

## FROM THE PROSECUTOR

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# Prosecutor Walsh revisits the "No Refusal" law

**A**fter several months of the "No Refusal" law for repeat drunk drivers being in effect our office has had the opportunity to successfully prosecute a woman for Aggravated Vehicular Homicide with a blood test that was a direct result of the implementation of the "No Refusal" law. Without this forced test she may have walked away with Justice shaking its head.

From the emails and phone calls our office has received from around the state, it appears that not all jurisdictions are having success with medical professionals agreeing to take a "forced" draw. One of the main obstacles with health care professionals is the issue of liability. In the litigious society we live in, doctors, nurses, phlebotomists and hospitals (and more importantly their law departments and attorneys) are concerned about liability.

Some other medical professionals have even suggested that a forced draw to help "prosecute" their patient would be an act contrary to their oath to help their patient. These concerns need to be addressed in order for us to be able to benefit by our new tool against repeat drunk driving offenders.

I would like to point out the "immunity" laws that many health professionals are unaware of and that may calm their fears (as well as the fears of their lawyers) and allow them to assist us in doing our job. On a short note, when one health care provider was advised that the mandatory draw had a lesser penalty than the refusal's 1 to 5 years in prison for Tampering with Evidence, he agreed that he would be of more help to his patient by assisting with the forced draw!

### IMMUNITY FOR HEALTH CARE PERSONNEL AND HOSPITALS/OMVI

Ohio Revised Code Section 4511.19(F) states:

Except as otherwise provided in this division, any physician, registered nurse, or qualified technician, chemist, or phlebotomist who withdraws blood from a

person pursuant to this section of section 4511.191 or 4511.192 of the Revised Code, and any hospital, first-aid station, or clinic at which blood is withdrawn from a person pursuant to this section or section 4511.191 or 4511.192 of the Revised Code, is immune from criminal liability and civil liability based upon a claim of assault and battery or any other claim that is not a claim of malpractice, for any act performed in withdrawing blood from the person. The immunity provided in this division is not available to a person who withdraws blood if the person engages in willful or wanton misconduct.

### IMMUNITY FOR LAW ENFORCEMENT OFFICERS/OMVI

Ohio Revised Code Section 4511.191(5)(b) states:

If a person refuses to submit to a chemical test upon a request made pursuant to division (A)(5)(a) of this section, the law enforcement officer who made the request may employ whatever reasonable means are necessary to ensure that the person submits to a chemical test of the person's whole blood or blood serum or plasma. A law enforcement officer who act pursuant to this division to ensure that a person submits to a chemical test of the person's whole blood or blood serum or plasma is immune from criminal and civil liability based upon a claim for assault and battery or any other claim for the act, unless the officer so acted with malicious purpose, in bad faith, or in a wanton or reckless manner.

As we continue to work out the wrinkles in using this new law, both Law Enforcement and their Police Legal Advisors need to work with their local health care providers and hospitals to develop policies that will not only be consistent with the laws that have been enacted, but that will help protect our communities from repeat drunk drivers. Our office has discussed these laws with our local chiefs and fellow prosecutors in the cities within our jurisdiction and jointly we have had discussions with our local hospitals. Through this cooperative effort we hope to continue to define and redefine the hospital's policies and levels of assistance that are consistent with the intent of the law. I will keep you updated!