

AL0300 BLOOD ALCOHOL

1.0 PURPOSE

To provide clear directions to medical staff and hospital employees who may be involved in taking blood alcohol samples from suspected impaired drivers pursuant to a demand under the provisions of the Criminal Code of Canada.

To assist the police and community in an effort to reduce impaired driving and the health, societal and financial costs resulting from impaired drivers.

2.0 DEFINITIONS

3.0 POLICY

3.1 Requirement for Blood Alcohol Sample

A blood alcohol sample should **not** be taken from a patient if he/she is capable of providing a breath sample and will be released by the medical staff in time to provide a breath sample (3 hours from the time of the alleged offence) as set out in the Criminal Code of Canada.

There is no legal obligation for a staff member to take a blood alcohol sample, if in the opinion of a medical practitioner, it would endanger the life of the patient from whom the blood is being taken.

3.2 Subpoena for Blood Sample Already Taken

Blood samples taken for clinical reasons will only be turned over to the police pursuant to a warrant, subpoena or court order. Patient consent is not required.

Note: The Coroner may seize blood samples without a court order pursuant to the Coroners Act.

3.3 Conditions for Taking Blood Alcohol Sample

A blood alcohol sample demanded by a peace officer should only be taken in the following circumstances:

1. the patient **consents** to allow the blood alcohol sample, and
 - i. the patient is capable to give a valid consent, or
2. the patient **refuses** to consent, and
 - i. a peace officer presents a warrant, or
3. the patient is **unable** to provide consent by reason of physical or mental condition resulting from the consumption of alcohol, the accident or other occurrence related to or resulting from the accident, and
 - i. a peace officer presents a warrant.

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Note: Where a blood alcohol sample is requested from a patient deemed to be incapable of understanding the demand of the peace officer, a **Certificate of Medical Practitioner** must be completed by the physician prior to the specimen collection. (see Form 2 for example of form).

3.4 When is Blood Alcohol Sample to be Taken

A blood alcohol sample is to be taken as soon as possible after the demand, however it is ultimately up to the most responsible practitioner treating the patient to ensure that it does not interfere with the provision of any primary care being undertaken at the time of the demand.

3.5 Persons Authorized to Take a Blood Alcohol Sample

The only staff authorized to take a blood alcohol samples are:

- physicians, and
- persons employed by a hospital, under the supervision of a physician, who in the normal course of their employment take blood samples.

3.6 No Offence Committed

A physician or persons employed by a hospital are not guilty of an offence under the Criminal Code of Canada for refusing to take a blood sample from a patient.

3.7 Civil and Criminal Liability

A physician or persons employed by a hospital cannot be held civilly or criminally liable for taking a blood alcohol sample at the demand of a peace officer (patient has consented) or pursuant to a warrant, provided the person exercises reasonable care and skill in taking the blood alcohol sample.

3.8 Certificate for Sample Required

For all blood alcohol samples taken from a patient the person responsible is required to complete a **Certificate of Taking a Blood Alcohol Sample**. (see Form 1 for example of form).

4.0 PROCEDURE

4.1 Physician

If a blood alcohol sample is required, the physician must determine:

- if it is medically appropriate to take a blood alcohol sample, and
- if the patient is capable of giving consent, and

If the patient is incapable of giving consent:

- complete a Certificate of medical practitioner (obtain form from the peace officer).

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4.2 Person Taking Blood Alcohol Sample

1. obtain an approved blood alcohol kit from the peace officer or use any other forensically approved method,
2. prepare two separate grey top tubes containing potassium oxalate/sodium fluoride, **DO NOT REMOVE LIDS.**
3. prepare venipuncture site with betadine swab or other non-alcoholic swab, **DO NOT USE ALCOHOL SWABS.**
4. perform venipuncture and fill the two grey tubes, **DO NOT REMOVE LIDS.**
5. immediately after taking the sample, adhere a label onto the blood sample containers and inscribe (by printing - do not write or type) the following information:
 - i. First and last name of the donor,
 - ii. Date and time,
 - iii. Initials of the taker of the blood alcohol sample, and **DO NOT ALLOW ANY OTHER PERSON TO HANDLE TUBES.**

Note: Any other person who handles the sample may be subpoenaed to give evidence in court.

