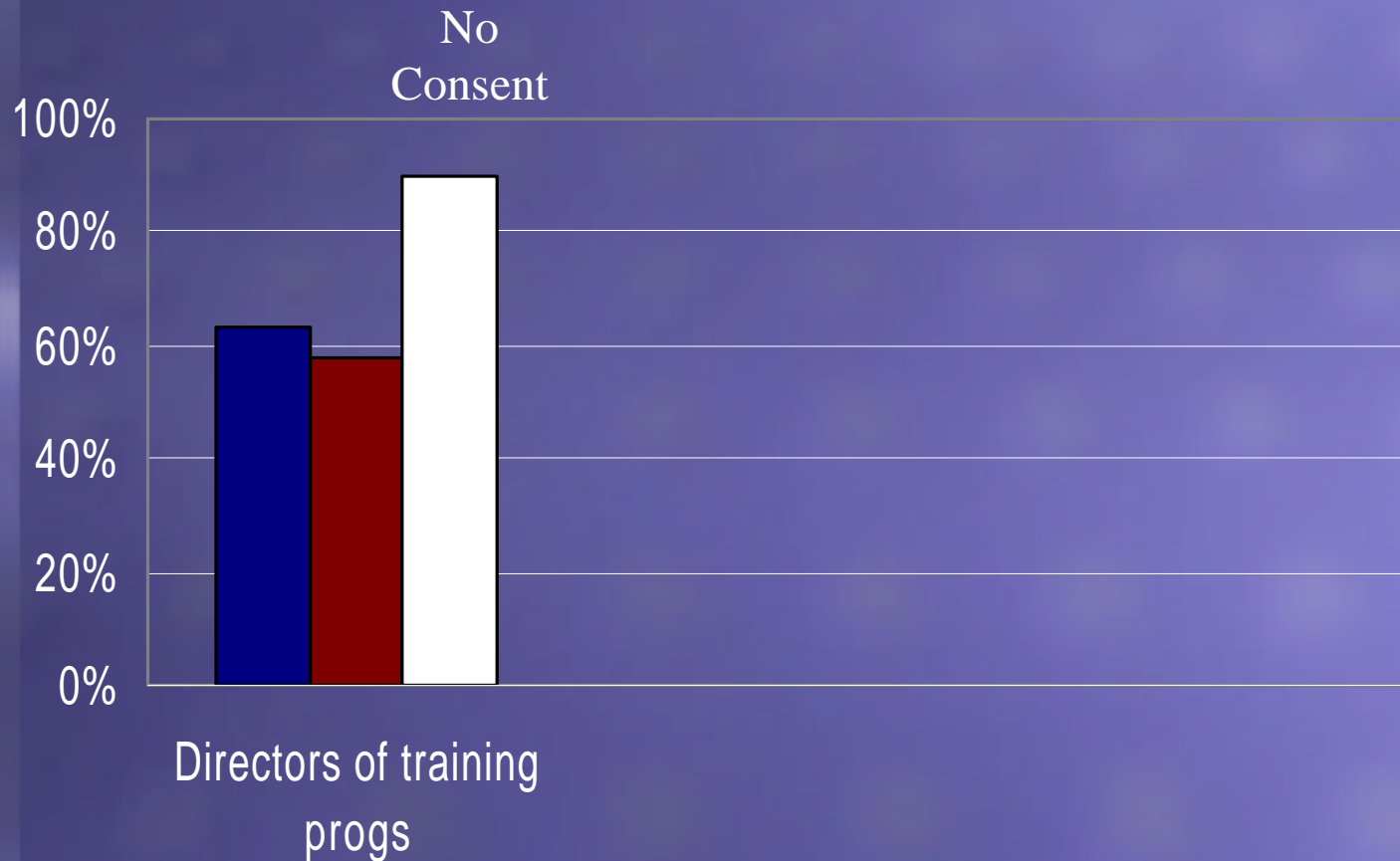
Providers Hide Student's Status When Doing Pelvic Exams



■ Identified Provider as Student ■ Failed to Inform Patients about Student Status
■ Student Introduced as Dr. ■ Corrected Misrepresentations

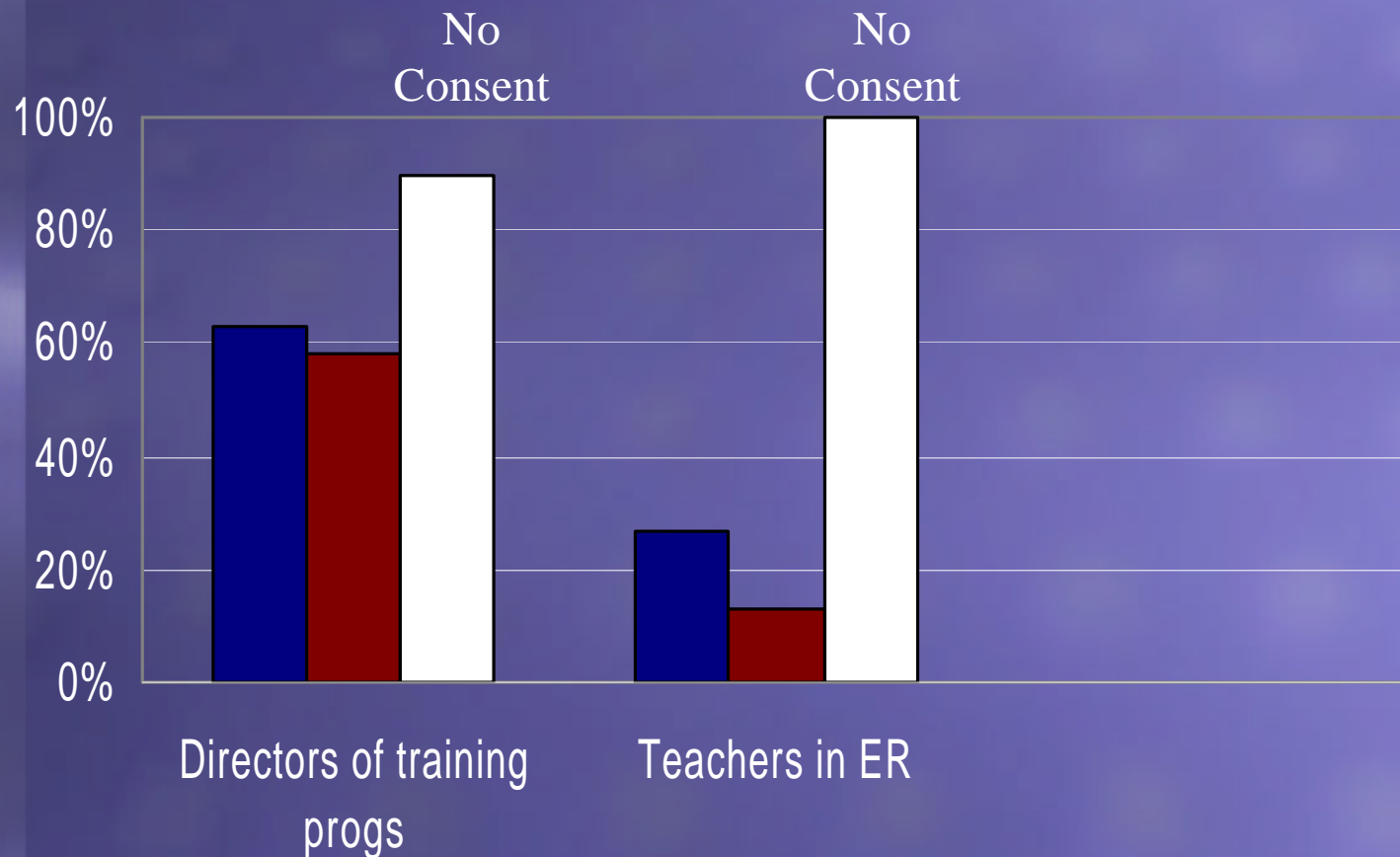
Source: Cohen, US, 1989; Ubel, US 2000

Consent for Practice on the Dead



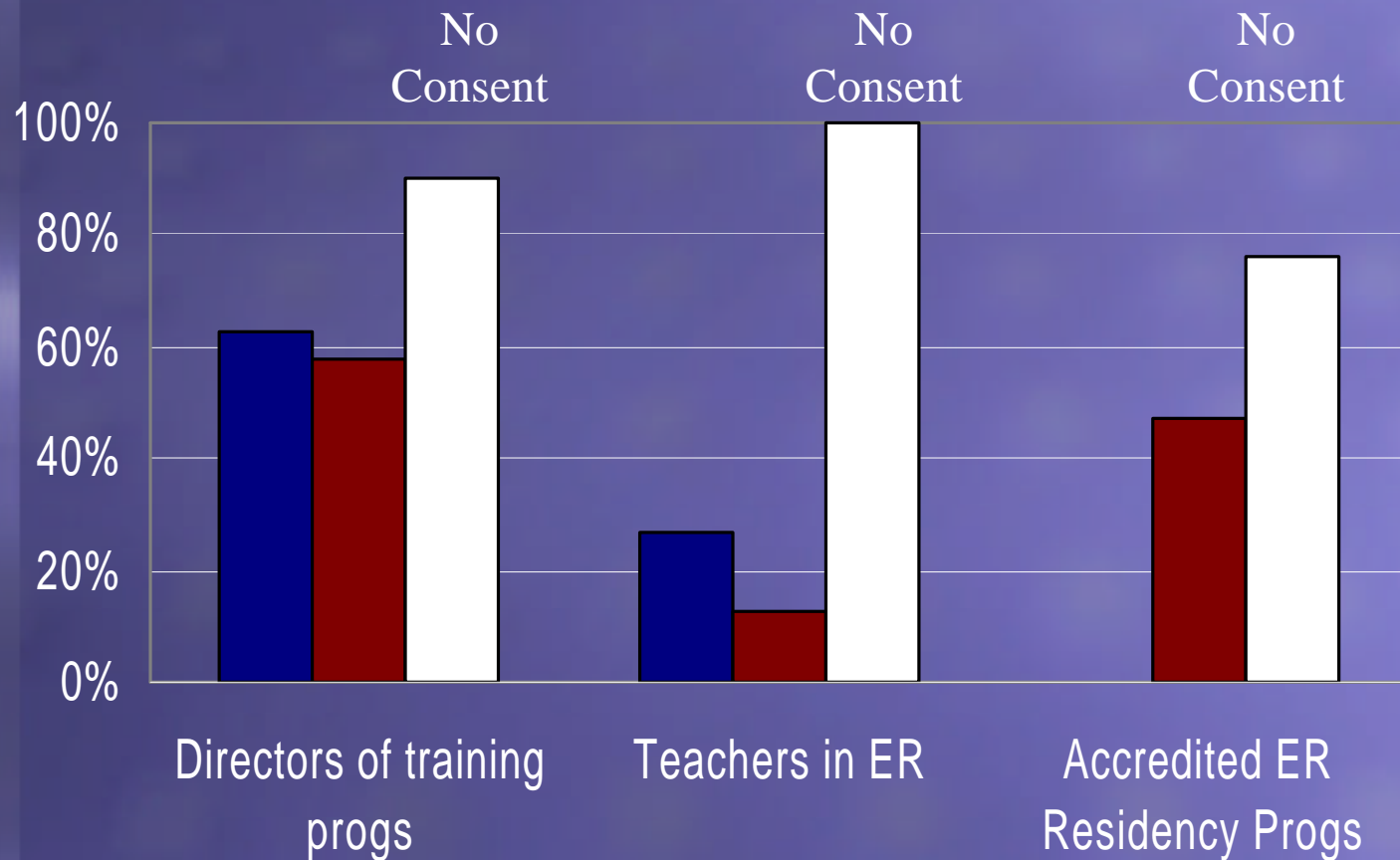
Source: Burns, US, 1994; Denny, Canada, 1999; Fourre, US, 2002

