

1980 WL 120816 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 12, 1980

*1 The Honorable Michael R. Daniel
Member
House of Representatives
Box 249
Gaffney, South Carolina 29340

Dear Representative Daniel:

You have requested of this office an opinion on whether or not a hospital, after performing a blood alcohol test, is under an obligation to deliver a vial of the patient's blood to various law enforcement agencies upon their request.

Your question, to be answered properly, must be placed in a factual context. Let us assume hypothetically that an individual has been arrested for driving under the influence and that individual has requested the arresting officer to assist him in obtaining a blood test and that the officer has transported the individual to the hospital where the suspect arrestee has requested the hospital to draw his blood for the purpose of a blood alcohol test. Assume also that the officer requests a vial of the suspect's blood at the same time. Is the hospital obligated to furnish the officer with the blood without the arrestee's permission? It is the opinion of the office that it is.

In [Schmerber vs. California, 16 L.Ed.2d 908 \(1966\)](#) the United States Supreme Court held that the extracting of blood from a patient, even against the patient's will or without his knowledge, at the request of police authorities, and in furtherance of a criminal investigation, was lawful. The extraction must be done by trained medical personnel in accordance with accepted medical practices. See also Attorney General's Opinion No. 3166 of August 13, 1971.

In the situation where the suspect himself requests that blood be drawn by the hospital personnel, there can be little, if any, grounds for him to complain if the hospital cooperates with the lawful request of the officer for a blood sample. The suspect is under arrest, in police custody, and the officer is conducting a criminal investigation at the time he requests the blood sample. The blood constitutes material evidence relating to the charge of driving under the influence. The suspect himself has no constitutional right to deny that evidence to the authorities under [Schmerber](#), and certainly the hospital has no greater right to deny the authorities access to evidence than does the suspect himself. More importantly there is a primary assumption that there is a general duty to give whatever testimony one is capable of giving absent any exemptions or privileges. Wigmore on Evidence § 2192. Since South Carolina does not recognize the patient-physician privilege, this presents no barrier to hospital cooperation.

A previous opinion of this office has stated that a coroner who has gathered evidence of a crime may not withhold it from investigating police officers who have need of it for examination or testing relating to solution of the crime. In the absence of reasonable cooperation from the Coroner, the remedy would be to apply to the circuit court for an appropriate order. Ops. Atty. Gen. No. 4483, 1975-76, p.342. The same rationale is applicable in this situation.

*2 In conclusion, it is the opinion of this office, that a hospital has no right to refuse to comply with a lawful request of law enforcement authorities for a blood sample of one suspected of driving under the influence where the suspect himself has requested that blood be drawn for the purposes of a blood alcohol test since to comply violates no constitutional rights of the suspect, and to refuse impedes the authorities in their duty to investigate criminal conduct.

Yours very truly,

Richard D. Bybee
Assistant Attorney General

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