

# Blood Specimen Collection Kit

## Objectives

- After completing the lesson, the Officer will be able to determine when the use of a Blood Specimen Collection Kit is appropriate pursuant to Implied Consent.
- After completing the lesson, the Officer will be able to complete the documentation that is contained in the Blood Specimen Collection Kit.
- At the conclusion of the study the Officer will know the procedures for processing the Blood Specimen Collection Kit.
- After this unit of study, the Officer will know the legal references for the use of Blood Specimen Collection Kit.

## Completing a Blood Specimen Collection Kit

The State of Oklahoma Blood Specimen Collection Kit is used for both blood alcohol and drug-related arrests. Examples of situations where a blood specimen collection kit would be used;

- when the arrestee is in the hospital due to injury or;
- when there is a physical defect of the arrestee such as Chronic Obstructive Pulmonary Disease (COPD).
- Another time a blood specimen collection kit may be used is when the officer has evidence of drug involvement or once a breath test is conducted and the results are 0.00 BrAC g/210L of breath and the officer has probable cause to believe the person is impaired.

The Intoxilyzer 8000 has many safeguards in place. Certain safeguards will disable the breath testing instrument. When the instrument is disabled, a blood specimen collection kit may be requested if another instrument is unavailable.

## Designation of State's Test

Agencies in the State of Oklahoma may designate which test the agency will use for a State's Test in accordance with [Oklahoma Administrative Code 40:20-1-2](#), **Designation by law enforcement agencies of blood or breath to be tested for alcohol content.**

*(a) Law enforcement agencies may designate either blood or breath as the specimen to be obtained and tested for the alcohol concentration thereof, but such designation shall not affect the validity of an otherwise valid test. Such designation shall be submitted on agency letterhead to the principal administrative office of the Board for record keeping purposes.*

*(b) for any person physically incapable, by reason of illness or injury or other physical disability or unconsciousness, of submitting to and successfully completing a test or tests of breath for the alcohol concentration thereof, a test or tests of blood for the alcohol concentration thereof shall be an approved alternate test to be administered to such person.*

The designation of the States Test should be forwarded to:

State Director of Tests for Alcohol and Drug Influence  
Board of Tests for Alcohol and Drug Influence  
P.O. Box 36307  
Oklahoma City, Oklahoma 73136-2307

[Oklahoma Administrative Code 40:20-1-3](#) also covers Collection, transfers, and retention of specimens of blood. OAC 40:20-1-3 states,

*(a) **Collection of blood.** Collection of specimens of blood from living human subjects under the provisions of Title 47 and Title 3 Section 303 and Title 63 Section 4210A, Oklahoma Statutes shall be performed as set forth in this Section. The person, from whom blood is collected for analysis of the presence or concentration of alcohol, other intoxicating substances, or a combination thereof, is referred to as the "Tested Person" for the purposes of this Section.*

**(1) Collection of blood specimens - general conditions.**

*(A) Blood specimens shall be collected by persons authorized by Title 47, Section 752 of the Oklahoma Statutes, and these rules, to withdraw blood.*

*(B) The collection of blood from a person with hemophilia or from a person who is taking anticoagulant medications does not invalidate an otherwise valid test.*

*(C) The expiration date of a glass vacuum tube relates to the manufacturer's federal labeling requirements for medical devices. Blood specimens collected directly in or immediately deposited into 10 milliliter (mL) glass vacuum tubes labeled by the manufacturer as containing 100 milligrams (mg) of sodium fluoride and 20 milligrams (mg) of potassium oxalate that are expired does not invalidate an otherwise valid test.*

**(2) Procedures, techniques, and precautions.**

*(A) Puncture site preparation and skin cleansing shall be performed without the use of alcohol.*

*(B) All blood specimens shall be collected directly in or immediately deposited into 10 milliliter (mL) glass vacuum tubes labeled by the manufacturer as containing 100 milligrams (mg) of sodium fluoride and 20 milligrams (mg) of potassium oxalate. Such containers are hereby approved for the collection of blood for analysis of the presence or concentration of alcohol, other intoxicating substances, or a combination thereof.*

*(C) Each tube containing a blood specimen shall be placed into a sealed container. A sealed container must be accompanied with a Blood Test Officers affidavit or contain at least the following information:*

