

A health care provider's primary obligation to patients is caring for their medical needs. When a patient also is involved in a criminal investigation, whether as a suspect, witness or victim, the patient's physical and mental condition remains the health care provider's highest priority and obligation. Health care providers in the ED are expected to cooperate with law enforcement in the preservation and collection of evidence involving patients, in accordance with appropriate medical ethics and legal statutes. The following guidelines are intended to assist health care providers in the Emergency Department (ED) respond to requests from law enforcement that the health care provider perform medical procedures or exams to assist law enforcement in criminal investigations that are usually related to drugs and alcohol.

❖ PATIENT CARE PRIORITIES

1. **If an examination or test is not medically necessary, the health care provider should not proceed with the examination or test unless the patient consents.**

Note: Under California law, adult and minor drivers are deemed to have given consent to test their breath, blood or urine for alcohol and/or drug content if law enforcement reasonably believes the driver is under the influence. However, drivers may choose not to undergo testing (revoke consent). The refusal of testing may result in criminal and administrative penalties. Vehicle Code Section 23612.

2. If the examination or test is ordered by a court, it should be conducted by law enforcement personnel (i.e., MDs or RNs employed by law enforcement), not ED health care providers.
3. In any situation where law enforcement presents a warrant or subpoena related to patient care, engage the on-call hospital risk manager for assistance in review of legal documents.
4. Prior to release of test results or any other patient information, review hospital HIPAA policies and/or consult with the hospital privacy officer.

❖ DOCUMENTATION

Documentation should be accomplished contemporaneously with the time of the patient encounter, or as soon thereafter as reasonably possible, and include details concerning chronology, patient examination and treatment, and consent discussions and results.

❖ MEDICAL PROFESSIONAL LIABILITY INSURANCE COVERAGE

Most medical professional liability insurance policies cover liability arising from direct patient treatment. If a patient were to sue as a result of a touching against consent arising from a request from law enforcement, and the touching had no basis in direct patient treatment, there would be no coverage under most medical professional liability insurance policies.