

# Laboratory Bulletin

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November 25, 2019

## Non-medical blood draw requests from police enforcement agencies under the amended Criminal Code of Canada

### Situation

On December 18, 2018, new *Criminal Code of Canada (CCC)* provisions related to impaired driving came into effect in Canada. The changes were designed to enhance police powers to investigate suspected impaired driving in light of the legalization of marijuana in October.

This bulletin is intended to provide provincial laboratory medicine leaders with general information and guidance on preparing for potential service expectations concerning the Criminal Code amendments.

### Background

Officers of law enforcement agencies who suspect that an individual has been operating a motor vehicle while impaired have the right to demand a blood sample. The amendment mandates a two-hour window from the time the individual ceases operation of the vehicle until the sample collection. Refusal of the individual to provide a blood sample holds the same consequence as providing a blood sample that is over the legal limit. The officer will issue an impaired driving charge under the Criminal Code without collecting the blood sample.

British Columbia recently enacted further regulation to support implementation of the impaired driving legislation. On June 7, 2019, the BC Government issued Ministerial Order M206 that defines specific classes of persons that are designated as “qualified technicians” to collect the non-medical samples under the requirements of the CCC. The identified classes include

- registered nurses
- nurse practitioners
- registered psychiatric nurses
- any person working in a hospital who collects blood samples in the normal course of duty

If the police enforcement agency brings an individual to a facility and requests non-medical blood sample be drawn, emergency medical treatment of the individual (if needed) **always** takes priority. Once the individual is medically stable, the attending physician may consider the officer’s request to draw the non-medical blood sample. Emergency room or laboratory professionals who meet the requirements as qualified technicians may be asked to perform the non-medical blood draw. The officer will provide the blood collection kit, consisting of alcohol-free cleaning wipes and Vacutainer brand collection containers. The qualified technician will draw the blood sample into two containers, which are then sealed and labeled.

When the non-medical blood draw is performed, the officer will ask the qualified technician to sign a *Certificate of a Qualified Technician Who Took Blood Samples*. The certificate states the name of the qualified technician who drew the sample, the date/time/place the blood was drawn, and that two samples were drawn directly from the individual into the approved containers. Completion of the *Certificate of a Qualified Technician Who Took Blood Samples* is designed to eliminate the need to attend court and testify to chain-of-custody. The police officer observing the drawing of the non-medical blood sample is able to testify to the chain-of-custody.

### **Guidance**

Laboratory personnel have an important role to play in ensuring that the mandatory sample collection window is achieved. Reasonable requests from a police enforcement officer or medical professional should be performed expeditiously to meet the two-hour timeframe wherever possible. Failure to meet the two-hour timeframe will significantly impede the ability of the police enforcement agencies to prosecute for a drug-impaired driving offence.

As the provincial laboratory medicine service responds to the changes introduced by the new legislation, additional work is underway with the health authority emergency departments and police agencies.

Please review the following appendix for answers to frequently asked questions.

### **Recommendation**

- Update your current operational protocols to reflect the information provided in this bulletin
- Engage further within your health authority to operationalize workflows

## **Appendix: Frequently asked questions**

### **1) *What is the purpose of the amendments to the Criminal Code legislation?***

Recent changes expand the investigative powers for police enforcement agencies. A police officer is empowered to require an individual to provide a blood sample if the officer has reasonable grounds to believe that the individual has been operating a vehicle while impaired by alcohol, drugs, or a combination of drugs and alcohol.

### **2) *How will this new legislation impact BC laboratories and their personnel?***

Police officers may be transporting individuals suspected of alcohol or drug intoxication to health authority emergency departments in order to have non-medical blood samples taken. These individuals may or may not be existing patients of the facility or require medical care at this time.

### **3) *Who is authorized to draw these non-medical blood samples under the CCC?***

In BC, the Ministerial Order M206 defined the following classes of hospital personnel as “qualified technicians” who are authorized to collect the samples: registered nurses, nurse practitioners, registered psychiatric nurses, and any person working in a hospital who collects blood samples in the normal course of duty.

