



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

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| ATTORNEY GENERAL OPINION | No. I25-005 (R25-008) |
| By KRIS MAYES ATTORNEY GENERAL | Re: Necessity of Medical Malpractice Insurance for Law Enforcement Blood Draws |
| August 5, 2025 | |

To: Jesse Torrez, Director of the Governor's Office of Highway Safety

Questions Presented

Does a blood draw conducted by a law enforcement officer during a DUI investigation constitute a medical procedure which would subject the officer to liability for medical malpractice?

Summary Answer

No, for two reasons. First, a blood draw conducted by a law enforcement officer during a DUI investigation is not a medical procedure but an investigative tool for gathering forensic evidence.¹ Second, a law enforcement officer conducting a blood draw for DUI purposes is not a "licensed health care provider," as defined in A.R.S. § 12-561, and therefore cannot be sued for medical malpractice under Arizona law.

¹ This Opinion only addresses a blood draw conducted in the context of a DUI investigation for the purpose of determining the alcohol concentration or drug content in the suspect's blood. If law enforcement officers perform blood draws in other contexts for purposes other than collecting forensic evidence, a different analysis may be required.

Background

If a law enforcement officer has probable cause to believe a driver committed a DUI offense, Arizona’s implied consent statute requires the driver to submit to a blood draw to determine their blood-alcohol concentration or drug content if requested by the officer, otherwise the driver risks having their license suspended for one year. A.R.S. § 28-1321(A)-(B). Arizona law permits a physician, registered nurse, or other “qualified person” to draw blood from a driver pursuant to the implied consent statute. A.R.S. § 28-1388(A). “A phlebotomist is a ‘qualified person’ under the statute [and] need not be certified, but rather, only ‘demonstrate competence through training or experience.’” *State v. May*, 210 Ariz. 452, 455 ¶ 10 (App. 2005) (cleaned up); *see also State ex rel. Pennartz v. Olcavage*, 200 Ariz. 582, 588 ¶ 21 (App. 2001) (a phlebotomist is “a person who, through training or experience, is competent to draw blood”).

Law enforcement officers who participate in Arizona’s Law Enforcement Phlebotomy Program are generally “qualified” to draw blood within the meaning of A.R.S. § 28-1388(A). *See May*, 210 Ariz. at 455 ¶ 10 (officer who attended the Law Enforcement Phlebotomy Program and “had drawn blood 150 to 200 times,” was “sufficiently qualified [] as a person competent to draw blood” within the meaning of the statute). Arizona’s Law Enforcement Phlebotomy Program was established in 1995 to address the high number of DUI investigations “that resulted in no chemical evidence due to test refusals, the need for officers in rural areas to travel to obtain a blood draw on a DWI suspect, and the refusal or inability of hospital staff to obtain blood samples for law enforcement.”² The Program “allows law enforcement officers with specialized training to draw

² Nat’l Highway Traffic Safety Admin., *Law Enforcement Phlebotomy Toolkit: A Guide to Assist Law Enforcement Agencies with Planning and Implementing a Phlebotomy Program*, 3 (2019), https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/14222-phlebotomy_toolkit_final-032819-v1a_tag_0.pdf.

blood for investigative purposes” and “eliminates the need for a suspect to be transported to a hospital or other facility to obtain a blood sample.”³ The training is focused on law enforcement procedures and consists of a one-week course at a community college and “20-30 hours in a clinical setting where [officers] complete more than 50 successful venipunctures.”⁴

The Arizona Municipal Risk Retention Pool/Southwest Risk recently determined that a blood draw conducted by law enforcement officers is a medical procedure, and as a result, has required law enforcement agencies to obtain medical malpractice insurance. The Director of the Governor’s Office of Highway Safety, which funds Arizona’s Law Enforcement Phlebotomy Program, submitted a request for an Attorney General Opinion as to whether a blood draw conducted by a law enforcement officer under Arizona’s DUI laws is a medical procedure that would require medical malpractice insurance.

Analysis

I. A blood draw conducted by law enforcement during a DUI investigation is not a medical procedure.

A law enforcement officer conducting a blood draw as a “qualified person” under A.R.S. § 28-1388(A) is, by definition, not a physician or registered nurse, but rather, “a person who, through training or experience, is competent to draw blood.” *Olcavage*, 200 Ariz. at 588 ¶ 21. Simply because a blood draw is conducted by a “qualified person” does not mean that the blood draw is a medical procedure, particularly when the purpose of the blood draw is to obtain forensic evidence. In *Olcavage*, the Arizona Court of Appeals concluded that a law enforcement officer

³ *Id.* at 1.

