

# Utah Nurse Refuses to be an “Agent” of the Utah Police

written by Nancy Brent | September 15, 2017

## **Avoiding Liability Bulletin - September 15, 2017**

Throughout my many years of practicing law, I have presented seminars and programs about law and nursing practice. Invariably, during those seminars and programs, the question of what a nurse should do if a police officer demanded that a blood sample be drawn when the patient refused to have the sample taken.

As you can probably imagine, my response was always that a nurse is not an agent of the police, and should a blood sample be necessary and consent not provided by the patient, a search warrant was necessary.

Many seminar attendees stated they would find it difficult to “stand up” to the police in such a situation and some even voiced the concern that their employer might not support them if they did so.

Well, this was not a concern for Alex Wubbels, the Utah nurse who did “stand up” to the police in the interest of her patient’s legal and ethical rights. Wubbels’ employer “stood up” for her as well. Although a ridiculous and unbelievable situation, Wubbels, her employer, and most of all, the patient, who was unconscious due to severe burns sustained in a car crash, were winners all the way around.

Wubbels’ actions were 100% in line with the law. In 2013, the United States Supreme Court<sup>1</sup> held that police cannot automatically order a blood sample be drawn when a person is arrested for DWI (driving while intoxicated). Rather, the Court held, the police must obtain a warrant for the blood draw unless an “exigent” (urgent) situation exists. Such a situation does not include, the Court continued, that blood-alcohol concentration diminishes with the passage of time.<sup>2</sup>

The Court established what an “exigent” circumstance is for the police. They must evaluate the “totality of the circumstances” in order to decide if seeking a warrant prior to taking a blood sample would “significantly undermin(e) the efficacy of the search in a specific, individual case.”<sup>2</sup>

You may wonder why obtaining a blood sample without a warrant is such a big deal. First and foremost, it is an intrusive procedure. However, when it is coupled with a potential criminal matter (such as DWI), the police (who are state or federal employees) are restricted by the 4<sup>th</sup> Amendment to the United States Constitution, which says, in part, that no unreasonable searches or seizures of property or person can occur and that a warrant can only be issued when probable cause exists.<sup>3</sup> Parallel protections also exist in state constitutions.

In the Wubbels' situation, the unconscious patient was not under arrest. He had been flown to the University of Utah hospital after he survived a two car crash in which the first driver was killed.

Although the police officer reportedly said he needed a blood test to see if there were "any chemical substances in this system at the time of the crash", it was not clear why he had this concern.<sup>2</sup>

A search warrant did not exist for the blood draw and there did not appear to be any probable cause for obtaining one. Moreover, the police officer refused to even seek a warrant, stating, "If I don't get the blood, I'm taking her to jail"....."I either go away with blood in vials or body in tow. That's my only two choices".<sup>2</sup>

Additionally, no consent was given because the patient was unconscious. All these factors added up to the potential for a clear violation of the patient's 4<sup>th</sup> Amendment rights had Wubbels not intervened.

The police involved have been placed on administrative leave and several investigations, both on the state and federal level, are being conducted by Utah officials and the FBI. The officer directly involved in handcuffing and detaining Wubbels also lost his job as a part-time paramedic.<sup>4</sup>

The University of Utah has changed its policy concerning the interactions between police and nursing staff: police can no longer directly contact its nursing staff.<sup>4</sup>

Although this situation was made of specific facts and circumstances, it's lessons can be applied to you in your everyday practice and regardless of the nursing specialty in which you practice. Its messages include:

1. Know your hospital policies and procedures concerning contact with law enforcement personnel;
2. If confronted with law enforcement personnel who demand something or threaten you, immediately contact your supervisor, CNO and/or risk manager;
3. Remove yourself and the law enforcement personnel from the area where the patient is located (Wubbels moved from the Burn Unit to the ED while the police officer continued to demand a blood sample);
4. Whether or not a DWI is alleged, a patient's rights under the 4<sup>th</sup> Amendment and state constitutions exist;
5. If you are an employee of a state affiliated health facility, know that you are always required to protect a patient's Constitutional rights;
6. If you work in a private facility, you must follow your facility's policies concerning law enforcement personnel and their request for warrantless blood draws;
7. If you become involved in violating a patient's rights under the 4<sup>th</sup> Amendment or your state constitutional protections in any health care setting, you may be named in a lawsuit as an "agent" due to your cooperation in violating those rights;
8. Adherence to the ANA's Nurses Code of Ethics With Interpretive Statements and other applicable codes is always necessary;

9. If your facility does not have policies and procedures on how to deal with law enforcement requests concerning patient information and bodily samples, share your concerns with your CNO and your Policy and Procedures Committee to get them developed and implemented; and
10. Always be true to yourself and your patients by “standing up” to those who want you to short cut your obligations in order to benefit them.

## FOOTNOTES

1. Missouri v. McNeely, 569 U.S. 141 (2013).
2. Sherry F. Colb (2013), “The U.S. Supreme Court Rules That Blood Tests for Drunk Driving Suspects Require a Search Warrant: A Wise Decision?”, in Verdict: Legal Analysis and Commentary from Justia. Available at: <https://verdict.com/2013/05/15/the-u-s-supreme-court-rules-that-blood-tests-for-drunk-driving-suspects-requires-a-search-warrant/> .
3. Constitution of the United States, Amendment 4.
4. Josh Delk (September 9, 2017), “Report: FBI Probes Utah Cop Who Arrested Nurse For Refusing To Draw Blood, The Hill. Available at: [thehill.com/blogs/blog-briefing-room/349864-fbi-probing-utah-cop-who-arrested-nurse-for-refusing-to-draw-blood](http://thehill.com/blogs/blog-briefing-room/349864-fbi-probing-utah-cop-who-arrested-nurse-for-refusing-to-draw-blood) .

***THIS BULLETIN IS FOR EDUCATIONAL PURPOSES ONLY AND IS NOT TO BE TAKEN AS SPECIFIC LEGAL OR ANY OTHER ADVICE BY THE READER. IF LEGAL OR OTHER ADVICE IS NEEDED, THE READER IS ENCOURAGED TO SEEK SUCH ADVICE FROM A COMPETENT PROFESSIONAL.***