Consent for Practice on the Dead



Source: Burns, US, 1994; Denny, Canada, 1999; Fourre, US, 2002

Consent for Practice on the Dead



Source: Burns, US, 1994; Denny, Canada, 1999; Fourre, US, 2002

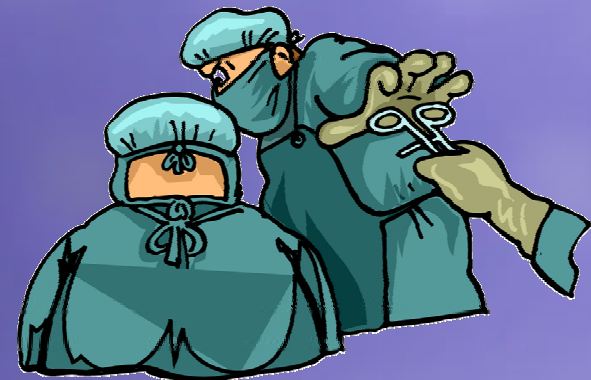
Pelvic Exams on Women Under Anesthesia

What Exactly Happens

- Often without Specific Consent
- Often without General Consent (admission form, surgical consent form)
- Without Knowledge
- Some Fact Patterns, Bibby, UK, 1988

- Vending machine model

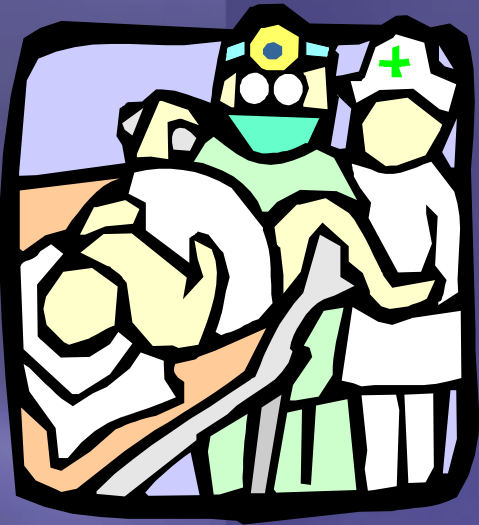
- Care Team Model



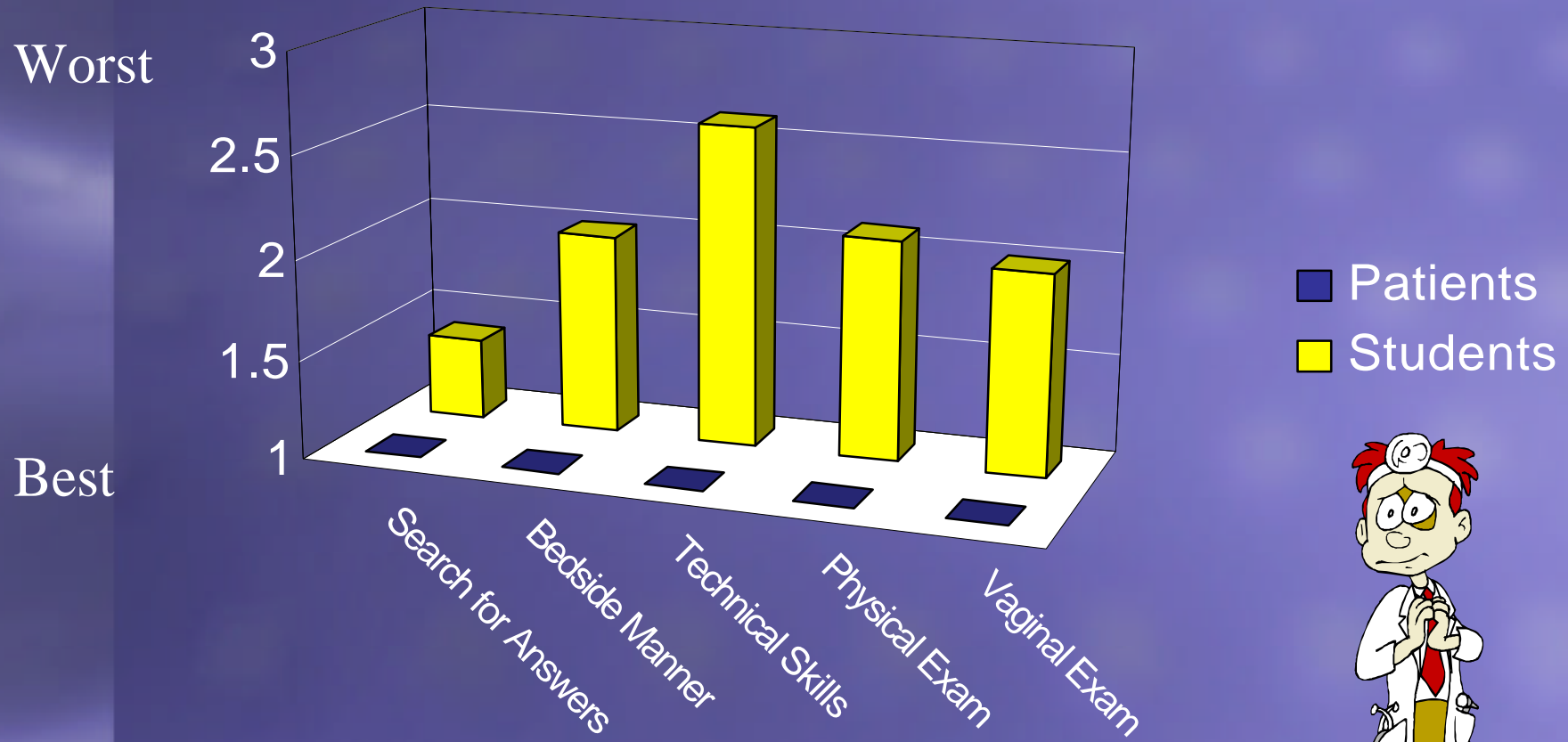
Unauthorized Practice

Why It Persists

- The Culture of Medicine
 - Spokesman for Royal College of Obstetrics and Gynecology labeled concerns over the practice as “academic nitpicking” and “snide, sexual innuendo”
- Necessity: Patients Will Refuse to Participate
 - Patients Accepting Care at a Teaching Hospital Know and Agree to Permit Students To Care for Them
 - Necessity: Educational Need
 - Misinformation and Fear

