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Police-Ordered Blood Draws In Idaho

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Law enforcement officers often request or demand that Idaho hospitals draw blood or conduct other tests on patients for law enforcement purposes; nevertheless, the general rule remains that patients (including persons in custody of the police) have the right to consent to or refuse their own healthcare, including blood draws or tests. (*See* I.C. § 39-4503). In addition, HIPAA limits the ability of healthcare providers to disclose information to police unless a HIPAA exception applies. (45 C.F.R. § 164.502). Accordingly, tests generally should not be performed and test results should not be disclosed to the police without the patient's consent absent a court order or statutory authority. In the case of minors or incompetent patients, the healthcare provider must generally obtain the consent of the minor's parent or other legally authorized representative. (*See* I.C. §§ 32-1015[1] and 39-4504).

Idaho does allow treatment or testing without the patient's consent in the following cases:

1. Court-ordered test. Under some circumstances, a court may order that an individual undergo certain tests or procedures to obtain evidence, *e.g.*, blood samples, urine samples, saliva samples, etc. (*See, e.g.*, I.C. § 19-625). The healthcare provider should strictly comply with any court order unless doing so would jeopardize the patient, the provider, or others, in which case the provider may need to raise objections to the court.

2. Deemed consent of driver. Under I.C. § 18-8002(1),[2] persons driving a motor vehicle in Idaho are deemed to have consented to a blood alcohol content (BAC) test; accordingly, certain hospital personnel may generally rely on such deemed consent if they want to draw blood in response to police request to do so. The relevant statute states:

> No hospital, hospital officer, agent, or employee, or health care professional licensed by the state of Idaho, whether or not such person has privileges to practice in the hospital in which a body fluid sample is obtained or an evidentiary test is made, shall incur any civil or criminal liability for any act arising out of administering an evidentiary test for alcohol concentration or for the presence of drugs or other intoxicating substances at the request or order of a peace officer

> in the manner described in this section and section 18-8002A, Idaho Code; provided that nothing in this section shall relieve any such person or legal entity from civil liability arising from the failure to exercise the community standard of care. …
>
> This immunity extends to any person who assists any individual to withdraw a blood sample for evidentiary testing at the request or order of a peace officer, which individual is authorized to withdraw a blood sample under the provisions of section 18-8003, Idaho Code, regardless of the location where the blood sample is actually withdrawn.

(I.C. § 18-8002(6)). Section 18-8003(1) states:

> Only a licensed physician, qualified medical technologist, registered nurse, phlebotomist trained in a licensed hospital or educational institution or other medical personnel trained in a licensed hospital or educational institution to withdraw blood can, at the order or request of a peace officer, withdraw blood for the purpose of determining the content of alcohol, drugs or other intoxicating substances therein. This limitation shall not apply to the taking of a urine, saliva or breath specimen. For purposes of this section: (a) the term “qualified medical technologist” shall be deemed to mean a person who meets the standards of a “clinical laboratory technologist” as set forth by the then current rules and regulations of the social security administration of the United States department of health and human services pursuant to subpart M of part 405, chapter III, title 20, of the code of federal regulation; and (b) the terms “phlebotomist” and “other medical personnel” shall be deemed to mean persons who meet the standards for the withdrawing of blood as designated and qualified by the employing medical facility or other employing entity of those persons.

Note that this section only allows the hospital to draw blood or run tests, it does not require hospital to do so. Also, I.C. §§ 18-8002 and 18-8002A contemplate that driver may refuse the test, in which case driver is subject to penalties. Section 18-8002(6) specifically states that a healthcare provider may decline or terminate any blood draw if:

> (i) In the reasonable judgment of the hospital personnel withdrawal of the blood sample may result in serious bodily injury to hospital personnel or other patients; or
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> (ii) The licensed health care professional treating the suspect believes the withdrawal of the blood sample is contraindicated because of the medical condition of the suspect or other patients.

(I.C. § 18-8002(6)(e)). For these reasons, my general advice is that a hospital usually should not draw blood without patient's consent. That rule is even more important if the patient expressly objects to or fights against the blood draw.

