



## Hudson Valley Regional Emergency Medical Services Council

33 Airport Center Drive Suite 204, New Windsor, NY 12553

Phone: (845) 245-4292

Fax: (845) 245-4181

www.hvremSCO.org

**2016 – 08:** Blood Draws by AEMT's for Law Enforcement

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**Effective Date:** Current

Recent changes to the NYS Vehicle and Traffic Law no longer require that blood be drawn under the order or supervision of a physician for the purpose of determining the alcoholic or drug content and allow advanced emergency medical technicians to draw blood at the request of a police officer.

It is important that the AEMT asked to perform an evidentiary blood draw understand the following:

1. A Police Officer must make the request pursuant to NYS Vehicle and Traffic Law;
2. **Since the law is permissive in nature and not mandatory, the AEMT may consent based upon personal choice or agency directive;**
3. The person whose blood is to be drawn must consent to the procedure;
4. In the event the person whose blood is to be drawn is unconscious, the Police Officer may direct the driver's blood be drawn without his/her express consent<sup>1</sup>.

Additionally, AEMT providers may be called upon to draw the blood of injured or critically ill people. It is important to be cognizant that in the event contact with such an individual is established, the provider must act pursuant to Article 30 of NYS PHL, Statewide BLS Protocol, Collaborative ALS Protocols, and conform to the requirements of Part 800.

As this change in law has removed physician oversight from this procedure, the Hudson Valley REMAC will not provide Medical Control oversight for the specific purpose of evidentiary blood draw. However, Medical Control oversight will continue to be provided as outlined in the Regional Medical Control Plan and Collaborative ALS Protocols.

Please contact the Hudson Valley Regional EMS office with any questions in this regard.

Issued and Authorized by:

Pamela Murphy, M.D.  
Chair

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### **<sup>i</sup> Presumed Consent (issues surrounding the unconscious driver)**

**VTL 1194(2) Chemical Tests. (a) When authorized.** Any person who operates a motor vehicle in this state shall be deemed to have given consent to a chemical test of one or more of the following: breath, blood, urine, or saliva, for the purpose of determining the alcoholic and/or drug content of the blood provided that such test is administered by or at the direction of a police officer

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with respect to a chemical test of breath, urine or saliva or, with respect to a chemical test of blood, at the direction of a police officer.

Because of Presumed Consent (VTL 1194(2)(a)), a police officer may direct that blood be taken from an unconscious driver without his/her express consent (which, in that circumstance is obviously impossible). People v. Kates, 53 N.Y.2d 591 (1981). The Court of Appeals noted, "[i]n the case of an unconscious individual, a chemical test can be administered since he is deemed to have given his consent when he used the highway. It is not necessary that a person be given the opportunity to revoke his consent. The only reason the opportunity to revoke is given is to eliminate the need for the use of force by police officers if an individual in a drunken condition should refuse to submit to the test' (Report of Joint Legislative Committee on Motor Vehicle Problems, McKinney's 1953 Session Laws of N.Y., pp. 1912-1928). Indeed, it would have been odd if the Legislature had provided that the blood test and the penalties for refusal designed to remove drunken drivers from the road would become inapplicable when the driver has, by excessive drinking or injuries sustained in a related accident, made himself incapable of consenting or refusing to submit to the test." Id. at 596.