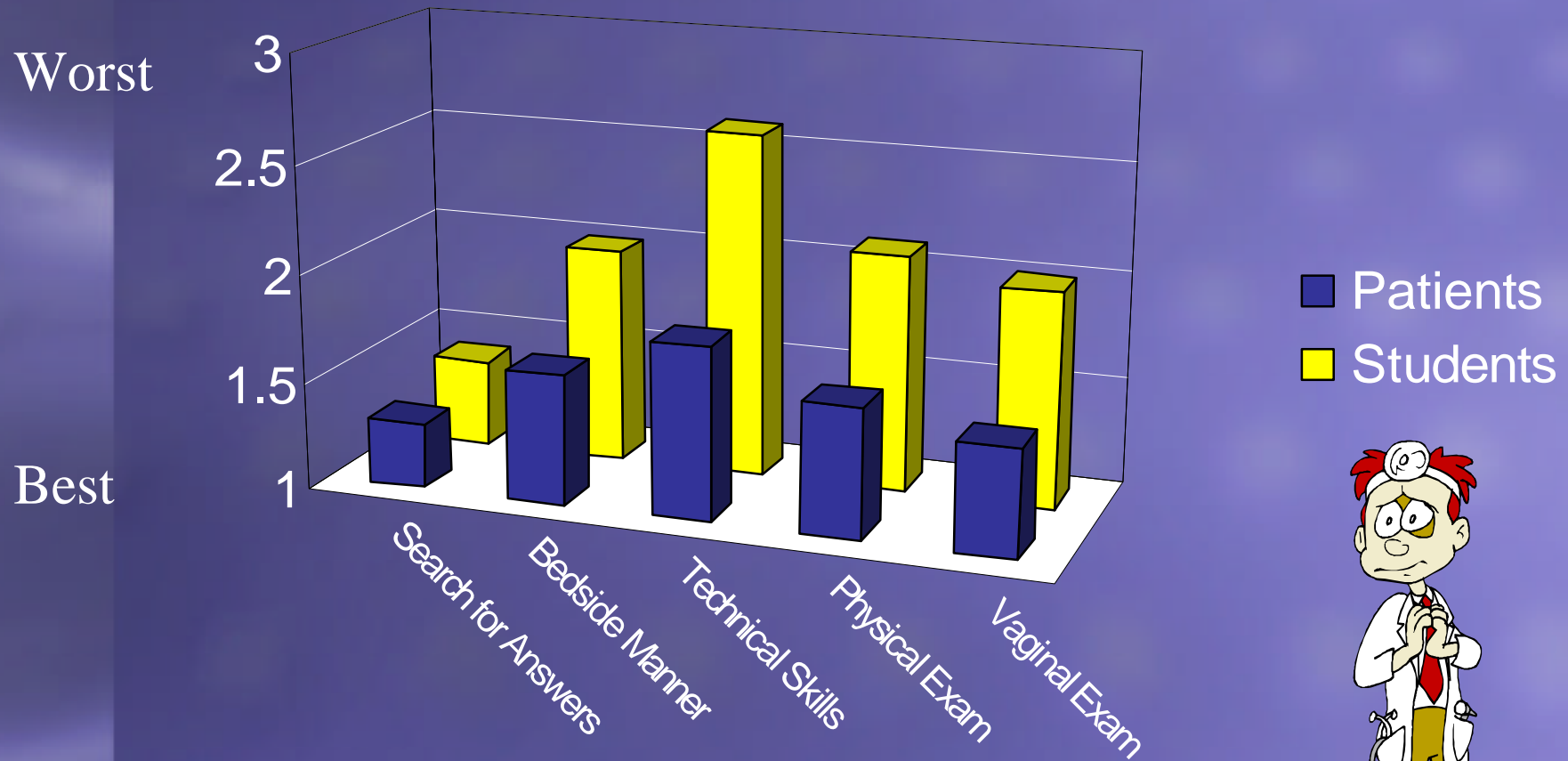


Ratings of Student Skills



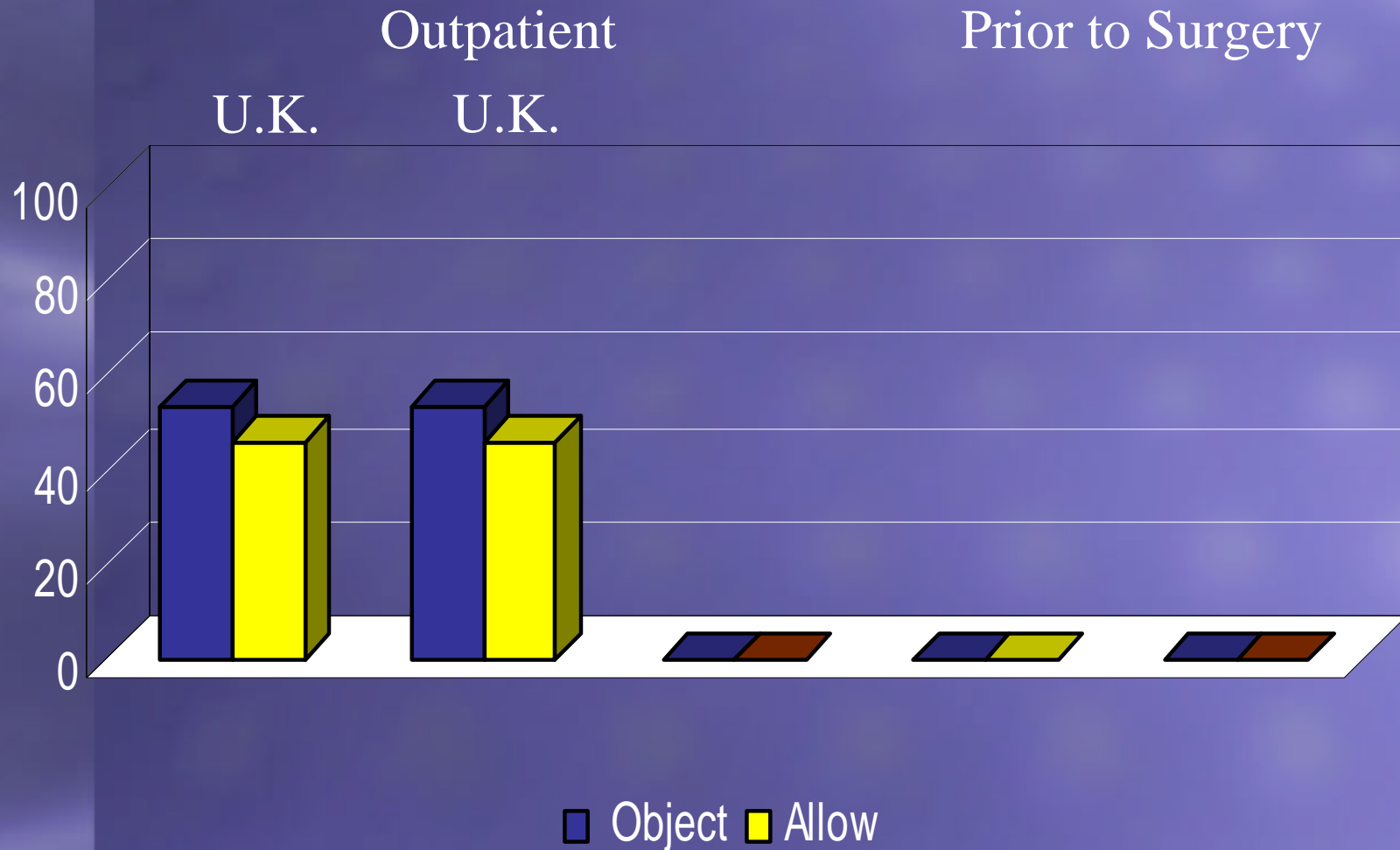
Source: Magrane, US, 1996

Ratings of Student Skills



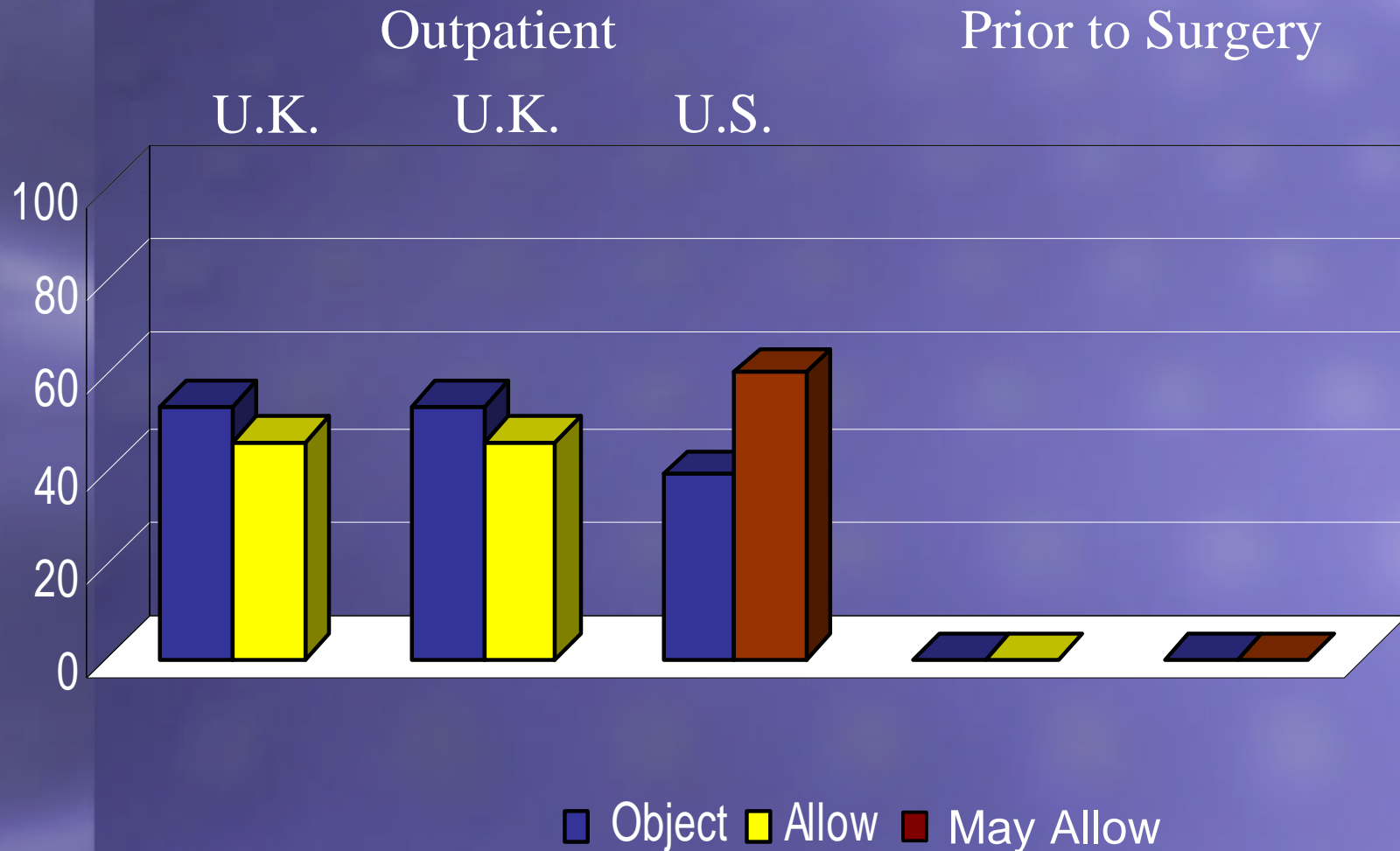
Source: Magrane, US, 1996

Patients Will Consent to Pelvic Exams



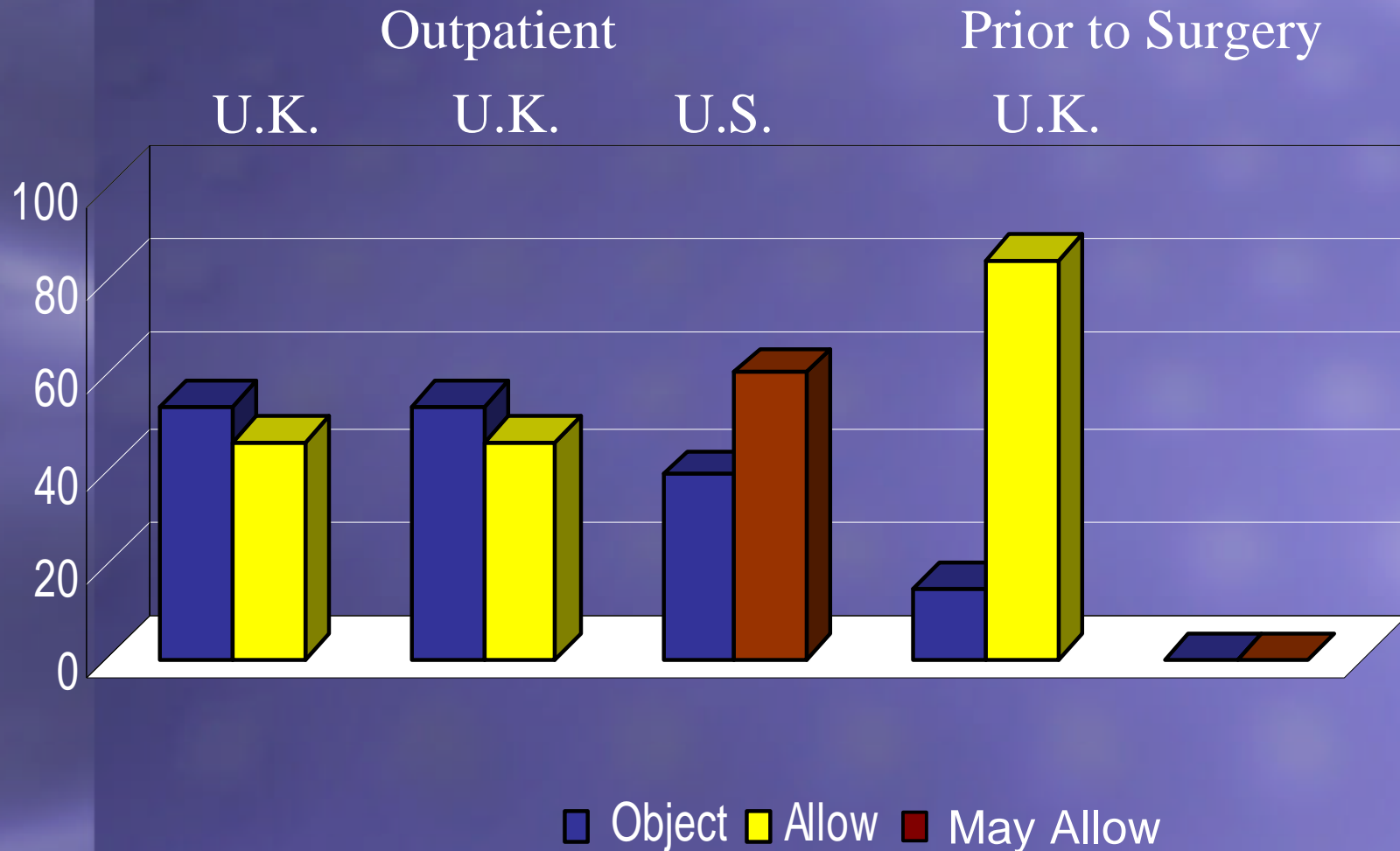
Source: Lawton, UK, 1990; Ubel, US, 1990; Bibby, UK, 1988

Patients Will Consent to Pelvic Exams