*(i) Full name of the subject from whom the blood specimen was obtained*

*(ii) Date, time, and location where the blood specimen was obtained*

*(iii) Name of the law enforcement agency (and unit thereof, if needed for further identification) responsible for obtaining and processing the blood specimen*

*(iv) Signature, printed name and title of the qualified person who withdrew the blood specimen.*

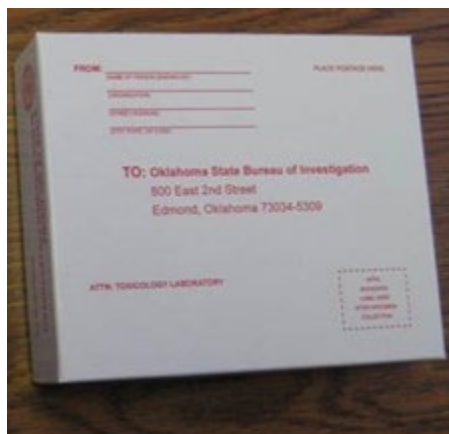
The Oklahoma Administrative Code (OAC) continues by stating what the officer will be watching for when observing the blood draw. The Officer must watch to ensure the puncture site is prepared and skin cleansing is completed without the use of alcohol disinfectants. The Officer must ensure the proper gray top vial (Vacutainer) is used. The gray top vials contain chemicals specific for blood samples for forensic analysis. The gray top vials used contain an anticoagulant (potassium oxalate) and a preservative (sodium fluoride). The officer will also watch as the blood is collected into the vial. The vials should be inverted to ensure mixing with the chemicals. The officer must then complete the Blood Test Officer's Affidavit, package the samples, store, or transfer the kit to the O.S.B.I. or your department evidence / laboratory per policy for analysis.

### Additional Test Requested by Arrestee

A Blood Specimen Collection Kit may be used when the arrestee requests an additional test for themselves. According to 47 O.S. § 67-751 E.

*“E. In addition to any test designated by the arresting officer, the arrested person may also designate any additional test to be administered to determine the concentration of alcohol, or the presence or concentration of any other intoxicating substance or the combination of alcohol and any other intoxicating substance. The cost of such additional test shall be at the expense of the arrested person.*

*A sufficient quantity of any specimen obtained at the designation of the arrested person shall be available to the law enforcement agency employing the arresting officer. Such specimens shall be treated in accordance with the rules applicable to the specimens obtained by an arresting officer.”*



### State of Oklahoma Blood Specimen Collection Kit

The Oklahoma State Blood Specimen Collection Kits are designed to assure the Oklahoma State Bureau of Investigations Toxicology Laboratory personnel that they will receive undamaged, properly collected, and clearly identifiable specimens for analysis. They are supplied with a detailed step-by-step instruction sheet which eliminates confusion at the time of specimen collection by clearly defining the steps used for collection.



Each Blood Specimen Collection Kit has printed on the outside of the exterior box, a Lot Number, and an Expiration Date. The Lot Number is not used by Law Enforcement. Normally this number is intended for the O.S.B.I. lab use only. As law enforcement you should not put this number onto the Blood Test Officer's Affidavit or anywhere else. The Expiration Date is a federal labeling requirement for medical devices. The use of an expired Blood Specimen Collection Kit is discouraged, and some agency policies do not allow use of expired kits.

Medical personnel authorized to draw blood for analysis for alcohol content may substitute vacuum tubes provided by their employing medical facility but must be 10 mL tubes with appropriate quantities of sodium fluoride and potassium oxalate. Some hospitals may not use the kit if they see that it is expired, the hospital is allowed to use appropriate substitute items if necessary. If substituted items are used, please document all items that were exchanged.

For example: The Blood Specimen Collection Kit expired 03/31/2022. You should indicate somewhere in the written report that the three gray top vials from kit # 12345, 10mL, REF 367001 LOT 3064345 were replaced with three gray top vials from the authorized blood withdrawal personnel with 10mL REF 901001 LOT 1184777 expiring ##/##/####.

The reference number and lot number will come from the printed label on the vial itself.



