

Senate Bill 58 and The Impact on EMS

August 23, 2010

Senate Bill 58, which includes provisions for EMS providers to withdraw blood for the purpose of evidence collection in cases involving allegations of operating watercraft or vehicles under the influence, was signed by Governor Strickland on June 18, 2010. The provisions within the Bill will become law on **September 17, 2010**. The EMS Board is authorized by the Bill to adopt rules addressing the withdrawal of blood by EMS.

I strongly encourage all of you to read the final version of Senate Bill 58 in its entirety, and it is posted at http://www.legislature.state.oh.us/bills.cfm?ID=128_SB_58. The sections that authorize EMS to withdraw blood for evidence collection are as follows:

Section 4765.38(D) In addition to, and in the course of, providing emergency medical treatment, an emergency medical technician-intermediate may withdraw blood as provided under sections 1547.11, 4506.17, and 4511.19 of the Revised Code. An emergency medical technician-intermediate shall withdraw blood in accordance with this chapter and any rules adopted under it by the state board of emergency medical services.

Section 4765.39(D) In addition to, and in the course of, providing emergency medical treatment, emergency medical technician-paramedic may withdraw blood as provided under sections 1547.11, 4506.17, and 4511.19 of the Revised Code. An emergency medical technician-paramedic shall withdraw blood in accordance with this chapter and any rules adopted under it by the state board of emergency medical services.

It is important to note the language of the Bill says “may”, not “shall”. The Bill permits, but does not require, withdrawal of blood for evidence collection by an EMT-Intermediate or EMT-Paramedic. The language also states the withdrawal of blood must be done in the course of providing emergency medical treatment. An EMT should not be dispatched for the sole purpose of withdrawing blood for evidence collection.

Under existing rules, O.A.C. 4765-16-04(C) and 4765-17-03(B), a physician that serves as the medical director of an EMS organization is authorized to limit the scope of practice of EMS personnel functioning under the auspices of the physician’s license. When Senate Bill 58 becomes law on September 17th, the local medical director will determine, by protocol, when and if an EMT-Intermediate or EMT-Paramedic functioning under the medical director’s license can withdraw blood for evidence collection.

The EMS Board recognizes the importance of providing information about the Bill to the EMS and law enforcement communities. To begin this educational process, the EMS Board held an open forum at the Ohio Department of Public Safety with a panel of

representatives including legal counsel, medical personnel, and law enforcement on August 18, 2010. Draft rules were also distributed and discussed. In my opinion, the event was very well attended, informative, and interactive. The comments and questions received during the open forum provided valuable feedback to the Board as it moves forward in finalizing its rules. The common thread in all of the discussion was the need for similar cooperative and interactive roundtables with EMS agencies, EMS medical directors, law enforcement agencies, and health care facilities at the local level during the process of creation of EMS protocols to address Senate Bill 58. I encourage you to begin the dialogue with these groups now rather than after the Bill becomes law. The Division of EMS will be conducting eleven regional meetings across the state later this year. All impacted parties will be invited to attend and participate in these sessions.

The EMS Board recognizes the need to adopt rules as quickly as possible to provide guidance to our medical directors and to our law enforcement officers. The draft rules presented during the open forum were approved by the EMS Board for filing on or after September 17th. As required by Ohio law, the EMS Board will conduct a public rules hearing after the rules are initially filed but prior to the rules becoming effective. This hearing will take place in conjunction with the October 20th EMS Board meeting. Comments and questions regarding the proposed rules are welcome at that hearing and changes can still be made before the rules become final. The proposed rules will be posted on the EMS web page at http://www.ems.ohio.gov/ems_laws.stm.

Although the rule development and filing process makes it impossible to have rules in effect before early December 2010, EMS medical directors have been placed in the position of providing protocols to address the EMS provisions within Senate Bill 58 by September 17th when the Bill becomes law. The draft rules may be used by EMS medical directors to assist them in the creation of initial protocols that can be available to their EMS agencies by September 17, 2010. It is imperative for EMS medical directors to realize that the protocols that they provide may require amendment in the future to comply with the version of the rules that is ultimately adopted.

In addition to the provisions addressed in the draft rules, there were several questions presented to the panel during the open forum on August 18, 2010 that were pertinent to the implementation of this process, but may not be explicitly addressed in the rules. I want to share a few of these excellent questions with all of you for the benefit of our entire EMS community.

Q: Does an EMS agency need to obtain a CLIA (Clinical Laboratory Improvement Amendment) certification or waiver to withdraw blood for evidence collection?

A: No. A CLIA certification or waiver is not required to withdraw blood for evidence collection. Unlike the performance of blood glucose measurement, the EMS provider or EMS agency is not responsible for the performance of any diagnostic or forensic analysis on the blood sample. The only action being performed by EMS personnel is the withdrawal of the blood.

Q: Will blood collection kits be supplied or available from the state for training of EMS personnel?

A: No. The Ohio Department of Public Safety, Division of EMS, will not provide blood collection kits for training purposes. A solitary universal blood collection kit does not exist. Law enforcement agencies independently contract with a variety of forensic laboratories to process their respective collected evidence. The content and design of blood collection kits are similar, but vary depending upon the type of kit the forensic laboratory vendor has elected to use and to provide to its clients, including law enforcement agencies. EMS agencies are encouraged to contact their local law enforcement agencies about the specific kits used in their area and availability for use in training.

Q: Who is responsible for obtaining consent from the patient for the withdrawal of blood for evidence collection?

A: The law enforcement officer is responsible for obtaining consent from the patient. The EMS provider's action should be limited to the performance of phlebotomy on a patient who has consented to the procedure or has implied consent.

Q: When EMS providers are dispatched to provide emergency medical treatment and the patient expires before their arrival on scene or prior to the performance of phlebotomy, can EMS personnel still be requested to obtain blood for evidence collection from the deceased patient?

A: No. Deceased patients will not benefit from nor require emergency medical treatment. Upon determination of death, all responsibility for the disposition of the patient, including forensic evidence collection, is immediately transferred to the coroner.

Q: Is funding available to defray the personnel costs when EMS providers participate in court proceedings related to the collection of blood for evidence?

A: There are administrative and operational issues associated with evidence collection, including the response to subpoenas for depositions or testimony in court, which are not within the realm of the authority of the EMS Board. For these issues, EMS agencies are advised to work with their respective legal counsel and administrators to address these potential activities within their organization's policies and procedures.

Q: Does the Bill provide liability coverage to EMTs that withdraw blood for evidence collection?

A: The Bill extends criminal and civil immunity for claims (except malpractice for willful or wanton misconduct) to EMTs-Intermediate and EMTs-Paramedic who withdraw blood for investigations of operating watercraft or vehicles under the influence. This immunity extends to the “emergency medical service organization that employs” the EMTs-Intermediate and EMTs-Paramedic. This immunity likely includes volunteers working under the supervision of emergency services organizations.

While the rules for the EMS provisions within Senate Bill 58 are being finalized in the upcoming weeks, I will be distributing information and supportive materials to EMS medical directors via the Regional Physician Advisory Boards, the Ohio Chapter of the American College of Emergency Physicians, and the EMS listserv to assist them in the creation of their protocols. EMS providers, EMS medical directors, and law enforcement personnel will all be invited to attend and participate in the regional meetings conducted by the Division of EMS.

If you have any questions or concerns, please do not hesitate to contact the Ohio Department of Public Safety, Division of EMS. As always, we are here to serve you.

Carol A. Cunningham, M.D., FACEP, FAAEM
State Medical Director
Ohio Department of Public Safety, Division of EMS