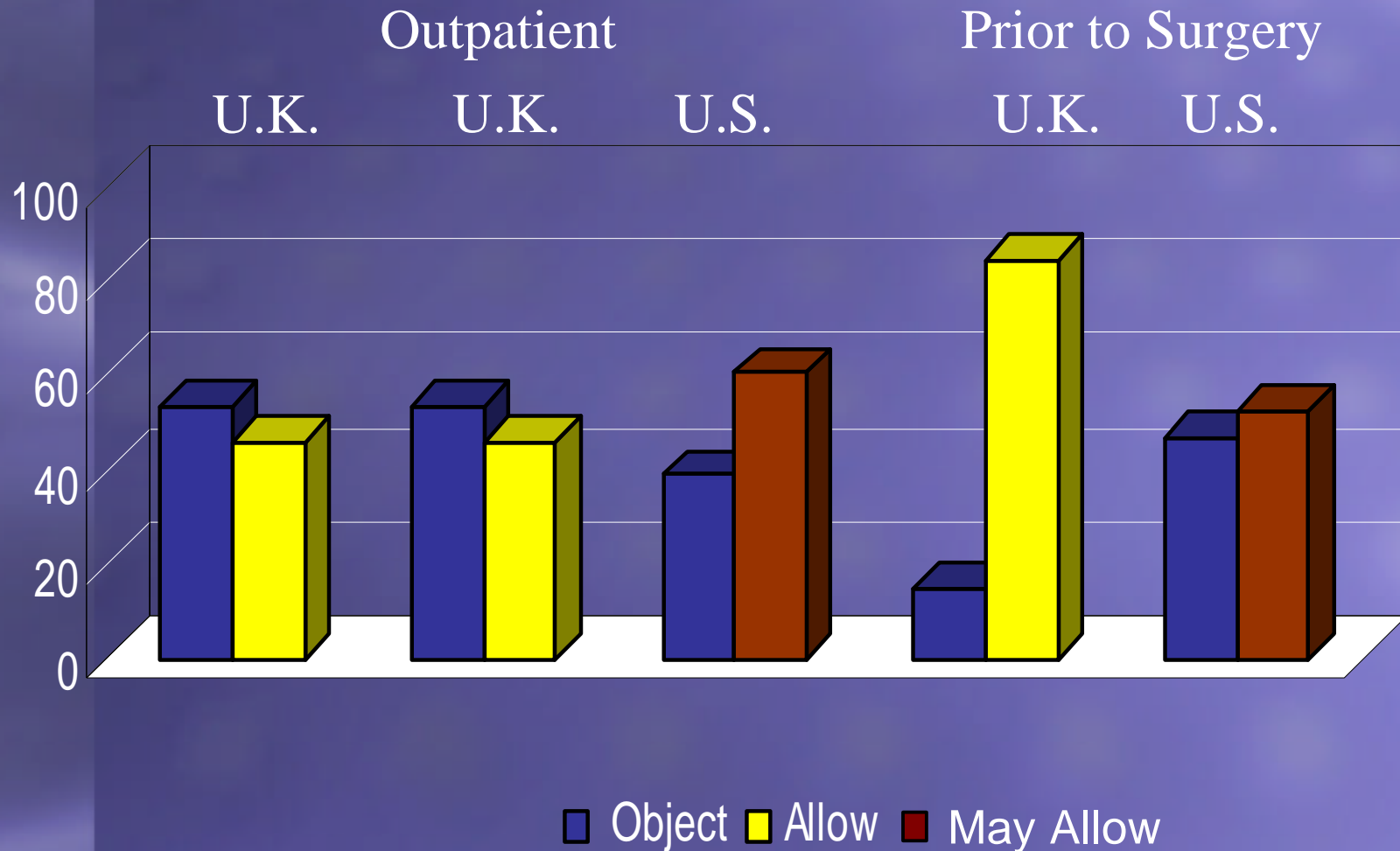
Source: Lawton, UK, 1990; Ubel, US, 1990; Bibby, UK, 1988

Patients Will Consent to Pelvic Exams



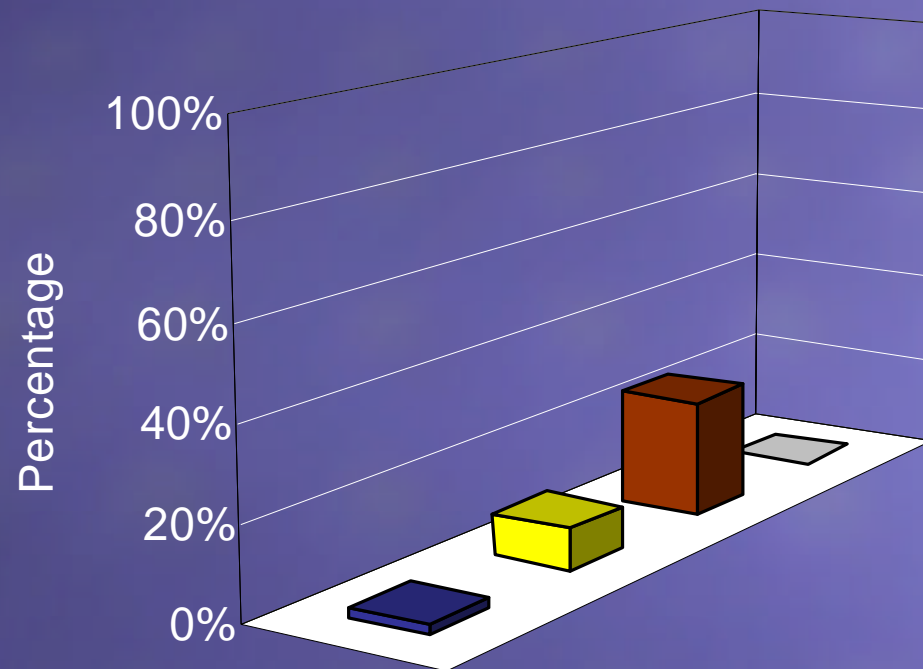
Source: Lawton, UK, 1990; Ubel, US, 1990; Bibby, UK, 1988

Patients Will Consent to Pelvic Exams



Source: Lawton, UK, 1990; Ubel, US, 1990; Bibby, UK, 1988

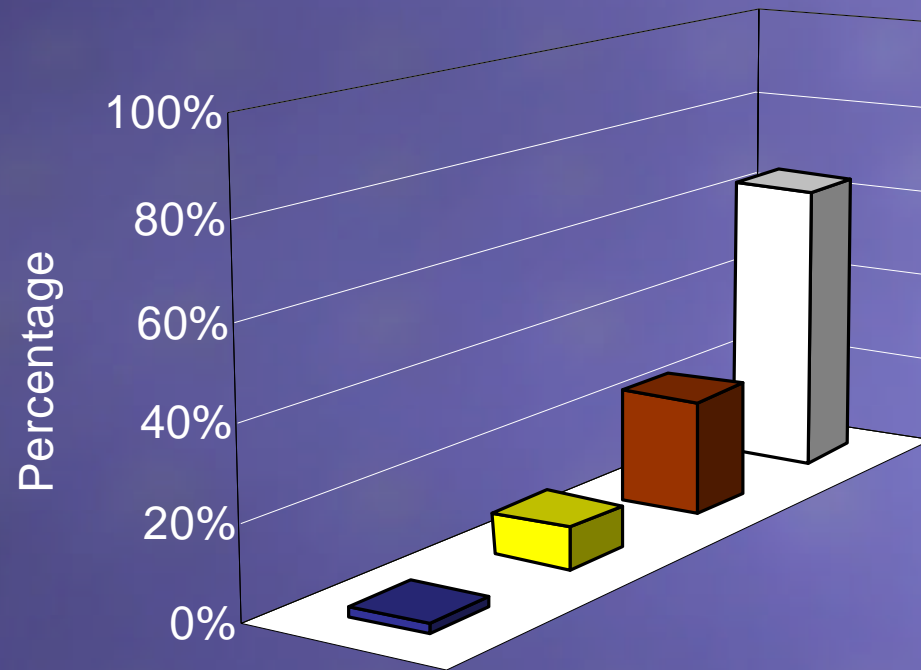
Patients Will Consent to Significant Student Interaction