The kits include:



- 1 Kit Box
- 1 Kit Instruction Sheet
- 1 Blood Test Officer's Affidavit
- 1 Inner Box Blood Vial Holder
- 1 Tamper-evident Evidence Seal for sealing inner box
- 3 10 mL Blood Collection Vials (gray-top) containing sodium fluoride and potassium oxalate
- 1 20 g x 1.5" Multisample needle

- 1 PVP Prep Pad (alcohol-free)
- 1 Safety Tube and Needle Holder
- 1 Ziplock Bag containing a liquid-absorbing sheet
- 3 Tamper-evident Specimen Security/Identification Seals with Blood Kit Number
- 1 Tamper-evident Internal Kit seal



When using the Blood Specimen Kit, the officer must ensure that all materials in the kit are used with exception to the needle. The authorized person drawing the blood should use the provided PVP Prep pad

for cleaning the injection site for the needle puncture. If the arrestee is allergic to iodine, then another non-alcohol-based antiseptic may be used or soap and water.

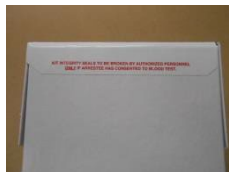
All three vials will be used (withdrawn).

## Processing and Packaging of the Blood Specimen Collection Kit

As stated previously, the Blood Specimen Collection Kits are supplied with a detailed step-by-step instruction sheet which eliminates confusion at the time of specimen collection by clearly defining the steps used for collection. The instruction sheet may be used as a checklist.

The following area will address the individual items in the kits and how the kit is packaged for processing.

Once the officer decides a Blood Specimen Collection is necessary the box of the kit should be examined. Review the expiration date to ensure the kit is not expired located on the outside of the blood kit box.



Look at the box seals and determine that the kit has not been previously opened.

Cut open the seals and open the outer box.



The Blood Kit number can be found on the Styrofoam box and on the Blood Specimen Seals. Take note of this number. The number is written onto the Blood Test Officer's Affidavit in Section 3.

The Officer should first fill out information requested on the Blood Test Officer's Affidavit form.

### Qualified Collection Personnel (Blood)

Pursuant to Oklahoma State Statute 47 O.S. §752(A); the only persons qualified to withdraw blood are:

1. Licensed medical doctors,
2. Licensed osteopathic physicians,
3. Licensed chiropractic physicians,
4. Registered nurses,
5. Licensed practical nurses,
6. Physician's assistants, certified by any state's appropriate licensing authority
7. Employees of a hospital or other health care facility authorized by the hospital or health care facility to withdraw blood
8. Intermediate Emergency Medical Technicians, Advanced Emergency Medical Technicians or Paramedics, acting within the scope of practice prescribed by their medical director.

The arresting officer must witness withdrawal after making a reasonable inquiry into the qualifications of person taking the blood. If a person is unconscious, the officer may request a withdrawal of blood. Some entities will not do this in fear of civil action taken against them. However, Title 47 O.S. §752(C) states: *"No person specified in subsection A of this section, no employer of such person and no hospital or other health care facility where blood is withdrawn shall incur any civil or criminal liability as a result of the proper withdrawal of blood when acting at the request of a law enforcement officer by the provisions of [Section 751](#) or [753](#) of this title, or when acting in reliance upon a signed statement or court order as provided in this section, if the act is performed in a reasonable manner according to generally accepted clinical practice. No person specified in subsection A of this section shall incur any civil or criminal liability as a result of the proper collection of breath, saliva or urine when acting at the request of a law enforcement officer under the provisions of [Section 751](#) or [753](#) of this title or when acting pursuant to a court order."*



## Blood Test Officer's Affidavit

County Number City Number Citation Number

Is the Arrestee under 21 years old?

Arrest date/time and location

Arrestee information

Why did you stop the person? This must be sufficient to show P.C.

What is the Persons Condition? If SFST **certified**, how many clues on each task?

Witnesses if any?

\*See next page

Is this a State's Test? Subjects Request? Check all that apply.

When distributing, remember to give the Arrestee copy of front and back of the form.