### **4) *What is the responsibility of the qualified medical practitioner or “qualified technicians?”***

Under the amendments, police officers will rely on a qualified medical practitioner or “qualified technicians” to

- determine whether taking the sample would endanger the individual’s health (laboratory personnel will defer to the judgement of a qualified medical practitioner determine the amount of blood necessary to enable a proper analysis)
- draw the non-medical blood samples

### **5) *Will the new provisions affect how care is provided by provincial laboratory medicine services?***

The amendments do not change laboratory staff’s professional and ethical obligations to individuals brought in for blood collection, particularly as they relate to consent to treatment. The *Criminal Code* provisions that require collection of non-medical blood samples create a power held by police agencies and an obligation to comply held by the individual suspected of impaired driving. They do not create the same power/duty to comply relationship between police and the medical practitioner or member of laboratory staff.

### **6) *Are laboratory personnel required to comply with a request for a non- medical blood draw under the criminal code provisions related to impaired driving.***

Yes, if you are requested to take blood from a suspected impaired driver and the individual is competent and consents, or there is a warrant, you are required to comply with the request in order to meet the two hour time line. You should only decline when there is a compelling reason to do so.

### **7) *Do laboratory personnel require a physician order to draw non-medical blood samples?***

Bill C-46 has removed the requirement that blood draws had to be performed under the direction of a qualified medical practitioner, and now permits samples of blood to be taken by a qualified technician. Therefore, under the new legislation for drug-impaired driving, a qualified technician does not need a physician order to draw a non-medical blood sample. Physician orders are still required for collection of samples for medical purposes.

**8) Will I be asked to take blood samples from an individual who is refusing?**

At no time will a qualified technician be asked to draw blood from an individual who has not consented. A valid consent is always required. Under the CCC, the individual who does not consent to the blood draw is admitting guilt and will be charged the same as if a blood result exceeding the legal limits was received.

**9) Does the individual need to sign a consent form?**

A documented consent is not required; the individuals may be deemed to have consented if they are observed to be cooperating with law enforcement and health care staff in respect to the blood draw. If the individual is not consenting, a blood sample is not required, as under the amended legislation the individual will be deemed guilty and charged with the offence just as if a positive blood result was received.

**10) Under the amendments, am I required to take blood in the absence of consent?**

No. If a patient or individual brought in by the police agency does not consent to having non-medical blood samples taken, medical practitioners and “qualified technicians” must decline to take the sample. Laboratory personnel must continue to adhere strictly to the health authority’s consent for treatment policy which typically requires that a valid consent be obtained before any treatment or procedure, except in very limited circumstances (for example, urgent/emergency health care).

**11) Are there any circumstances under the new provisions where blood can be taken without consent?**

Yes, but only if the police representative presents a warrant. If an individual is incapable of providing consent and the police have reasonable grounds to believe that his or her impairment caused someone bodily injury, the police can apply to a judge for a warrant to have the incapable individual’s blood taken. Health authorities must comply promptly with valid court orders, including warrants. Laboratory personnel presented with a warrant by police should consult with their manager or supervisor who, in turn, may contact the organization’s Risk Management department for additional support.

**12) What can the police do if I decline to take blood from a capable patient or individual who refuses to consent?**

The *Criminal Code* expressly states that it is not an offense for a medical practitioner or qualified technician to refuse to take a sample of blood from a patient or individual for the purposes of these provisions. The individual suspected of impaired driving may, however, face criminal liability for refusing to comply with the police demand.

**13) What if the patient or individual consents, but taking the sample might endanger his or her health?**

A sample should not be taken if, for any reason, doing so would endanger the patient or individual’s health. Under the *Criminal Code*, medical practitioners and “qualified technicians” are responsible for determining whether or not taking a sample poses a risk to the patient or individual’s health and the police must defer to their judgement. We recognize that laboratory staff will have to defer to the judgement of a qualified medical practitioner in any case where there is reason to believe that taking a sample might endanger a patient or individual’s health.