■ Instrumental Delivery ■ C Section
■ Normal Delivery ■ No Preference

Source: Grasby, Australia, 2001

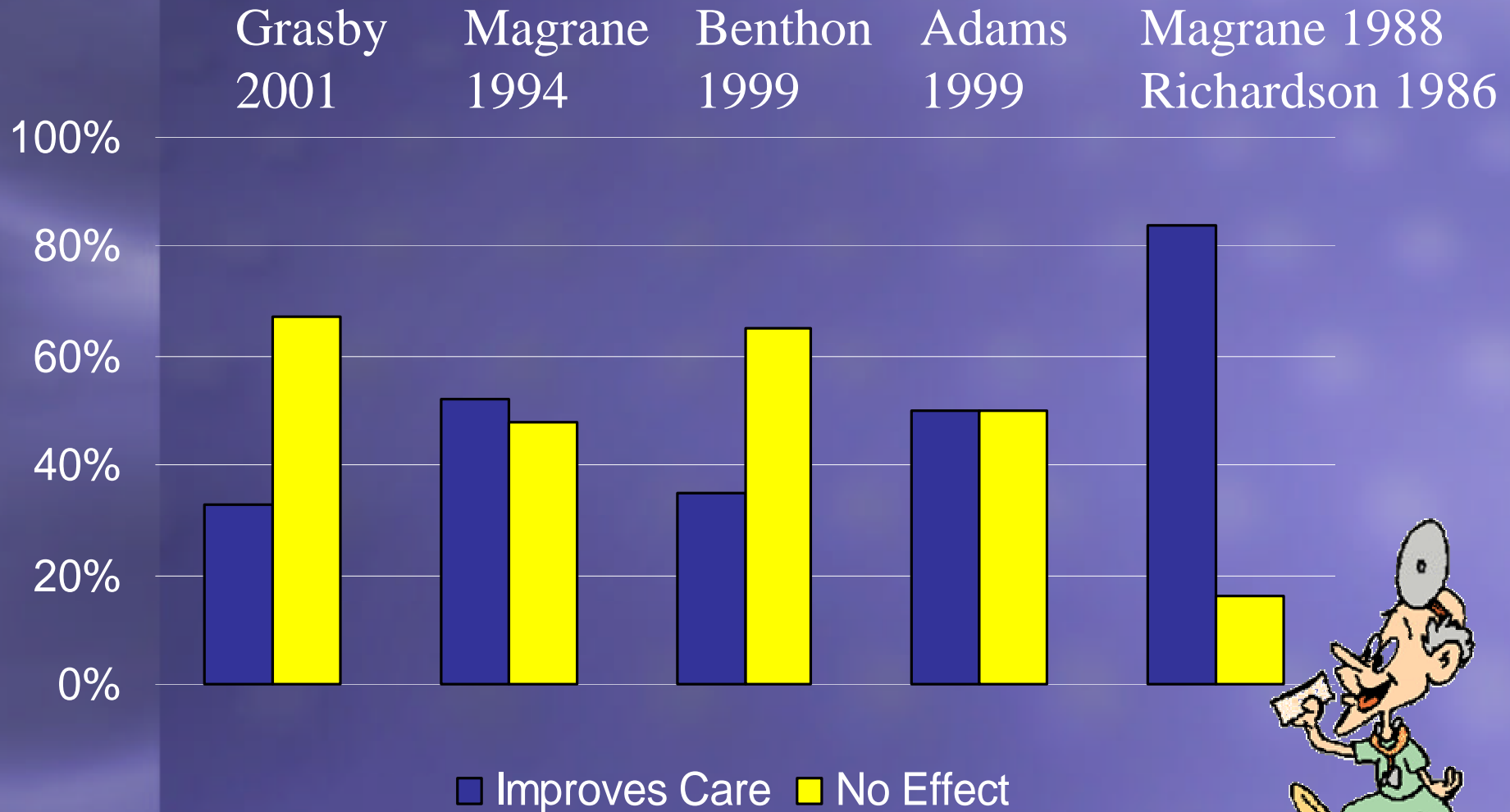
Patients Will Consent to Significant Student Interaction



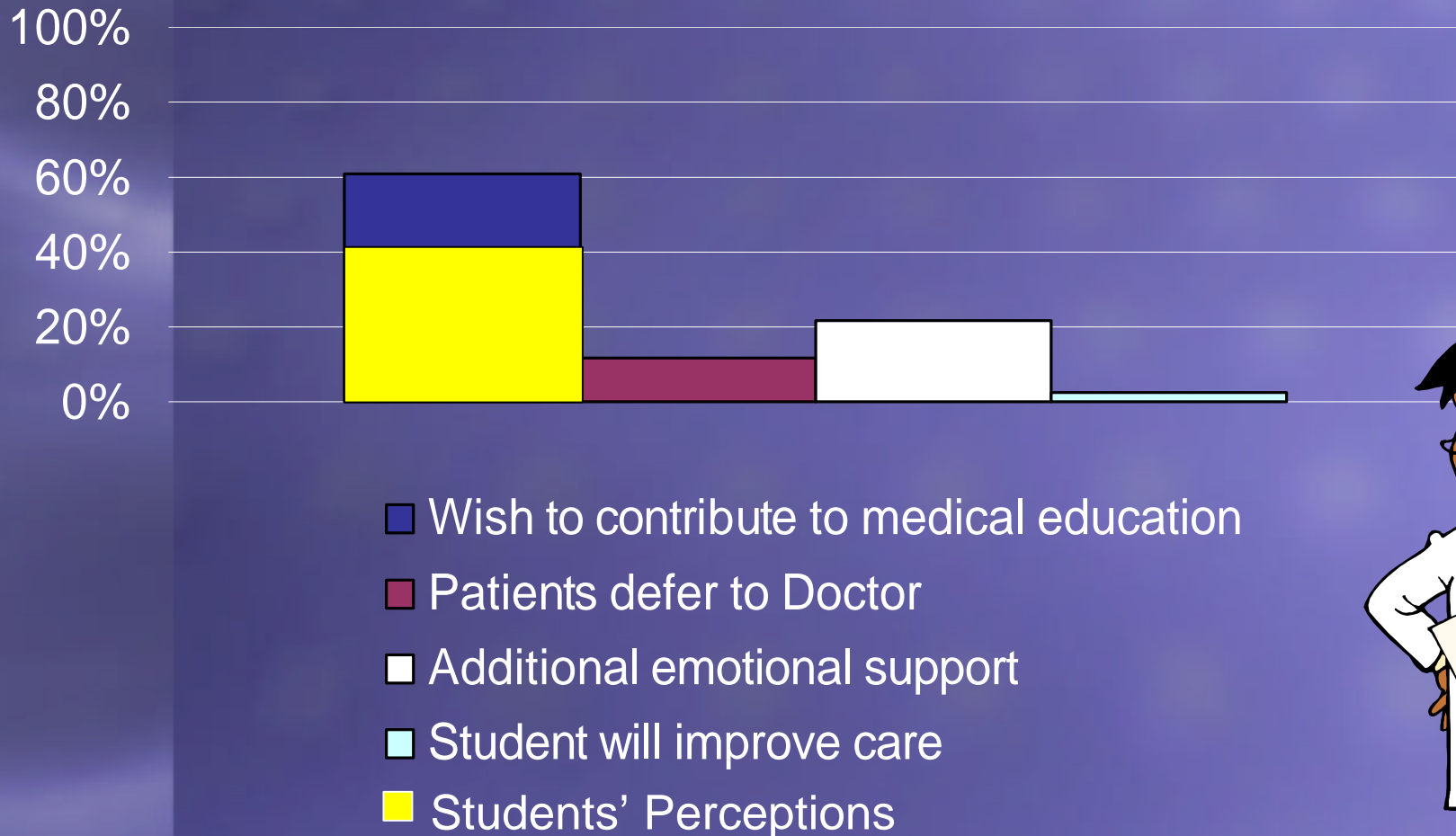
■ Instrumental Delivery ■ C Section
■ Normal Delivery ■ No Preference

