



RISK NOTE

Subject: **Police Requests for Blood Samples**

NB: HCPP is not able to provide advice to physicians. We recommend physicians contact the College of Physicians and Surgeons and/or Canadian Medical Protective Association for advice on this issue. The following comments are provided for information purposes only. These comments reflect the requirements set out in the Criminal Code of Canada (CCC).

Emergency room professionals are frequently asked by police to obtain blood samples from patients (e.g. individuals who have been involved in motor vehicle accidents). The following is a summary of the applicable law and a discussion on how health care providers should handle such requests.

Applicable Legislation

There are two statutes that provide for the drawing of a blood sample from a patient. One is the British Columbia *Motor Vehicle Act (MVA)* and the other is the federal *Criminal Code of Canada (CCC)*. When police suspect a person of having consumed alcohol or drugs prior to an accident, they have an option of utilizing either the MVA's civil/administrative offences against the driver, or recommending criminal charges under the CCC. In the case where there has been bodily harm or death, criminal charges are most likely.

The purpose and the requirements in each statute for taking a blood sample are different. Many of the provisions in the *MVA* mirror those found in the *CCC*, although some requirements which must exist before a blood sample can be drawn without a patient's consent are more onerous under the *CCC*.

The following is a brief summary of the two statutes in relation to drawing blood samples. Each of these will be discussed in more detail in this document.

	Criminal Code of Canada	Motor Vehicle Act
Who can draw sample	Physician Qualified technician –	Physician Registered nurse or nurse

	generally a person who is employed by a hospital who in the normal course of their employment takes blood samples	practitioner ¹ Certified member of the Canadian Society of Laboratory Technologists A person employed by a hospital who in the normal course of their employment takes blood samples
Blood Sample Certificate	<p>If blood is drawn, with or without consent of the patient, the physician or technician must provide a certificate of the blood draw. The police may provide a form.</p> <p>The certificate must state:</p> <ul style="list-style-type: none"> • who drew the sample • that taking the sample did not endanger the life of the patient • that the patient was incapacitated <i>due to the consumption of alcohol or the resulting accident</i> • that two samples were drawn • the time and place of drawing the samples • that the samples were taken directly from the patient into an approved container.² 	<p>If blood is drawn, with or without consent of the patient, the physician or technician must provide a certificate of the blood draw.</p> <p>Certificate templates are provided in MVA Regulation.³</p>

¹ *Motor Vehicle Act* [RSBC 1996] c 318 lists those who can take blood samples in s 225 (3), including “registered nurse”. The *Health Professions Act: Nurses (Registered) and Nurse Practitioners Regulation* BC Reg 284/2008 s. 4 states that all registrants may practice nursing.

² *Criminal Code of Canada*, RSC 1985, c C-46 at s 258(1)(h)

³ Blood Sample Certificate Regulation BC Reg 333/83 (A regulation of the BC Motor Vehicle Act).

<p>Drawing sample without consent</p>	<p>Only with a warrant IF ⁴</p> <p>Person has caused the death or bodily harm of another person or himself because of the consumption of alcohol or drug as per s 253 operation while impaired (decided by judge or Justice of the Peace providing the warrant)</p> <p style="text-align: center;">AND</p> <p>The physician is of the opinion that the person is unable to provide consent because of any physical or mental condition that resulted from the consumption of alcohol or a drug, the accident, or any other occurrences related to or resulting from the accident</p> <p style="text-align: center;">AND</p> <p>Taking the blood sample with not endanger the life or health of the person.</p>	<p>Does not require warrant</p> <p>Police officer may demand a sample be taken without consent of the individual if they are incapable "due to mental or physical trauma of comprehending the nature of a demand for a sample".⁵</p> <p>NB: In the case of a patient who is incapacitated and unable to consent, it would be unlikely that the police would be proceeding under the MVA, therefore it is more likely that the Criminal Code standard would apply.</p>
<p>Refusal to draw sample</p>	<p>A physician or qualified technician may refuse to draw the sample without being guilty of an offence. No specific reason for refusal is required.⁶</p>	<p>A person authorized to take a blood sample may refuse if in their opinion it would endanger the patient's health or life.⁷</p>

⁴ *Criminal Code of Canada*, RSC 1985, c C-46 at s 256(1)

⁵ *Motor Vehicle Act, supra*, at s 225(2)

⁶ *Criminal Code of Canada, supra*, at s 257(1)

⁷ *Motor Vehicle Act, supra*, s. 229

We recommend that Health Care Agencies (HCA) establish one policy which follows the requirements set out in the CCC. This is a higher standard than the MVA. Should there be a situation in which a patient is hospitalized and there is a police request for blood sample, it is most likely that the alleged offence would fall under the CCC instead of the MVA. Additionally, police may not know at the time which law they will proceed under. Following one policy will provide clarity to physicians and ensure the highest standards of the law are complied with.