BLOOD TEST OFFICER'S AFFIDAVIT												Section 1
<b>UNDER 21</b>		<b>YES</b>	<input checked="" type="checkbox"/>	<b>CO#</b>	<b>55</b>	<b>CITY#</b>	<b>22</b>	<b>CITATION NUMBER</b>	<b>19-1858</b>			
<b>DATE OF INCIDENT/ARREST</b>		<b>TIME OF INCIDENT/ARREST (MILITARY)</b>		<b>INCIDENT LOCATION</b>				<b>CITY</b>	<b>COUNTY</b>			
10/20/2019		2045		2605 North Street				Oklahoma City	55			
<b>NAME OF SUBJECT (LAST, FIRST, MIDDLE)</b>				<b>DOB (MO/DAY/YR)</b>				<b>HEIGHT</b>	<b>WEIGHT</b>	<b>RACE</b>	<b>SEX</b>	
Henry, Beverly Sue				02/19/1983				507	145	W	F	
<b>ADDRESS OF SUBJECT</b>				<b>CITY</b>				<b>STATE</b>	<b>ZIP CODE</b>			
12150 SW Sweetshoppe St				Oklahoma City				OK	73149			
<b>DL NUMBER</b>	<b>EXP. (MO/YR)</b>	<b>STATE</b>	<b>CLASS</b>	<b>RESTRICTIONS</b>	<b>ENDORSEMENTS</b>	<b>CMV/CDL</b>	<b>HAZ MAT PLACARD</b>	<b>VEHICLE MAKE</b>	<b>VEHICLE MODEL</b>	<b>TAG #</b>		
S999877321	10/2025	OK	D	n/a	n/a	y	x	Chevy	Equinox	HDM900		
<b>For Implied Consent Cases Only:</b> On the above date, time and location, the above named person was arrested, and I had reasonable grounds to believe the person was driving or in actual physical control of a motor vehicle upon a public road, highway, street, turnpike, public parking lot, or other public place or upon a private road, street, alley, or lane which provides access to one or more single or multi-family dwellings within this state while under the influence of alcohol and/or other intoxicating substances as prohibited by law.												
<b>Describe driving behavior or circumstances:</b> Vehicle drove left of center line, made a wide right turn onto North Street.												
<b>Describe person's condition (odor, actions, etc.):</b> Bloodshot watery eyes, spoke with a thick slow slurred speech, smell of alcoholic beverage coming from person's breath, observed six clues on HGN, four clues on WAT, four clues on OLS.												
<b>THE PERSON WAS INFORMED OF THE IMPLIED CONSENT TEST REQUEST?</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO												
<input type="checkbox"/> I HAVE AUTHORIZED BLOOD WITHDRAWAL. <b>SIGNATURE</b> <b>DATE</b>												
<b>OTHER WITNESSES:</b>												
<b>A. Name:</b> <b>Title:</b> <b>Address:</b> <b>Phone:</b>												
<b>B. Name:</b> <b>Title:</b> <b>Address:</b> <b>Phone:</b>												
<input checked="" type="checkbox"/> <b>STATE'S TEST (ARRESTEE AGREED IMPLIED CONSENT)</b> <input type="checkbox"/> <b>ADDITIONAL TEST (ARRESTEE REQUEST FOR CRIMINAL PROSECUTION ONLY)</b> <input type="checkbox"/> <b>FATALITY GREAT BODILY INJURY</b>												
<b>IN COMPLIANCE WITH OAC 40-20-1-3</b>												
<b>COLLECTION DATE</b>		<b>TIME (MILITARY)</b>		<b>BLOOD KIT NUMBER (6 digits)</b>		<b>#VIALS COLLECTED</b>		<b>PLACE OF COLLECTION (HOSPITAL NAME)</b>				
10/20/2019		2205		580967		3		SW Medical Center				
<b>SIGNATURE AND TITLE (e.g. R/N) OF PERSON WITHDRAWING BLOOD</b>						<b>PRINT NAME AND TITLE</b>						
Nancy Plumrose, R.N.						Nancy Plumrose, R.N.						
<b>COUNTY OF OFFENSE</b>						<b>DELIVERED OR MAILED BY</b>						
Oklahoma						Rick McElroy						
<b>WITNESSED BY OFFICER</b>						<b>PRINT NAME AND TITLE</b>						<b>BADGE #</b>
Rick McElroy						Rick McElroy OFC						468
<b>NOTE: DO NOT SEIZE THE PERSON'S DRIVER'S LICENSE BASED UPON CONSENT TO THE STATE'S BLOOD TEST.</b>												
<b>Section 6</b>												
<b>In accordance with Title 12 O.S. Section 426. "I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct."</b>												
<b>Date</b>		<b>Place (location when signed)</b>		<b>Signature of Law Enforcement Officer*</b>				<b>Print Name</b>				
10/20/2019		SW Medical Center		Rick McElroy				Rick McElroy				
<b>Agency (list troop if applicable)</b>		<b>Address</b>		<b>Zip</b>		<b>Agency/Troop Phone Number</b>						
OKC PD		700 Colcord Drive		73102		405-297-1000						
<b>*Upon submission of evidence to the OSBI Laboratory for examination, the requesting officer certifies with his/her signature: I am aware of and consent to the terms outlined in the OSBI CSD Notice to Customers (OSBI CSD QMA 1.1).</b>												
<b>THIS FORM DOES NOT HAVE TO BE NOTARIZED. (Read Section 5)</b>												
<b>Complete all sections. Make copies, front and back, of this form and distribute as follows:</b>												
<b>DISTRIBUTION OF FORM:</b>												
1. Give one copy to the person whose blood was withdrawn. 2. Put the original in the blood kit. 3. Give one copy to the Prosecutor. 4. Keep one copy for your records.												
<b>LAB USE ONLY</b>												