Source: Grasby, Australia, 2001

Patients See a Benefit in Medical Student Participation

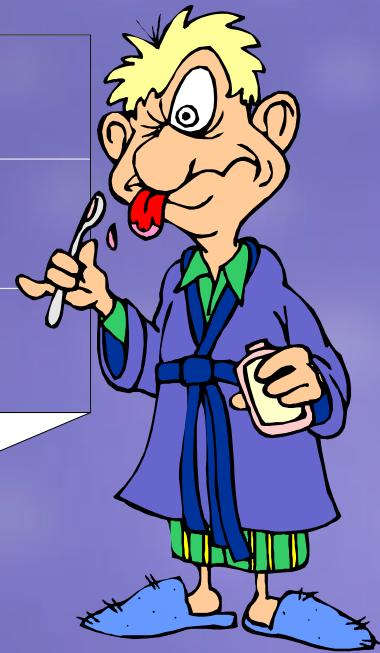
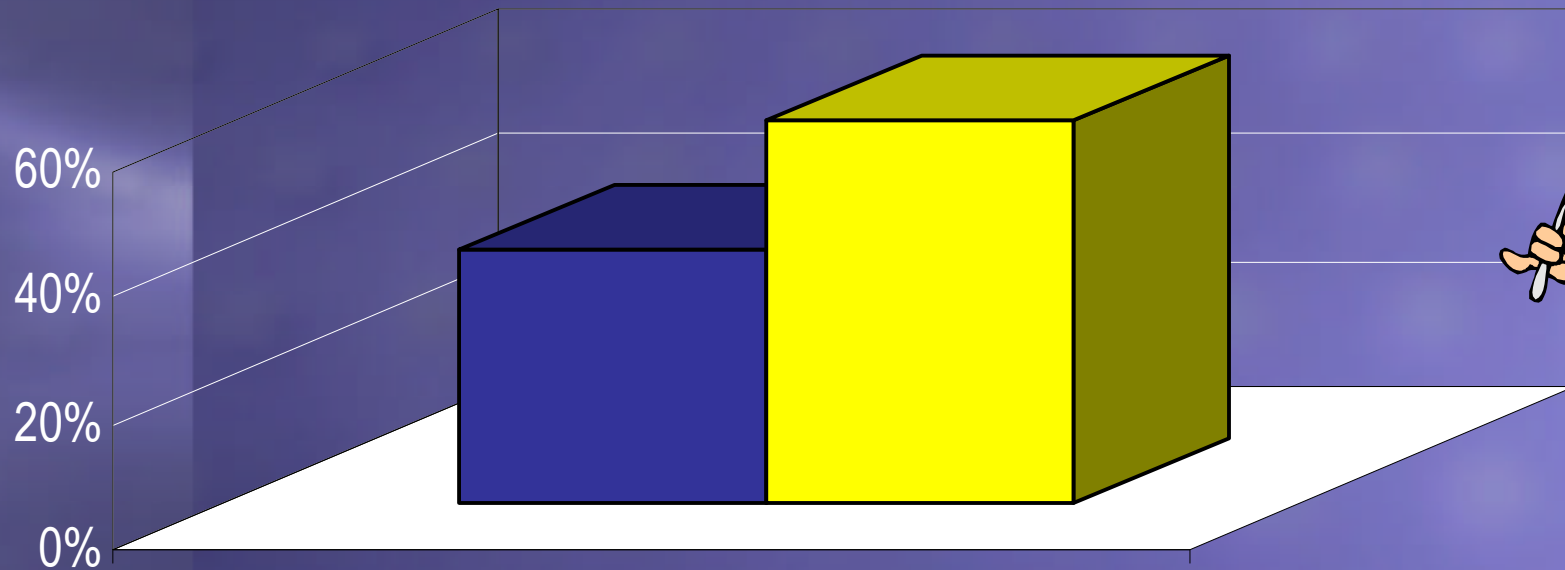