**14) What do I do if I suspect that the patient or individual might be incapable of providing informed consent?**

Medical practitioners must continue to assess capacity in strict accordance with the Consent to Treatment Policy. If the patient or individual is incapable of providing a valid consent (for example, by reason of intoxication), medical practitioners and qualified technicians should decline to take the sample unless a warrant is presented.

**15) Can I be charged if I refuse to collect the samples?**

A qualified technician is protected from civil or criminal liability and may refuse to draw the sample with a reasonable excuse without being guilty of an offence. Blood samples must not be drawn if the procedure will endanger the health of the individual. Under both the Motor Vehicles Act (MVA) and the CCC, the individual has no civil or criminal resources against the physician or qualified technician who took the blood sample, provided that the samples was taken with reasonable care and skill.

**16) Do I need to use a special collection kit provided by the law enforcement officer?**

The attending officer is responsible to provide the collection kit, including the *Certificate of a Qualified Technician Who Took Blood Sample*.

**17) What happens if the sample collection tubes in the provided kit are expired or the law enforcement officer does not provide a sample collection kit?**

From the RCMP perspective: the kits for non-medical blood draws do not have an expiry date. The vacutainer tubes included in the kit display a manufacturer's expiry date (in essence, a "best before" date). This expiry date is related to the manufacturer's promise that the vacuum remains intact until that date. The RCMP Integrated Impaired Driving Unit (IIDU) instructs officers that the expired collection containers should not be an impediment to the blood draw. The *British Columbia Impaired Driving Reference Manual* issued to police enforcement officers also states that "EXPIRED KITS can be used."

It is an expectation that the blood collection kit will be provided to laboratory personnel to best meet chain of custody requirements.

**18) Do I need to transport the samples to the forensic laboratory for testing?**

The attending officer is responsible for using the organization's established procedures to deliver the sample to the appropriate forensic laboratory for analysis.

**19) Will I need to testify in court for chain-of-custody?**

Laboratory personnel are not responsible for the continuity of evidence, so it is unlikely that the qualified technician drawing a non-medical blood sample will testify in court. When the qualified technician collects the samples and signs a *Certificate of a Qualified Technician Who Took Blood Samples* in the presence of the police officer, the officer testifies in court to the chain-of-custody.

**20) When is a warrant for patient medical samples required?**

The police enforcement agency must present a warrant in order for to seize medical samples under the care of the laboratory. Laboratory personnel will continue to follow existing health organization procedures for specimen release when such warrants are issued.

**21) What if the facility does not offer 24/7 service for either emergency or laboratory services and there is no qualified technician available?**

The police enforcement agencies will need to take the individuals to a facility where there is a qualified technician available for the non-medical blood draw procedure. By definition of qualified technician, the facility is a hospital (any person working in a hospital who collects blood samples in the normal course of duty).

**22) What if an existing laboratory policy does not align with these new processes?**

Existing laboratory policy is written in the context of samples collected for medical purposes and should be reviewed so that all public sector laboratories are also operating under similar policy for non-medical sample collection.

**23) What if the officer applies undue pressure or displays inappropriate behavior toward qualified technicians during the process?**

Please advise your leadership team of issues that arise so that joint solutions can be developed.

**24) What is the payment mechanism for performing non-medical blood draws in the health authority?**

Currently the reimbursement process is unclear, but has been referenced by the BC Ministry of Health as requiring a new fee code to be established. The answer to this question is still pending. In the meantime, laboratory personnel should retain a copy of the *Certificate of a Qualified Technician Who Took Blood*.

**25) Which drugs are included in the drug panel?**

The Drug Impaired Driving regulation in Canada applies to the following drugs (with a corresponding prohibited drug concentration): THC, GHB, LDS, Psilocybin, Psilocin, 6-MAM heroin metabolite, Ketamine, Cocaine, and Methamphetamine.

**26) Whom should I ask for more information on this issue?**

Laboratory leaders should contact the organization's Risk Management department with questions. After regular business hours, they should contact the administrator-on-call.