6. give the blood alcohol sample directly to the attending peace officer,
7. complete the Certificate of Taking a Blood Sample form (obtain form from the peace officer), and
 - i. immediately make two copies,
 - ii. give the original certificate to the attending peace officer,
 - iii. give a copy of the certificate to the patient, and
 - iv. attach a copy of the certificate to the health record.

Note: If the sample is taken/provided pursuant to a warrant, subpoena or court order, attach the warrant, subpoena or court order document to the patient's chart.

5.0 REFERENCES

1. Criminal Code of Canada, Part VIII, Offences Against the Person and Reputation, Sections 254 to 258.
2. Health Care Protection Program Risk Note – Police Requests for Blood Alcohol Samples - Feb. 15, 2004
3. Order in Council Designating Qualified Technicians dated December 9, 1992.

Notes: The Order in Council defines "qualified technician" as the following classes of person:

- a Registered Nurse within the meaning of the Nurses (Registered) Act,
- a certified member of the Canadian Society for Medical Laboratory Science,
- a certified Laboratory Assistant member of the Canadian Society for Medical Laboratory Science, and
- a person who is employed by a hospital and who in the normal course of his/her employment takes blood samples.

Blood Alcohol demands are made under the Criminal Code of Canada and not the Motor Vehicle Act of BC. The CCC supersedes any of the provisions of the MVA.

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These forms are provided for informative purposes only and are not for reproduction and use. The peace officer requesting the sample must provide the appropriate form(s).

**FORM 1
Certificate of Taking a Blood Alcohol Sample**

I, _____ of _____ am a

medical practitioner

_____, employed by a hospital, under the supervision of a
(position)

physician, who in the normal course of employment takes blood alcohol samples.

AND I DO HEREBY CERTIFY:

THAT, on _____ [date] at _____ [time] at _____

Province of British Columbia

pursuant to a demand made under section 254 (3) of the Criminal Code of Canada. (patient consent)

pursuant to section 256 (1) of the Criminal Code of Canada. (with a warrant)

I did take a sample of the blood alcohol of a person identified to me as _____

I marked the blood alcohol specimen container containing the sample of blood alcohol with the inscription:

I gave the blood alcohol specimen container to _____

DATED _____ [day, month, year] at _____ in the

Province of British Columbia.

**FORM 2
Certificate of Medical Practitioner**

I, _____, medical practitioner, observed a person

identified to me as _____ at _____ [place]

on _____ [day, month, year] at _____ [time] at which

time I formed the opinion that _____ was incapable, due to _____

of comprehending the nature of a demand under section 254 (3) of the Criminal Code of Canada.

DATED _____ [day, month, year] at _____ in the Province

of British Columbia.

Medical Practitioner

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BLOOD ALCOHOL POLICY – FREQUENTLY ASKED QUESTIONS

Q. It is sometimes very difficult to determine if the patient will be released in time for the police to take a breath sample. What do I need to know to determine this?

A. Normally the police have to take a breath sample within 2 hours from the time the person was actually driving. The police should be able to provide this information.

Q. We routinely take blood samples for medical reasons. Why can't we simply give one of these samples to the police?

A. The police have to make a demand to a patient for a blood sample drawn. Blood taken for other reasons does not meet this criterion even if the patient consents to the demand. Police must serve a warrant before these samples can be turned over.

Q. If the police serve a warrant does it have to name an individual physician or other person to be valid?

A. No. The warrant will generally only name a "physician or qualified technician" of a specific facility.

Q. Is a physicians "Order" required to collect a blood sample from a patient?

A. No. There doesn't have to be a written physicians Order however the Criminal Code requires the collection of the blood sample to be done under the supervision of a physician.

Q. If I take a blood sample from a patient pursuant to a warrant can the patient sue me for assault?

A. No.

Q. Can I legally refuse to take a blood sample even if a warrant says we to?

A. Yes. The Criminal Code allows for the refusal to take a blood sample without a reason and not be guilty of a criminal offence. Some reasons for refusal include: endangerment of the patients life, interference with the primary medical care of the patient and staff are needed elsewhere to provide emergency care to patients.

Q. Does a staff person who takes a blood sample have to go to court?

A. Anyone who handles the blood sample can be subpoenaed to appear in court, however this rarely happens

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