Most Important Reasons Patients Give for Participating



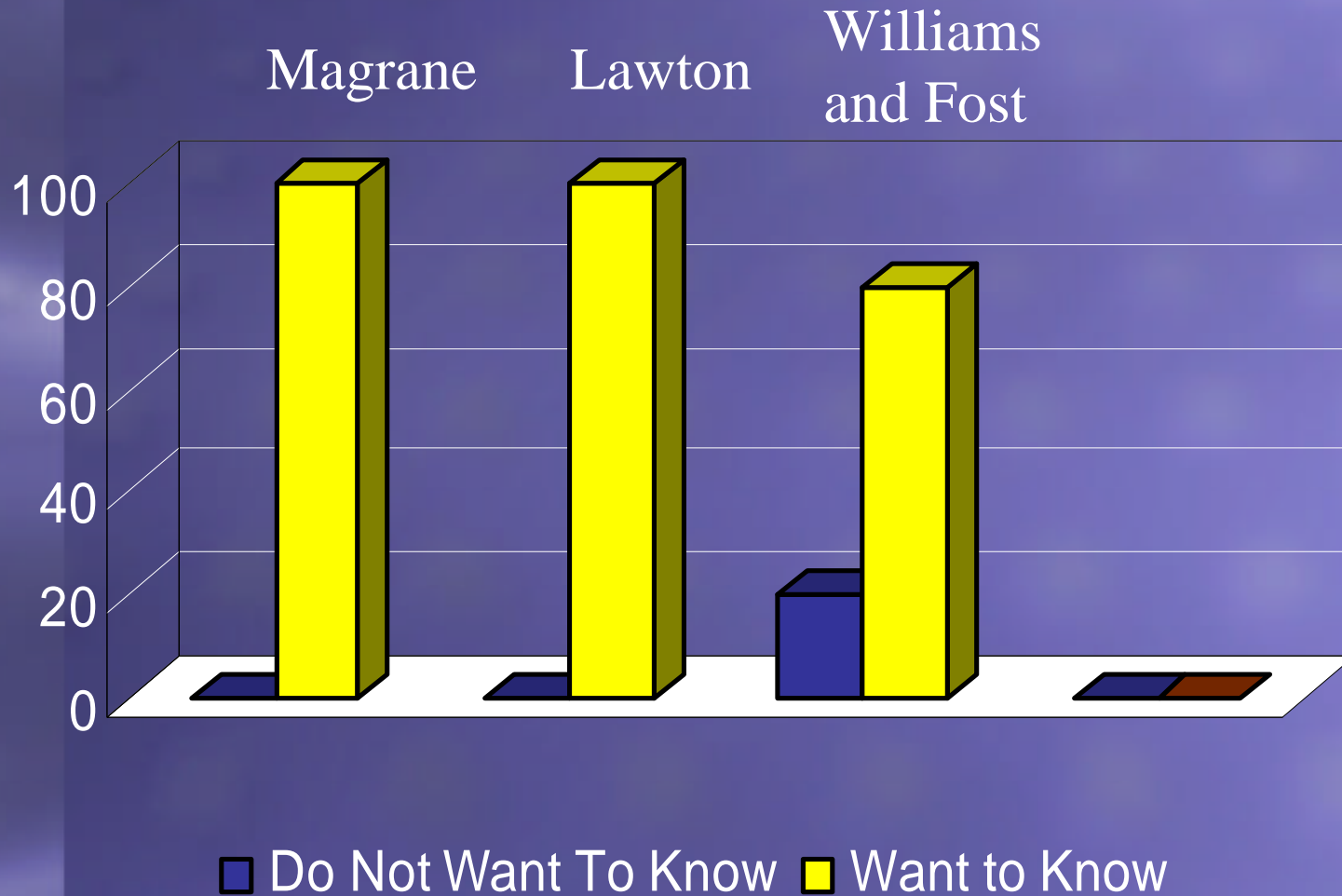
Source: Magrane, US, 1996

Accepting Care at a Teaching Hospital Does Not Imply Consent

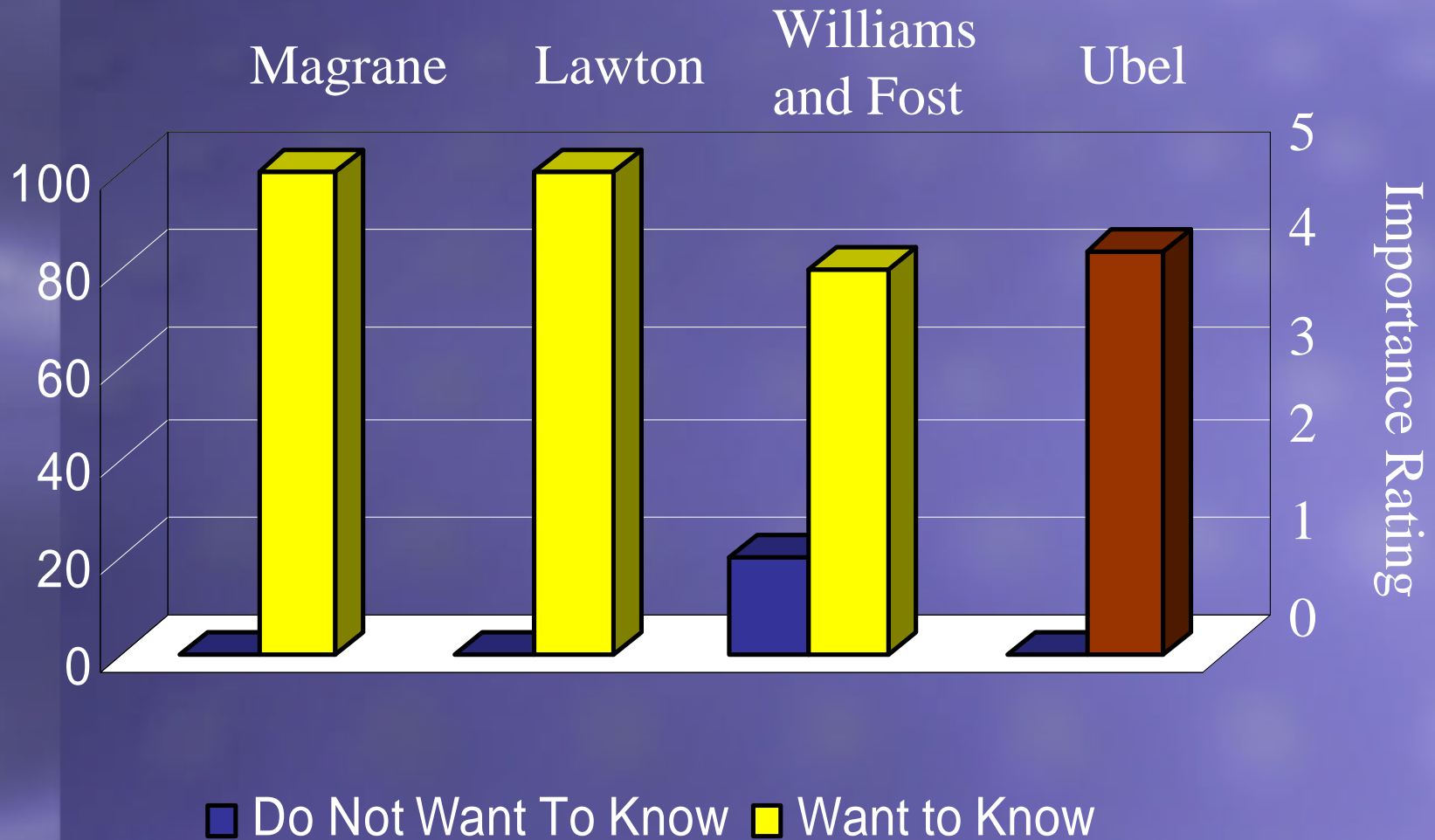


■ Knew/Understood Care Provided by Teaching Hospital ■ Did Not Know

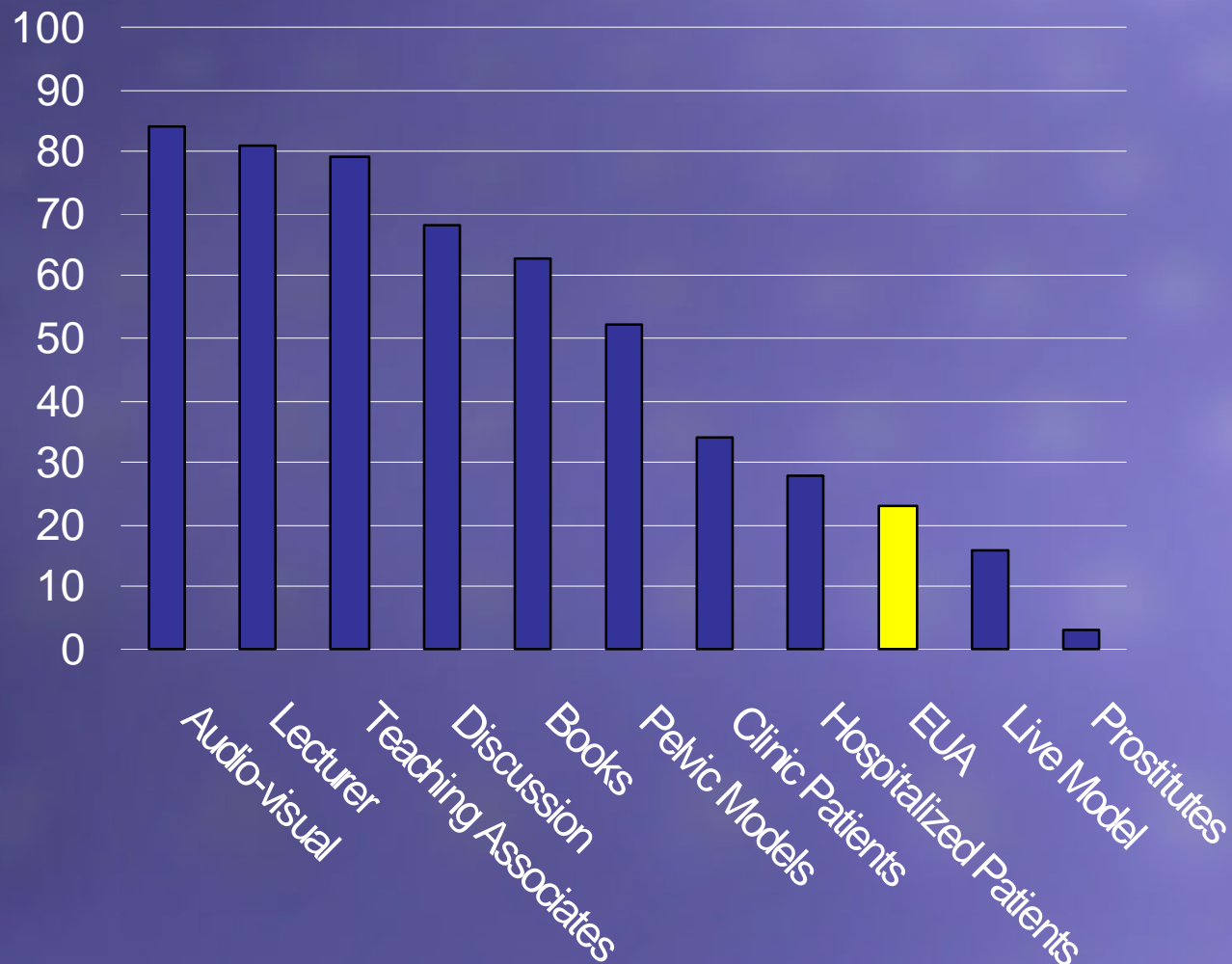
Virtually All Patients Want to Be Asked Permission