## Section 3

B. Name: _____		Title: _____		Address: _____		Phone: _____	
<input checked="" type="checkbox"/> STATE'S TEST (ARRESTEE AGREED IMPLIED CONSENT <sup>1</sup> ) <small><sup>1</sup>IN COMPLIANCE WITH OAC 40:20-1-3</small>		<input type="checkbox"/> ADDITIONAL TEST (ARRESTEE REQUEST) <small>FOR CRIMINAL PROSECUTION ONLY</small>		<input type="checkbox"/> FATALITY <small>GREAT BODILY INJURY</small>		Section 3	
Section 4							
COLLECTION DATE	TIME (MILITARY)	BLOOD KIT NUMBER (6 digits)	#VIALS COLLECTED	PLACE OF COLLECTION (HOSPITAL NAME)			

In Section 3 the Officer must choose if this test is a State's Test and Additional Test (Arrestee Request), if applicable. The Blood Specimen Collection Kit can be used for many purposes.

The Officer may also select what else applies. The test may be for a subject that was involved in a Fatality and had Injuries, etc..... More than one check box (Fatality, Injury, or Property Damage) may be selected.

For Criminal Prosecution Only is used in those rare occasions when the blood tested will be used for the prosecution of an individual, but not used in a driving privileges suspension action.

## Section 4

Section 4				
COLLECTION DATE (1)	TIME (MILITARY) (2)	BLOOD KIT NUMBER (6 digits) (3)	#VIALS COLLECTED (4)	PLACE OF COLLECTION (HOSPITAL NAME) (5)
10/20/2019	2205	580967	3	SW Medical Center
SIGNATURE AND TITLE (e.g. R/N) OF PERSON WITHDRAWING BLOOD (6)			PRINT NAME AND TITLE (7)	
Nancy Plumrose, R.N.			Nancy Plumrose, R.N.	
COUNTY OF OFFENSE (8)			DELIVERED OR MAILED BY (9)	
Oklahoma			Rick McElroy	
WITNESSED BY OFFICER (10)			PRINT NAME AND TITLE (11)	BADGE #
Rick McElroy			Rick McElroy OFC	468

Section 4 is the area where the information from the actual blood draw is located. The officer will enter the Collection Date (1) and the time of collection in Military Time (2).

The Blood Kit Number (3) is found on the front of the Styrofoam box and on the Blood Specimen Seal. The Blood Kit Number must be on the Blood Test Officer's Affidavit. The kit is a 3-vial kit and all vials should be collected (4). Write in the "Place of Collection block", may not be hospital. (5)

The person drawing the blood will sign the document and indicate their title (6) then print their name and title next to the signature (7).

In the "County of Offense" block (8), the officer will write in the county that the offense took place.

The "Delivered or Mailed By" block (9) is the name of the officer who delivers the blood kit to the place where it is logged and then mailed by administration OR is the name of the Officer who mails/delivers the blood kit. This is normally the same officer that witnesses the blood draw and seals the blood kit in preparation for it to be mailed or delivered to the laboratory.

The "Witnessed by Officer" block (10) is the signature of the Officer that witnessed the actual blood being withdrawn from the subject. In block (11) the Witnessed by Officer will print his name, title, and



badge number.

Section 5 begins with the statement, “NOTE: DO NOT SEIZE THE PERSON’S DRIVER’S LICENSE BASED UPON CONSENT TO THE STATE’S BLOOD TEST.”