The Police Request

Blood testing should only be requested by the police if administering a breathalyser test is not possible, or if testing for a substance other than alcohol. If it is likely that the patient will be released from hospital within two hours, they can likely attend at the police station for a breathalyser test.

Requirements before Obtaining a Blood Sample

(a) The patient is competent and consents

The physician must first determine whether the patient is competent to give consent to obtain a blood sample (pursuant to common medical assessment standards).

If the police make a formal demand of the patient to provide a blood sample for alcohol and/or drug testing, the patient is competent and the patient consents, then the physician **may** obtain or order a blood sample be obtained from the patient, provided the physician is satisfied that the taking of these samples at that time would not endanger the life or health of the patient.⁸

(b) The patient is competent but refuses to consent

If the patient is competent but refuses to give consent to the physician to obtain a blood sample after the police have made a demand on the patient, then the blood sample **must not be taken**.

(c) The patient is unable to consent and there is no warrant

If a patient is unable to provide consent to a blood sample being obtained for alcohol and or drug testing, "by reason of any physical or mental condition of the person that resulted from the consumption of alcohol, the accident or any other occurrence related to or resulting from the accident",⁹ the physician:

⁸ *Criminal Code of Canada, supra*, at s. 254(4); *R v Green* [1992] 1 SCR 614

⁹ *Criminal Code of Canada, supra*, at s. 256(1)(b)(i)

- (i) may advise the police of this and, at the request of the police officer, may fill out a certificate to certify that to be the case; and
- (ii) **must refuse to obtain a blood sample** from the patient, **unless** the physician is served with a warrant to do so.

When a Physician is Served with a Warrant

If a warrant is served on a physician by a police officer **and** the physician is satisfied that at that point in time the patient is unable to consent due to a “physical or mental condition of the person that resulted from the consumption of alcohol, the accident or any other occurrence related to or resulting from the accident”¹⁰ **and** taking the blood sample would not endanger the life or health of the patient, then the physician is required to obtain or give an order to obtain a blood sample from the patient.¹¹ This means that if the physician believes the person is unable to consent for reason other than the consumption of alcohol, the accident, or another occurrence related to the accident, the physician should not draw the blood sample or order the blood sample to be drawn without the patient’s consent.

Physicians are required to obtain, or direct a qualified technician to obtain, a blood sample when served with a warrant. However, they will not be guilty of an offence should they refuse, even after being served with a warrant.¹² This refusal could, however, result in a complaint or disciplinary action.

It should be noted that a possible difficulty for medical personnel who refuse to take the blood sample after being presented with a warrant by a police officer is anger and oral complaints of obstruction of justice from the officer. As such, policies should be in place so that medical staff are aware of the procedures to follow in this situation.

Under both the *MVA* and the *CCC*, a patient has no civil or criminal recourse against a physician or qualified technician who takes the blood sample, provided the sample was taken with reasonable care and skill (i.e. not negligently).¹³

The warrant may be issued by telephone or other form of telecommunication (i.e. fax). If it is issued over the telephone, the police should provide an official document naming the justice who approved the warrant, and the time, place and date for obtaining the sample. A clause noting the warrant was issued by telephone will be attached.

¹⁰ *Ibid*, at s 256 (1)(b)(ii).

¹¹ *Ibid*.

¹² *Criminal Code of Canada, supra*, at s. 257(1)

¹³ *Criminal Code of Canada, supra*, at s. 257(2); *Motor Vehicle Act supra*, s 228.

Obtaining the Blood Samples

1. Who can take the blood sample?

The *MVA* allows the following individuals to take blood samples:

- Physicians¹⁴
- Registered nurses and nurse practitioners¹⁵
- Certified members of the Canadian Society of Laboratory Technologists, and persons employed by a hospital who normally takes blood samples in their employment.¹⁶

The *CCC* limits drawing blood samples to qualified medical practitioners and qualified technicians. Qualified medical practitioners are defined as physicians/doctors only as per the *Medical Practitioners Regulation*.¹⁷ Qualified technicians are not specifically defined, however in general an appropriate technician would be someone working under the direction of the physician, who is certified to draw blood samples, and who commonly draws blood samples in the course of their employment. Common sense will prevail in determining who is an appropriate qualified technician.

The police officer may observe the drawing of the blood sample so he/she can testify to this fact in court. The police officer will likely take notes for this purpose.