3. Police-ordered tests for certain DUI crimes. Under I.C. § 18-8002(6)(b), police are authorized to order certain persons to draw blood if they have reasonable cause to believe that one of the following offenses has occurred:

> (i) Aggravated driving under the influence of alcohol, drugs or other intoxicating substances as provided in section 18-8006, Idaho Code;
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> (ii) Vehicular manslaughter as provided in subsection (3)(a), (b) and (c) of section 18-4006, Idaho Code;
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> (iii) Aggravated operating of a vessel on the waters of the state while under the influence of alcohol, drugs or other intoxicating substances as provided in section 67-7035, Idaho Code; or
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> (iv) Any criminal homicide involving a vessel on the waters of the state while under the influence of alcohol, drugs or other intoxicating substances.

Again, only the persons identified in I.C. § 18-8003(1) may be ordered to draw blood. However, even in the case of police-ordered tests:

> The withdrawal of the blood sample

> may be delayed or terminated if:
>
> > (i) In the reasonable judgment of the hospital personnel withdrawal of the blood sample may result in serious bodily injury to hospital personnel or other patients; or
> >
> > (ii) The licensed health care professional treating the suspect believes the withdrawal of the blood sample is contraindicated because of the medical condition of the suspect or other patients.

(I.C. § 18-8002(6)(e)). In such cases, it may be necessary for the provider to explain the limits to the police and invoke the statute if the provider believes the exceptions apply. The provider should, of course, document his or her determination.

4. Testing of persons charged with certain offenses involving transmission of bodily fluids. Idaho law appears to allow healthcare providers to test persons charged with certain crimes for hepatitis C:

> All persons, including juveniles, who are charged with sex offenses, prostitution, any crime in which body fluid has likely been transmitted to another, or other charges as recommended by public health authorities shall be tested for the venereal diseases enumerated in section 39-601, Idaho Code, and for hepatitis C virus.

(I.C. § 39-604(4)). Note this allows the test but does not necessarily require the hospital to conduct the test if it declines, e.g., if patient refuses and hospital personnel do not want to force the issue. If the hospital decides to conduct the test, the test should only be performed at the direction of an authorized official.

5. Examination of inmates. Healthcare providers may examine or test inmates for venereal disease, HIV, and hepatitis.

> (1) All persons who shall be confined or imprisoned in any state prison facility in this state shall be examined for on admission, and again upon the offender's request before release, and, if infected, treated for the diseases enumerated in section 39-601, Idaho Code, and this examination shall include a test for HIV antibodies or antigens. This examination is not

> intended to limit any usual or customary medical examinations that might be indicated during a person's imprisonment. Nothing herein contained shall be construed to interfere with the service of any sentence imposed by a court as a punishment for the commission of crime. Nothing contained in this section shall be construed to impose upon any state prison facility an obligation to continue to treat a person who tested positive for any disease enumerated in section 39-601, Idaho Code, or be financially responsible for such treatment after the person is released from the state prison facility.
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> (2) All persons who shall be confined in any county or city jail may be examined for and, if infected, treated for the venereal diseases enumerated in section 39-601, Idaho Code, if such persons have, in the judgment of public health authorities or the jailer, been exposed to a disease enumerated in section 39-601, Idaho Code.
>
> (3) All persons who are charged with any sex offense in which body fluid, as defined in this chapter, has likely been transmitted to another shall be tested for the human immunodeficiency virus (HIV). At the request of the victim or parent, guardian or legal custodian of a minor victim, such test shall be administered not later than forty-eight (48) hours after the date on which the information or indictment is presented.

(I.C. § 39-604(1)-(3)). Again, the statute appears to allow testing but does not necessarily require the hospital to conduct the test if it declines.

For more information concerning provider interactions with police, see our article at https://www.hollandhart.com/police-providers-patients-and-hipaa.

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[1] It is not clear how the statutes that authorize care without patient consent are affected by Idaho's statute generally requiring parental consent, I.C. § 32-1015. Given the breadth of the parental consent law, providers should generally require parental consent before engaging in any healthcare of a minor. For more information, see our article at

https://www.hollandhart.com/idahos-new-parental-consent-law-faqs.

[2] This statute is used less frequently now because of *Missouri v. McNeely,* 569 U.S. 141 (2013), in which the United States Supreme Court held that evidence obtained through use of such statutory provisions over the patients' objection is inadmissible because it violates patient's constitutional rights.
