

OPINION NO. 68-097

**Syllabus:**

A private physician or registered nurse may legally refuse to withdraw blood when requested by a law enforcement official acting under the provisions of Section 4511.191, supra.

---

To: James H. Estill, Holmes County Pros. Atty., Millersburg, Ohio  
By: William B. Saxbe, Attorney General, June 12, 1968

Your request for my opinion reads in pertinent part as follows:

"(1) Is the withdrawal of blood for the sole purpose of testing for alcohol content the 'practice of medicine.'

"(2) Can a physician or registered nurse lawfully refuse to administer such a test when a request is legally made at the direction of an officer of law.

"(3) May a physician or registered nurse legally refuse to administer a test when the subject is unconscious or otherwise in a condition rendering him incapable of refusal.

"(4) May a registered nurse or physician require a written consent to be given in their presence prior to the administering of the test.

"(5) Would the physician or registered nurse administering the test suffer civil liability when the same is made at the lawful direction of an officer."

At the outset, it is observed that your questions pertain to the responsibilities and liabilities of physicians and registered nurses with respect to withdrawing blood at the request of a law enforcement official acting under the provisions of Sections 4511.19 and 4511.191, Revised Code. (Implied Consent Law)

Although you are presenting the questions, it would appear that answers to questions one and five would for all practical purposes constitute advice to private physicians and nurses. As you know, the powers and duties of the Attorney General are fixed by statute and as a consequence it would be inappropriate for me to render such advice.

It would appear, however, that question two is germane to the entire problem and that a resolution of this issue will be dispositive of questions three and four, and the opinion will be so confined.

Section 4511.19, Revised Code, reads in pertinent part as follows:

"When a person submits to a blood test

at the request of a police officer under section 4511.191 of the Revised Code, only a physician or a registered nurse shall withdraw blood for the purpose of determining the alcoholic content therein. This limitation does not apply to the taking of breath or urine specimens."

I do not construe Section 4511.19, supra, to mean that physicians or nurses are legally obligated to withdraw blood upon a request of a police officer. 41 American Jurisprudence, Section 4, Obligation to Practice or Accept Professional Employment, page 135, reads in pertinent part as follows:

"In the absence of statute, a physician or surgeon is under no legal obligation to render professional services to everyone who applies to him or seeks to engage him. Physicians are not public servants who are bound to serve all who seek them, as are innkeepers, common carriers, and the like. And the existence of a license law and the possession of a license does not enlarge a physician's duty in regard to accepting an offered patient. An act requiring a license before a person practices medicine is essentially a preventive not a compulsory measure, and one who has secured a license according to statute is under no obligation to take all the cases that offer, and therefore is not liable for damages alleged to result from the refusal to take a case. \* \* \*"

I am unaware of any Ohio statute placing a physician or registered nurse under a legal obligation to withdraw blood under the circumstances being discussed herein.

I am of the opinion that the operation of the Ohio Implied Consent Law as it applies to the withdrawal of blood depends upon the voluntary cooperation of the medical profession.

If individual physicians or nurses do not desire to participate in the program that is their decision to make and it would follow that if there is no legal obligation on the part of private physicians and nurses to withdraw blood, it is within their prerogative to establish limitations for the withdrawing of blood; e.g., that the person be conscious and give written consent in their presence for the withdrawal of the blood.

If, in your geographical area, satisfactory arrangements can not be made for the withdrawing of blood by physicians or registered nurses, there appears to be no alternative but to

have law enforcement officials direct that breath or urine tests be given. The two hour limitation for withdrawing of bodily substance, (see Section 4511.191, supra) would preclude the use of physicians or nurses residing a great distance from point of arrest. I realize that at times the chemical test may have to be forfeited as to a person who is unconscious or otherwise incapable of taking the breath or urine test.

In conclusion, it is my opinion that a private physician or registered nurse may legally refuse to withdraw blood when requested by a law enforcement official acting under the provisions of Section 4511.191, supra.