



## Alerts

### Recent U.S. Supreme Court Decision on Warrantless Blood Draws Illustrates Need for Discussion Between Health Care Providers and Law Enforcement

**May 10, 2013**

*Health Care Alert*

The U.S. Supreme Court recently affirmed a trial court's decision to throw out blood evidence in a drunk driving investigation where the blood evidence was obtained through a warrantless, nonconsensual blood draw. *Missouri v. McNeely*, 599 U.S. \_\_\_\_ (2013). This case illustrates the need for health care professionals to engage in proactive discussions with law enforcement regarding procedures for a nonconsensual, police blood draw in order to avoid liability concerns for battery or professional misconduct.

During a routine traffic stop, a police officer arrested respondent patient for driving under the influence of alcohol. The patient refused to submit to a breathalyzer or blood test to determine his blood alcohol level. The patient was not injured, but the officer took him to a hospital, where hospital personnel performed a nonconsensual blood draw. As in most states, in Missouri (and Illinois) the state statutes require that drivers give implied consent for a blood draw in a drunk-driving investigation by law enforcement. However, when this consent is explicitly revoked, the Fourth Amendment dictates that police need a warrant to obtain this blood evidence unless exigent circumstances exist. The trial court suppressed the blood evidence and the U.S. Supreme Court affirmed, stating that exigent circumstances did not necessarily exist merely because of the dissipating nature of blood alcohol evidence.

#### **Question Before the Court and How the Court Decided It**

*Issue:* In a drunk-driving investigation, does the natural metabolization of alcohol in the blood stream present an emergency that necessitates an exception the warrant requirement of the Fourth Amendment?

The U.S. Supreme Court has consistently held that whether an exigent circumstances exists is a case-by-case determination made based on a totality of the circumstances. The Court refused to adopt a blanket rule that all blood draws are exigent circumstances. This ruling did not preclude a situation where a warrantless blood draw would be permissible.

#### **What the Court's Decision Means for Practitioners**

Health care practitioners do not want to be put in the position of performing a nonconsensual medical procedure. The implied consent provision in a state's motor vehicle code will not suffice to protect a practitioner from liability. This case illustrates the murky and turbulent waters of Fourth Amendment law. Where trained law enforcement professionals are unable to gauge what evidence collection process is appropriate, health care practitioners are even more at a disadvantage in understanding the state of the law. Even under direction of law enforcement, blood evidence gathered by a health care practitioner may be thrown out in a criminal prosecution. In order to maintain good working relationships with local law enforcement, health care practitioners need to engage in early, proactive discussions with law enforcement in their communities to prevent a potentially volatile situation. Hinshaw can discuss options for health care practitioners and help determine the best course of action tailored to the individual institution's needs. We can also facilitate these discussions with local prosecutors' offices and law enforcement.

*Missouri v. McNeely*, 599 U.S. \_\_\_\_ (2013)