⁴ *Phlebotomy Program Update May 1, 2025*, Ariz. Governor’s Off. of Highway Safety, <https://gohs.az.gov/highway-safety-programs/impaired-driver-training/phlebotomy-program#:~:text=better%20interagency%20cooperation.-.Training,germane%20to%20law%20enforcement%20procedures>. (last visited July 1, 2025)

conducting a blood draw for forensic purposes under A.R.S. § 28-1388(A) could do so without the supervision of a licensed medical professional—as required by Title 36 and 32 for certain healthcare workers—because “phlebotomists who draw blood for DUI purposes are not assisting in a medical practice, *nor are they collecting specimens as part of a medical procedure*. Their actions are forensic in nature, not diagnostic or medical.” *Id.* at 587 ¶ 15 (emphasis added). The Court found that the statutes governing medical professionals were not applicable in the DUI context because “[b]lood drawn for DUI purposes is not aimed at enabling medical personnel to make a medical determination. Rather the blood draw is intended to provide the evidence necessary to make a legal determination—namely, whether a suspect’s blood alcohol content exceeds a legislatively imposed limit.” *Id.* at ¶ 16. *Olcavage* thus makes clear that a blood draw is not a medical procedure *per se*; rather, the blood draw’s purpose is the primary indicator of whether it is a health-related service or a non-medical investigative tool. And a blood draw conducted by an officer for DUI purposes falls into the latter category.

Arizona courts have also recognized the distinction between a blood draw conducted for medical purposes and a blood draw for the purposes of obtaining forensic evidence in a DUI investigation through what is known as the “medical blood draw exception.” Section 28-1388(E) provides that if a law enforcement officer has probable cause to believe that a person has committed a DUI offense and a sample of blood “is taken from that person for any reason, a portion of that sample sufficient for analysis shall be provided to a law enforcement officer if requested for law enforcement purposes.” This exception to the warrant requirement, known as the “medical blood draw exception,” allows a warrantless blood draw to be used in a DUI prosecution if “(1) probable cause existed to believe that the suspect was driving under the influence, (2) exigent circumstances made it impractical for law enforcement to obtain a warrant, (3) *the blood was*

drawn by medical personnel for a medical reason, and (4) the provision of medical services did not violate the suspect’s right to direct his or her own medical treatment.” *State v. Nissley*, 241 Ariz. 327, 333 ¶ 24 (2017) (emphasis added). In other words, in order for blood evidence to be admissible under this exception, the State must show that the blood draw was not requested or carried out by law enforcement, but that an independent decision was made by medical personnel to draw the suspect’s blood for a medical reason. *State v. Peltz*, 242 Ariz. 23, 33 ¶ 37 (App. 2017). The distinction courts have drawn in this context between a blood draw for medical purposes and a blood draw for law enforcement purposes demonstrates that a law enforcement officer acting as a “qualified person” who draws blood either with the driver’s consent or pursuant to search warrant is *not* doing so for a medical reason, and the blood draw does not constitute a medical procedure.

II. Law enforcement officers are not licensed health care providers subject to liability for medical malpractice under Arizona law.

Arizona’s Medical Malpractice Act (A.R.S. § 12-561 *et seq.*) governs any claim for medical malpractice in the State. *Bailey-Null v. ValueOptions*, 221 Ariz. 63, 70 ¶ 24 (App. 2009) (“Medical malpractice actions can be brought against a health care provider only on the grounds listed in A.R.S. § 12-561.”). The Act defines a medical malpractice action as one “for injury or death against a licensed health care provider based upon such provider’s alleged negligence, misconduct, errors or omissions [] in the rendering of health care [] or other health-related services or for the rendering of such health care [] or other health-related services, without express or implied consent including an action based upon the alleged negligence, misconduct, errors or omissions or breach of contract in collecting, processing or distributing whole human blood[.]” A.R.S. § 12-561(2). A licensed health care provider is a person or facility “licensed or certified by the state to provide health care, medical services [] or other health-related services and includes the officers, employees and agents thereof working under the supervision of such person [] in

providing such health care, medical services, [] or other health-related services.” A.R.S. § 12-561(1)(a).⁵