Virtually All Patients Want to Be Asked Permission



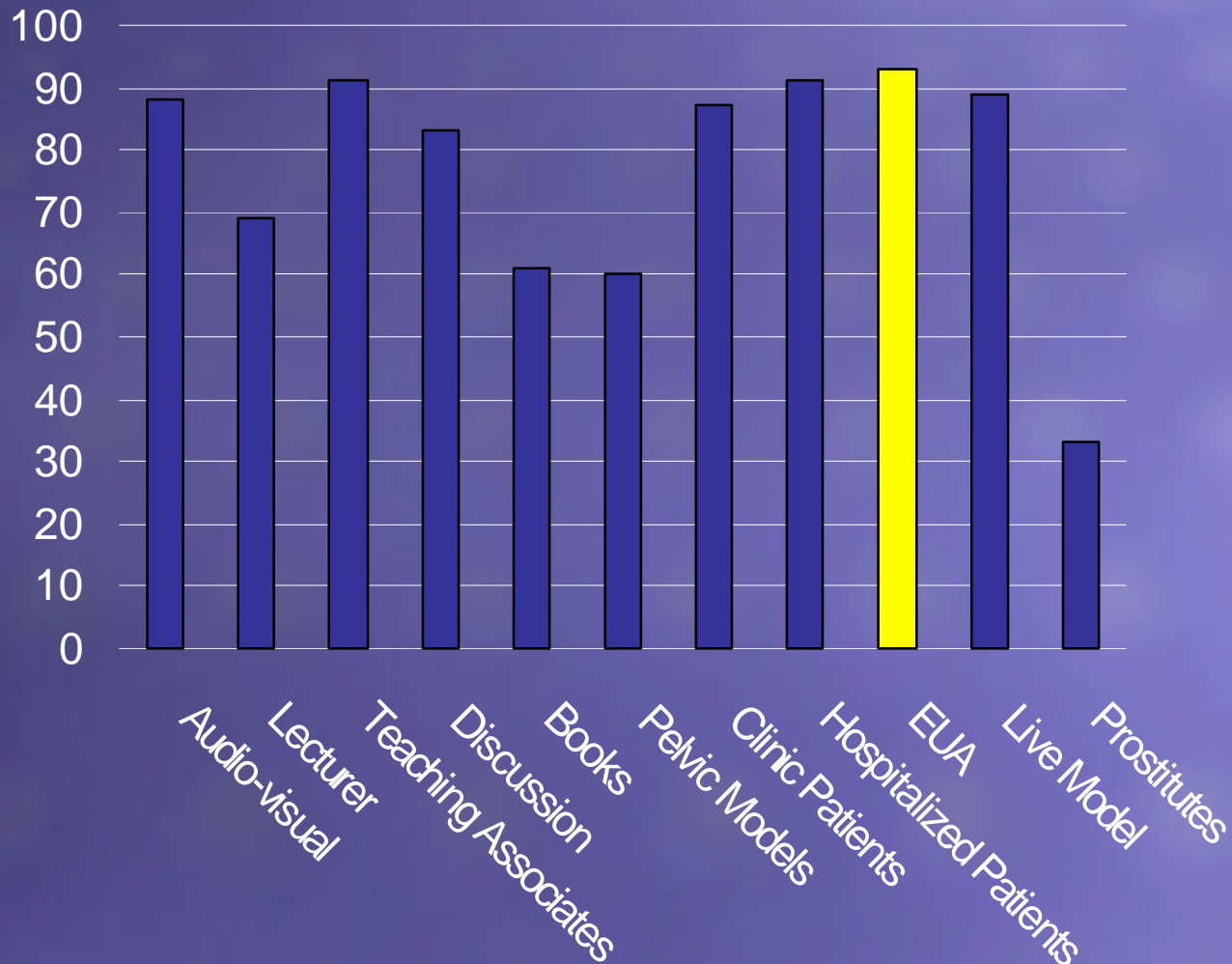
Alternatives to Exams Under Anesthesia



Source: Beckmann, US and Canada, 1985

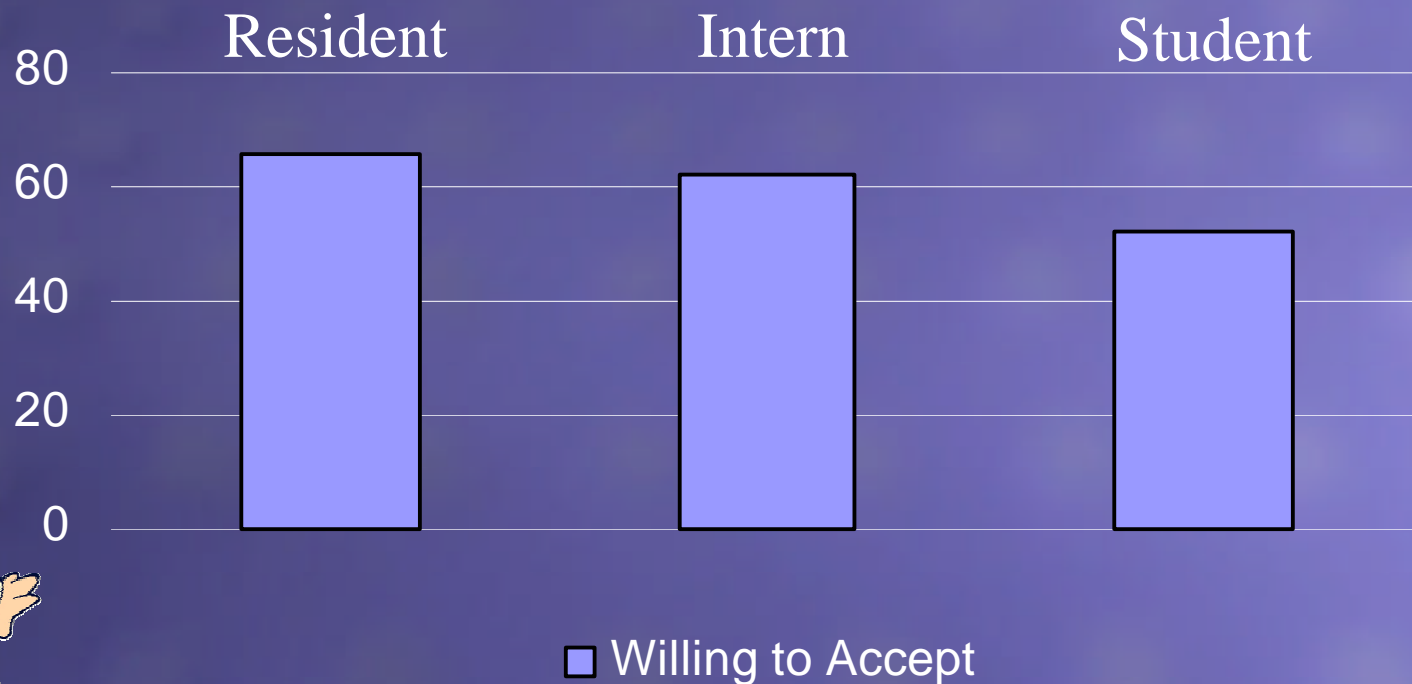
Alternatives to Exams Under Anesthesia

Effectiveness
Of Method



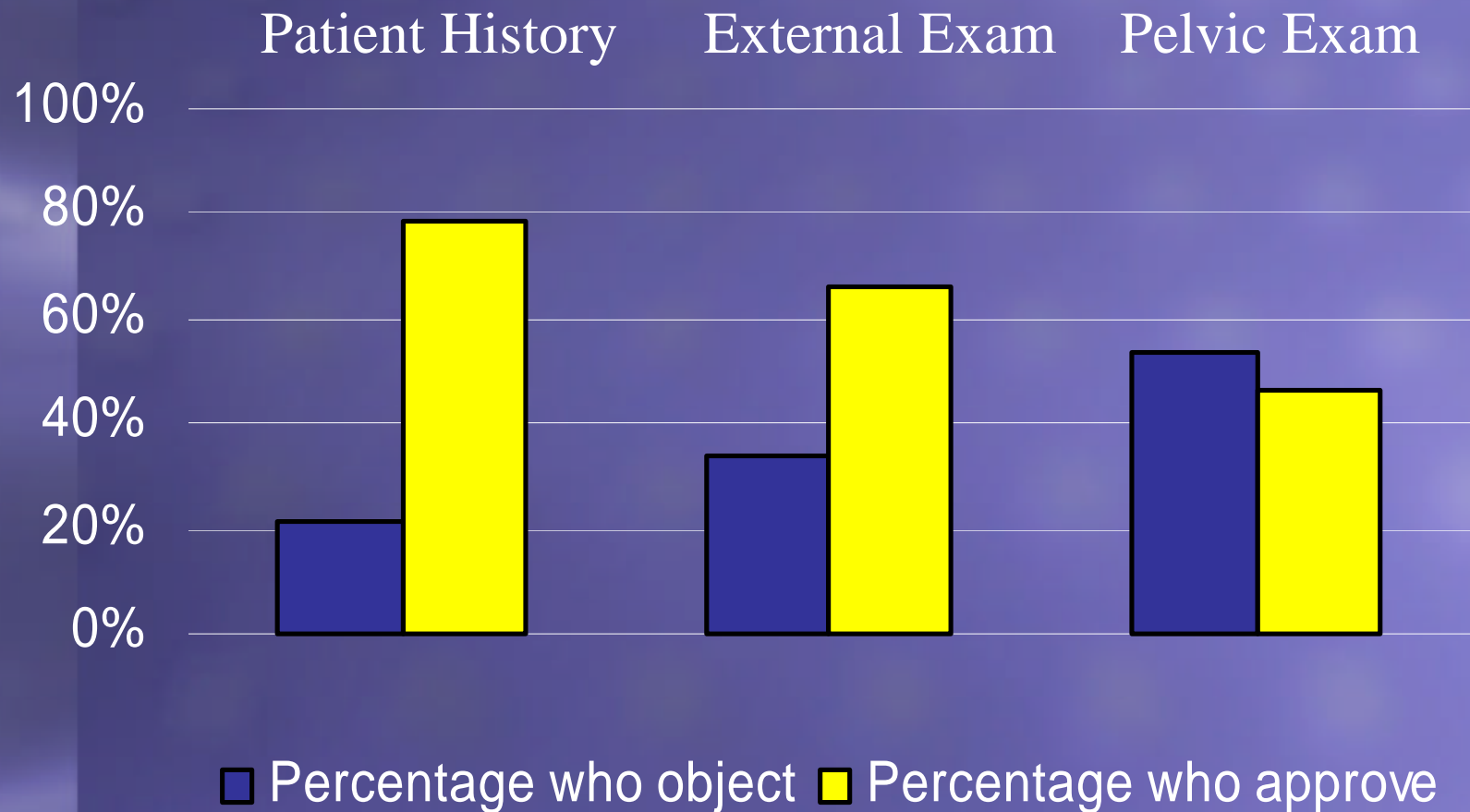
Source: Beckmann, US and Canada, 1985

Willingness to Participate Varies with Doctor's Experience



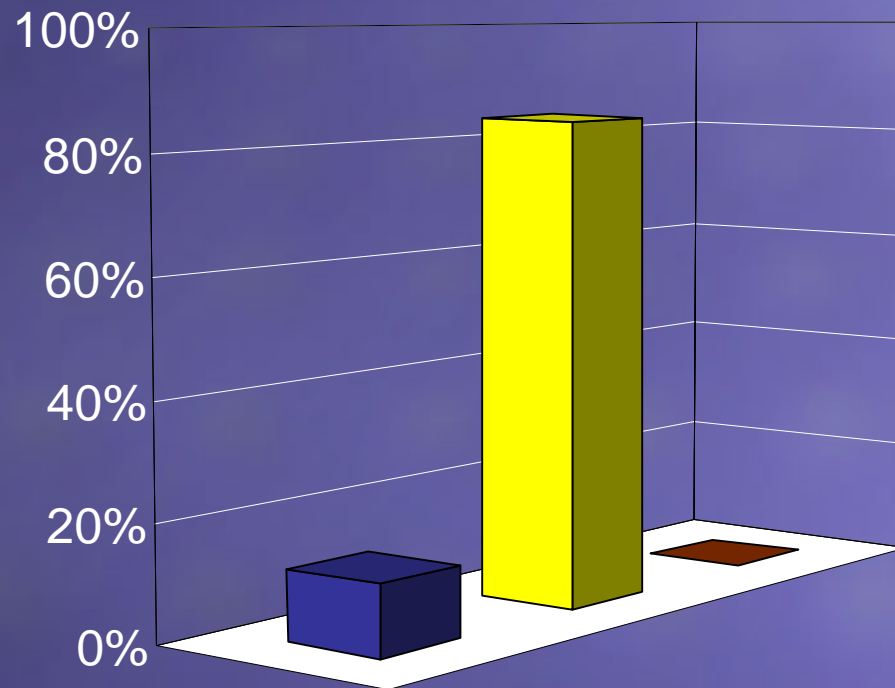
Source: Williams & Fost, US, 1992

Patients Object More Often to Invasive Procedures



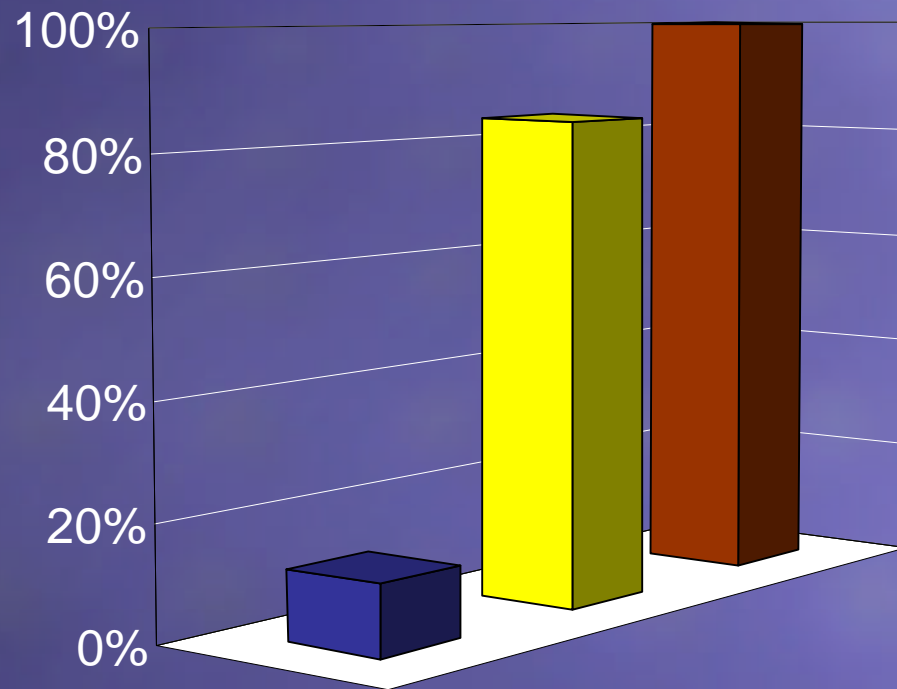
Source: Bibby, UK, 1988

Numbers Matter: Patients Object to Lots of Students



- Non-vaginal exam, more than two students
- Non-vaginal exam, no more than two students
- Vaginal exam by only one student

Numbers Matter: Patients Object to Lots of Students



- Non-vaginal exam, more than two students
- Non-vaginal exam, no more than two students
- Vaginal exam by only one student

The Care Team Model Raises Concerns

- Ask whether the student's exam would have been performed but for the fact that the surgeon or supervising physician is a member of the teaching faculty
 - With the vending machine model, student exams may not have occurred absent the supervising physician's status as a teacher. But this may also be the case with the care team model
 - Duplication Effect
 - Substitution Effect
- Ask whether general consent to admission or surgery authorizes medical student to do exam



The Care Team Model Raises Concerns

- Typical consent form reads:

“I, the undersigned, agree and give consent to [Teaching Hospital], its employees, agents, the treating physician, his/her partners, consultants, [Teaching Hospital] medical residents and Housestaff and other agents to diagnose and treat the patient named on this consent to any and all treatment which includes, but might not be limited to, routine diagnostic, x-ray, laboratory procedures, examinations and other procedures related to the routine diagnosis and treatment of the patient as determined necessary and advisable by [Teaching Hospital]....”

- Medical student as Housestaff? Employee? Agent?

- Consent authorizes care for patient's benefit, not student's education



Unauthorized Practice Clearly Impermissible—Or Is It?

- A Violation of Informed Consent?
 - Not Self-Executing: Patients cannot enforce these duties if they do not know they have been cared for by a medical student or Dr. in training
 - Characteristics of the Provider May not be Encompassed
 - Cannot show causation
- Accreditation Standards?
 - LCME Accreditation Standards— silent
 - JCAHO Accreditation Standard RI.1.2.2
“Informed Consent is Obtained”
 - JCAHO gauges compliance by looking in the medical record for “evidence of informed consent, when required by hospital policy.”



Better Protection of Patient Consumers



- Paper fixes are of limited utility if done in isolation (Royal College of OB/Gyn guidelines, ACOG statement, AMA ethical opinion)
- Need a solution across the system
- Formation of a Working Group for Task Force
- A Role for Self Help
 - Asking the right questions
 - Making express any concerns
 - Feeling empowered to ask every white coat what their role and status is