The driver retains their license.

## Collection Procedure



The Officer must witness the blood withdrawal. Open the Styrofoam blood tube holder and allow a qualified blood collector to collect the blood specimens.

What are you watching for? [OAC 40:20-1-3](#) states the Officer must ensure the area of the puncture is cleaned ONLY with an iodine solution, preferably the PVP that is supplied with the kit. If the arrestee is allergic to Iodine, a non-alcoholic antiseptic should be used, and a note recorded.



The Officer must watch as the blood goes into the vials, and that all vials are inverted to ensure the mixture of the blood with the anti-coagulant and preservative.

After the vials are filled and inverting of the vials accomplished, the Officer must ensure the Blood Collector has signed the Blood Test Officer’s Affidavit form. The personnel withdrawing the blood or facility is responsible for disposal of the medical waste i.e., needle, needle guide and prep pad used.



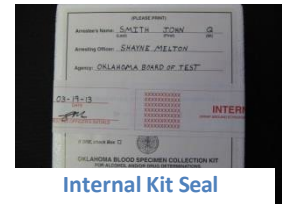
The person who draws the blood states, “I am finished”, they have signed the Blood Test Officer’s Affidavit, it is now time to finish the affidavit and be sure to make a copy prior to sealing the Blood Specimen Collection Kit. To make sealing easier, lay out all the seals, and the Styrofoam Box, fill out all the blank lines. The information required is arrestee last name, date, and officers’ initials.



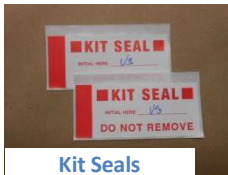
The vials are sealed with the Blood Specimen Seal. Remove the paper backing. Place the gray top in or near the center of the seal as pictured. The seal will be pressed down to adhere to the sides of the vial. Once this is complete the blood kit number should be visible. This helps maintain the integrity of the vials after the blood draw.



The three sealed blood vials should be placed into the Styrofoam vial holder and the lid should be placed on top. Once the lid is placed over the vials, the Internal Kit Seal is placed around the Styrofoam box overlapping the seal in the center of the box; avoid covering the blood kit number. The sealed Styrofoam box is then placed into the plastic zip lock bag provided in the kit. Leave the white absorbent material in the bag to soak up blood if a vial happens to leak or break during delivery.



Internal Kit Seal



Kit Seals

Place the closed plastic bag into the outer box. *\*Reminder:* make appropriate copies of the affidavit and place the original affidavit on top of the plastic bag before closing the box. You will seal the outer cardboard box with the two (2) Kit Seals provided.

With the Kit Seals in place, fill out the front of the box with your return address or as prescribed by your agency's policy. Deliver the box per your agency policy. Postage for mailing is the responsibility of the agency requesting the blood kit to be processed. Some agencies provide postage, and the officer will mail the blood kit, other agencies, the officer may be required to deliver the kit to their property or administration who will process the evidence and mail/deliver the kit to the Oklahoma State Bureau of Investigations. The chain of evidence goes from the officer to O.S.B.I.

*\*The blood kit should never be released to the arrestee.*

## Unconscious Persons

To take blood from an unconscious person, probable cause to make the arrest for impairment to operate a motor vehicle or being in Actual Physical Control of a motor vehicle must be established. Since there is usually some confusion on withdrawing blood from an unconscious person, refer to the statutes.

The Oklahoma Statute 47 O.S. 751(D) states:

*"D. Any person who is unconscious or otherwise incapable of refusing to submit to a test of such person's blood or breath to determine the alcohol concentration thereof, or to a test of such person's blood, saliva or urine to determine the presence or concentration of any other intoxicating substance therein, shall be deemed not to have withdrawn the consent provided by subsection A of this section, and such test may be administered as provided herein.*

*An unconscious person who has been issued a citation by a law enforcement officer for one of the offenses listed in subsection A of this section is arrested for purposes of this section. The arresting officer must leave a copy of the citation with the arrested person which may be accomplished by handing it to the arrested person, or by leaving it with the personal effects of the arrested party, so as to inform the unconscious person of the arrest.*

*Any person who has been arrested for one of the offenses listed in subsection A of this section who is unconscious or injured and who requires immediate medical treatment as determined by a treating physician may be released on the person's own recognizance for medical reasons by the arresting officer. The arresting officer who releases an arrested person on the person's own recognizance must indicate the release on the face of the citation. Any person released on his or her own recognizance for medical reasons shall remain at liberty pending the filing of charges."*

