



Physician Leadership

From YouTube™ to Your Local Emergency Department

Implied Consent for Law Enforcement, Blood Draws in DUI Cases

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Through the magic of YouTube™, almost everyone in the country (if not the world) has seen the video of a Salt Lake City police detective dragging a screaming emergency department nurse from a hospital for refusing to allow the detective to draw blood from an unconscious DUI victim. The attention generated by that video has highlighted a confusing area of the law for health care providers, and this article is intended to provide answers to some of the most frequent questions that arise in these types of situations.

If a law enforcement officer tells me to perform a blood draw on a patient, do I have to comply?

No. Wyoming law does not require a physician (or any other provider) to draw blood from a patient, even if the patient is brought to a hospital under arrest by a law enforcement officer. Other states (notably Georgia) may require a physician to draw blood if directed by law enforcement. Wyoming law does not. In the heat of the moment, law enforcement officers may claim that the physician is obstructing justice by refusing, but this is unlikely (notwithstanding the Salt Lake City nurse's arrest). Refusal to draw blood is not obstruction as long as you do not prevent the law enforcement officer from conducting the blood draw him/herself (which Wyoming law also permits law enforcement officers to do, if they have been trained to do so).

Don't patients have to consent to have their blood drawn?

In most circumstances, yes. But, like most other states, Wyoming law states that the patient's consent to the blood draw is implied where the patient is an adult (or "youthful driver" discussed below) under arrest for DUI/DWI, the patient is a

commercial motor vehicle driver, or law enforcement has a search warrant directing the specimen collection. The patient may, however, still refuse the blood draw, but their consent is initially implied.

What if the patient is not under arrest, but unconscious?

The patient's consent is also implied if they are dead, unconscious or not in a position to consent. In the case of death, hospitals will often be unwilling to proceed with a blood draw unless the family consents. While the family's consent is probably not necessary (since the patient's consent is implied), since the provider has no obligation to perform the blood draw, the provider can refuse to conduct the blood draw until the family consents.

If the patient is a minor, does the minor's parent or guardian have to consent to the blood draw?


Wyoming law is not perfectly clear on this situation. Generally, minors cannot consent to their own health care (with certain limited exceptions), and a parent's or guardian's consent would be required. However, Wyoming law states that for "youthful drivers" (under 21), consent to a blood draw is implied if the patient is under arrest for DUI or DWI. Since an individual reaches the age of majority for most purposes at 18, this leaves open the question of whether consent is implied if the patient is under 18. In that situation, providers can choose not to conduct the blood draw if they feel uncomfortable doing so without a parent's or guardian's consent (since the provider is not obligated to conduct the blood draw in the first place).

What if the patient refuses to comply, even though their consent is implied?

Patients can still refuse the blood draw even though their consent is implied, unless the law enforcement officer has a search warrant for the blood draw or the accident being investigated was one in which serious bodily injury or death occurred. In those situations, the patient cannot refuse the blood draw. That does not mean, however, that the provider is required to draw the blood – if the patient is violently uncooperative, the provider is not required to draw the blood and should use their own judgment about whether they are willing to do so. While law enforcement investigations are important, the safety of the provider, his/her staff, and other members of the public are also important and should be the provider's paramount concern.

If the law enforcement officer asks me to collect a urine specimen instead of a blood sample, is that covered by the patient's "implied consent"?

Yes. Although generally a blood sample will be requested, the law enforcement officer can request a urine specimen rather than a blood sample, and the patient is legally considered to have consented. Depending on the circumstances, the patient may choose to give a urine sample rather than a blood sample, or vice versa, but the law enforcement officer's choice dictates this in most cases.

It's important to state that nothing in this article is intended to encourage physicians to refuse to comply with law enforcement requests for blood draws. Law enforcement officers already have a difficult job contending with various health care privacy laws- not to mention actually performing investigations and enforcing the law! The vast majority of health care providers are eager to comply with legitimate law enforcement requests for assistance and should be. But, increasingly, society recognizes that patients have specific rights in the health care setting in addition to every individual's Constitutional rights be free of unreasonable search and seizure. The intersection of all these laws is murky, leading to confusion among providers, and hopefully this article assists in clearing up some of the confusion. 



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