In obtaining the blood sample, the physician or technician should not use alcohol swabs, and the syringe should be kept away from alcohol solutions.

2. Appropriate sample containers

All blood samples should be received from the patient directly into, or placed directly into, approved containers that are subsequently sealed. At time of writing, an "approved container"¹⁸ is defined as one of the following:¹⁹

- Vacutainer XF947;
- BD Vacutainer 367001,
- Vacutainer 367001,
- Tri-Tech Inc. TUG10,

¹⁴ Qualified medical practitioners are defined as Registrants of the College of Physicians and Surgeons (ie. physicians/doctors) in the *Medical Practitioners Regulation* BC Reg 416/2008 at ss 1-3, a regulation of the *Health Care Professions Act* . <https://www.canlii.org/en/bc/laws/regu/bc-reg-416-2008/latest/bc-reg-416-2008.html>

¹⁵ See footnote 1 for details

¹⁶ Blood Sample Certificate Regulation, BC Reg 333/83 <https://www.canlii.org/en/bc/laws/regu/bc-reg-333-83/47670/bc-reg-333-83.html>

¹⁷ *Medical Practitioners Regulation*, *supra*.

¹⁸ *Criminal Code* at Section 258

¹⁹ Order Approving Blood Sample Containers SOR/2005-37. A regulation of the *Criminal Code of Canada*.

- BD Vacutainer REF 367001, and
- Trittechforensics TUG10.

3. Identification of Blood Samples

The physician should obtain two blood samples from the patient. The second blood sample is for the patient because legislation allows the accused to retain one sample for analysis on his/her behalf. The physician must give both blood samples to the police officer. It is not the physician's responsibility to ensure the patient is given one sample

The specimens should be clearly identified immediately after taking the sample, including the date and time the specimen was obtained and the initials of the person drawing the blood. Immediately after completing the labels, the person drawing the blood should hand the blood specimen containers directly to the attending police officer. No other person should handle the specimens.

Medical Priorities

Emergency medical treatment of the patient must be of primary importance. Once a patient is medically stable the physician may deal with a police officer's request to obtain a blood sample. Blood **must not** be drawn if the physician believes it would endanger the life of the patient. The sample should be taken as soon as is "practicable", ideally within two hours of the alleged offence.²⁰

Blood may be taken for medical purposes. If the police wish access to samples drawn for medical purposes, they must apply for a warrant. **Do not** provide these samples until the warrant has been served.

Physician's Certificate

The police officer may request that the physician provide a certificate stating:

- The physician, nurse or a qualified technician acting under the direction of the physician, took the blood samples, and that before the samples were taken he/she was of the opinion that the taking of the blood samples from the accused would not endanger the life or health of the accused;
AND, in the case of a demand made pursuant to a warrant, that by reason of any physical or mental condition of the accused that resulted from the consumption of alcohol, the accident or any other occurrence related to or resulting from the accident, the accused was unable to consent to the taking of his/her blood;²¹

²⁰ *Criminal Code of Canada, supra*, at s 258(1)(d); *Motor Vehicle Act, supra*, s. 227

²¹ *Criminal Code of Canada, supra*, at s 258(1)(h)

- At the time the samples were taken, an additional sample of the blood of the accused was taken to permit analysis of one of the samples to be made by or on behalf of the accused;
- The time, date and the place where both samples referred to above were taken;
- All samples were received from the accused directly into, or placed directly into, approved containers that were subsequently sealed and that are identified in the certificate. The physician can complete the certificate upon police request. The certificate can be put into evidence and the facts set out in the certificate may be accepted by the court without the physician being required to appear in court to testify.

The *MVA* has similar provisions and a template form which a physician or nurse practitioner may complete.²² It also allows the blood samples to be used as evidence without the appearance of the physician in court. **Police Officer's Responsibilities**

The police officer should receive the specimen containers and the physician's certificate. The police officer is responsible for using established procedures for delivering the sample to the appropriate forensic laboratory. The facility is not responsible for analyzing the samples. The police officer is responsible for delivering one sample to the patient.

Requests for Blood Samples in Relation to Impairment by Other Substances

Police requests for samples to show impairment due to a substance other than alcohol should be handled in the manner indicated above. The same procedure should be followed regarding consent and obtaining and documenting the sample. If the patient cannot consent or refuses to consent, the police must produce a warrant and the physician must be satisfied that the warrant applies to the situation at hand.

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²² Blood Sample Certificate Regulation, BC Reg 333/83 <https://www.canlii.org/en/bc/laws/regu/bc-reg-333-83/47670/bc-reg-333-83.html>