The Arizona Supreme Court has emphasized that it is not the *type* of claim that determines whether it is a medical malpractice claim, “it is the identity of the person against whom it is asserted.” *Kenyon v. Hammer*, 142 Ariz. 69, 77 (1984). Indeed, “[a] malpractice claim asserted against an unlicensed health care provider is not covered by the statute[.]” *Id.* The Act encompasses only “claims against licensed health care providers for matters based upon such provider’s rendition of health care services[.]” *Id.* In other words, no cause of action exists for medical malpractice unless the person against whom the claim is asserted is a “licensed health care provider” as defined by the Act. Law enforcement officers do not fall within this definition.⁶

Law enforcement officers are not “licensed or certified” by the State to provide any kind of “health care, medical services [] or other health-related services.” As discussed previously, blood draws conducted for investigatory purposes are forensic in nature, they are not medical or health-related services. But even if they were, officers are not licensed or certified by the State to provide them. While the Act does not explain the terms licensed or certified, Arizona courts have found that the “license” referred to “is a license from DHS—the department created for the sole purpose of controlling licensing standards for health care institutions.” *Sahf v. Lake Havasu City Ass’n for the Retarded & Handicapped*, 150 Ariz. 50, 58 (App. 1986); *see id.* (finding that facility was certified by DES to provide residential services, but this was distinct from the provision of

⁵ The Act also includes federally licensed blood banks and plasma centers in the definition of licensed health care provider, but that definition is not relevant here. A.R.S. § 12-561(1)(b).

⁶ And even if they did, liability arguably would not exist for another independent reason—Arizona law specifically provides that a person who collects blood pursuant to Arizona’s DUI laws “does not incur any civil liability as a result of this activity if requested by a law enforcement officer” unless the person acts with gross negligence. A.R.S. § 28-1388(F).

health care services requiring DHS license, and therefore facility was not a “licensed healthcare provider” and not subject to suit for medical malpractice); *Madrid v. Maricopa Cnty.*, No. CV-10-2031-PHX-GMS, 2011 WL 1578506, at *6 (D. Ariz. Apr. 27, 2011) (County jail’s medical facilities could not be sued directly for medical malpractice because they were “not licensed or certified by the State” through DHS and thus did not qualify as “licensed healthcare provider”). The reasoning of these cases dictates that a licensed health care provider is licensed or certified by a state regulatory agency responsible for licensing and regulating healthcare facilities and providers.

In Arizona, there is no state licensing of phlebotomists. *See Olcavage*, 200 Ariz. at 584 ¶ 4 (parties stipulated there is no state licensing of phlebotomists).⁷ Law enforcement officers are thus not licensed or certified by any state regulatory agency responsible for the licensing or regulation of healthcare professionals. And while officers may receive a certificate upon their successful completion of the Law Enforcement Phlebotomy Program, that certificate is not a “certification” provided by a state regulatory agency. *Compare Certificate*, Black’s Law Dictionary (12th ed. 2024) (“1. A document certifying the bearer’s status or authorization to act in a specified way; esp., an official paper stating that one has completed a course of study or passed an examination <nursing certificate>.”) *with Certification*, Black’s Law Dictionary (12th ed. 2024) (“1. The act of attesting; esp., the process of giving someone or something an official document stating that a specified standard or qualification has been met.”). By way of example, an individual applying with the Arizona Board of Nursing to be a Certified Nursing Assistant must have a “certificate of completion” demonstrating graduation from an approved program as part of their

⁷ For a complete list of Arizona’s healthcare regulatory agencies, *see* <https://azbn.gov/board/about/state-regulatory-agencies> (last visited July 1, 2025).

application to become “certified” by the Board.⁸ *See also May*, 210 Ariz. at 455 ¶ 10 (Noting sheriff’s deputy who completed Law Enforcement Phlebotomy Program and obtained certificate of completion “need not be certified” in order to be competent to draw blood). Because a certificate of completion is not equivalent to a license or certification from a state regulatory agency, law enforcement officers do not fall within the definition of a “licensed health care provider” and are not subject to suit for medical malpractice in Arizona.

Conclusion

A blood draw conducted by a law enforcement officer during a DUI investigation in order to obtain evidence is not a medical procedure. Moreover, a law enforcement officer “qualified” to conduct a blood draw though his or her training in the Law Enforcement Phlebotomy Program is not a “licensed health care provider,” as defined in Arizona’s Medical Malpractice Act, and therefore cannot be sued for medical malpractice under Arizona law.

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⁸ *See* <https://azbn.gov/licenses-and-certifications/apply-license> (last visited July 29, 2025).