There are some rules you must follow, however, to protect arrestee rights. The tested subject must be informed that the test has been done. If charges have been filed, then he/she has the right at hearing to recant the consent and suppress the evidence. In addition, the tested subject must be aware when they awaken that they were placed under arrest. The Court of Criminal Appeals decided another case which must be followed. In *State v. Sheperd*, 840 P.2d 644 (Okla.Cr.1992), the Court said:

*“...it would obviously be futile to verbally inform an unconscious person that he is [840 P.2d 646] under arrest. However, some type of actual restraint is necessary so that when an individual regains consciousness, he may immediately be made aware that he has been arrested and that his liberty has been restricted so that he is not free to go. The means of actual restraint necessary to comply with this statutory requirement may vary according to what is reasonable under the circumstances of each situation. For instance, it may be reasonable in some instances to place a guard outside of an individual's hospital room and it may be reasonable in other cases for the police to merely inform the hospital officials that the individual has been placed under arrest and is not to be discharged without the consent of the police. Whatever the case, such actual restraints must take place before the individual's blood is drawn, or he will not have been under arrest and the blood will have been taken in violation of the implied consent statute.”*

*State v. Sheperd*, requires an arrest before the specimen is collected. Section 751 D. has been written to meet this requirement. For purposes of the arrest, an unconscious person must be issued a citation for APC or DUI. You must give a copy to the arrested person or leave it with their personal effects. If the arrested person is to remain hospitalized, note on the citation that the person is released on their own recognizance for medical reasons or that they are not to be released without consent from police. You should make a good record as to how the arrest was conducted, before the withdrawal of the sample occurred.

Based on the above case and statute, each officer should make a good record as to how the arrest procedure was conducted, **before** the withdrawal of the sample. A suggested way to accomplish the arrest would be to inform either hospital personnel of the arrest with instructions for the arresting officer or his office to be contacted before the arrestee/licensee is released. It would also be feasible to do the same with a responsible member of the immediate family. The officer must ensure that copies of documents/tickets are left with the arrestee/licensee or with their personal effects.

Here are some guidelines when drawing blood from an unconscious person:

- Officers attempting to take blood from an unconscious defendant must have probable cause of impairment meeting the elements to arrest.
- The person sought to be tested must be unconscious, or so near thereto as to be incapable of consent, document medical opinion of level of consciousness if possible.
- When the person regains consciousness, he must be made aware that he is under arrest or was arrested. A citation must be issued prior to the blood withdrawal and a copy left with the arrestee.
- Defendant must be made aware that the blood has already been withdrawn at the time of the incident. Leave a copy of the completed Blood Test Officer's Affidavit form with the defendant when the blood is taken.

- When the person regains consciousness, at some opportune time, the defendant must be given an opportunity to revoke his consent to the taking of the blood test. This can be done at trial, preliminary or prior to any hearing. However, the decision once made is binding. Thus, where the crime charged is a felony, the decision would have to be made at preliminary hearing or prior to.
- It is not necessary that the state provide the defendant with the results of the test prior to his decision.
- If the defendant has already been charged when he/she is asked to make a decision, he/she is entitled to the assistance of counsel.

### Points of Importance

Just to recap, the following are some items easily missed:

- BOT discourages using an Expired Blood Specimen Collection Kit unless absolutely necessary and within your agency's policy.
- When a blood test is conducted be sure to get the signature of the person withdrawing the blood on the Blood Test Officer's Affidavit preferably prior to the blood draw.
- Fill out the Blood Test Officer's Affidavit form and distribute copies
  - Place the ***signed original*** in the blood kit and deliver to OSBI
  - Give one photocopy, front and back to the Arrestee
  - Give one photocopy to your local Prosecutor
- If you have an Affidavit from a previous test from a Breath testing instrument and blood is an additional test for you or the subject, you will provide the arrestee a copy of the Blood Test Officer's Affidavit form along with the Breath Test Officer's Affidavit.
- If you do not have an Affidavit from a previous test from a Breath testing instrument and blood is your primary test, you must provide the arrestee a copy of the Blood Test officer's Affidavit form.
- The arrestee's driver license is NOT seized. The driver license is given back to the arrestee.