Impaired Driving and Bodily Fluid Samples: What Hospitals and Health-Care Providers Should Know

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In anticipation of the recent decriminalization of cannabis use by adults, the federal government introduced legislative changes to address impaired driving offences. The new laws increase police power to demand bodily fluid samples for the purpose of detecting the presence of alcohol and drugs in drivers. From a hospital's perspective, these changes are significant as frontline staff may see increased demands (and presence) by police for blood samples.

The changes arise as a result of Bill C-46, which received Royal Assent on June 21, 2018 and amends sections of the *Criminal Code*. Police are permitted to demand breath, oral fluid, and urine samples from drivers. Hospital staff will not generally be involved in the procurement of these samples as they will be taken at the roadside or police station. When police are obtaining a blood sample on consent, however, a physician or "qualified technician" — currently only a nurse — is necessary to gather the sample and provide a certificate to confirm that "they took the sample and before the sample was taken they were of the opinion that taking it would not endanger the [driver's] life or health."

As was the law previously, when a patient is unable to provide consent, police can obtain a warrant or court order for an existing sample, or in rare cases, for a sample to be obtained.

Overview of Bill C-46

Bill C-46 is composed of two parts, with Part 1 already effective and Part 2 coming into force on December 18, 2018.

Part 1 came into force upon the bill receiving Royal Assent on June 21, 2018, and is currently an enforceable law. It establishes new criminal offences for driving with blood drug concentrations and/or blood alcohol concentrations above a certain threshold and authorizes the Governor in Council to set the legal blood concentration thresholds. Part 1 also authorizes law enforcement to demand that the driver provide a bodily sample for

analysis when they have reasonable grounds to suspect a driver is under the influence of drugs.

Part 2 represents a complete repeal of the current impairment offences and procedures relating to the operation of motor vehicles, facilitates investigation and proof of blood alcohol concentration, and increases certain minimum fines and maximum penalties. It also eliminates the need for police to have a reasonable suspicion that a person has been drinking in order to require a roadside breath test for a driver.

Impact on Hospitals and Health-care Providers

With the decriminalization of cannabis, health-care providers may have greater interaction with patients and law enforcement on matters relating to cannabis intoxication. Unlike alcohol, THC (the main psychoactive chemical in cannabis) dissipates quickly in blood, so there may be greater urgency from law enforcement in seeking blood samples from persons they suspect of having cannabis in their system.

Police are permitted to demand breath, oral fluid, and urine samples from drivers. Typically these demands will take place at the roadside or a police station. Where the demands are made at a hospital, hospital staff should not be involved in procuring these consent samples.

Police can also demand blood samples from drivers. Blood samples, however, can only be taken by or under the direction of a qualified medical practitioner or qualified technician, and that person must be satisfied that the taking of samples would not endanger the life or the health of the patient. If the patient refuses to comply with a police officer's demand for a blood sample, they may be charged with an offence. Hospital staff and physicians should not take blood from a patient in the face of a patient's active refusal to consent.

Where the patient is unable to consent, police can obtain a warrant to obtain an existing sample, or rarely, to obtain a new sample. The blood sample may only be taken by or under the direction of a qualified medical practitioner where a qualified medical practitioner is of opinion the patient is unable to consent and the taking of the sample would not endanger the life or the health of the patient.

Takeaway for Hospitals

Health-care providers should provide staff, especially those working on the frontline, with access to information on these important changes to the *Criminal Code*. If policies and procedures on the obligations of hospital staff to comply with police demands exist, they should be updated and re-distributed to strive for uniform knowledge across all personnel.

Furthermore, hospitals should be alive to the dynamic nature of the law surrounding cannabis, impaired driving and police authority to demand bodily fluid samples. This area of the law is evolving and case law may modify its interpretation and application as challenges work their way through the court system.

Stay tuned for further updates as Part 2 comes into force later this year.

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