

OFFICE OF THE CHIEF OF POLICE

ADMINISTRATIVE ORDER NO. 7

May 19, 2017

SUBJECT: BLOOD TEST – REVISED; REQUEST FOR WITHDRAWAL OF BLOOD, FORM 04.35.00 – RENAMED AND REVISED; AND, AFFIDAVIT IN SUPPORT OF SEARCH WARRANT, FORM 12.25.05 – ACTIVATED

BACKGROUND: On April 17, 2013, the Supreme Court of the United States issued its decision in *Missouri v. McNeely*, that the mere dissipation of alcohol in the bloodstream following an arrest for Driving Under the Influence (DUI) is not, *per se*, a sufficient exigency permitting a warrantless blood test to determine the driver's Blood Alcohol Content (BAC). In response to the decision, the Department, with the assistance of the Los Angeles County District Attorney's Office, has created the Affidavit in Support of Search Warrant, Form 12.25.05, to be used by officers in completing and submitting a search warrant to obtain a blood sample from non-compliant arrestees in a timely manner. In the event an exigent circumstance arises, officers do not need a search warrant.

PURPOSE: This Order outlines the procedures necessary for officers to receive a signed search warrant in order to obtain a blood sample from an individual arrested for a misdemeanor or felony DUI who refuses to comply with the "implied consent" law. These procedures do not change the Department's policy regarding felony DUI investigations. This Order also renames and revises the Request for Withdrawal of Blood, Form 04.33.00, and activates the Affidavit in Support of Search Warrant, Form 12.25.05.

PROCEDURE:

- I. **BLOOD TEST – REVISED.** Department Manual Section 4/343.40, *Blood Test*, has been revised. Attached is the revised Department Manual section with the revisions indicated in italics.
- II. **REQUEST FOR WITHDRAWAL OF BLOOD, FORM 04.35.00 – RENAMED AND REVISED.** The Request for Withdrawal of Blood, Form 04.35.00, has been renamed as the Request of Medical Professional & Consent for Withdrawal of Blood and has been revised to ensure that the purpose of the blood draw being requested is properly justified and documented. The use, completion, and distribution of this form remain unchanged.
- III. **AFFIDAVIT IN SUPPORT OF SEARCH WARRANT, FORM 12.25.05 – ACTIVATED.** The Affidavit in Support of Search Warrant, Form 12.25.05, has been activated.

FORM AVAILABILITY: The Request of Medical Professional & Consent for Withdrawal of Blood and the Affidavit in Support of Search Warrant are available in E-Forms on the Department's Local Area Network (LAN) and are attached for immediate use and duplication.

All other versions of the Request of Medical Professional & Consent for Withdrawal of Blood form shall be marked "obsolete" and placed into the divisional recycling bin.

AMENDMENT: This Order amends Section 4/343.40 of the Department Manual. The "Form Use" link applicable to the Request of Medical Professional & Consent for Withdrawal of Blood and the Affidavit in Support of Search Warrant is accessible in E-Forms on the Department's LAN.

AUDIT RESPONSIBILITY: The Commanding Officer, Audit Division, shall review this directive and determine whether an audit or inspection shall be conducted in accordance with Department Manual Section 0/080.30.



CHARLIE BECK
Chief of Police

Attachments

DISTRIBUTION "D"

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343.40 BLOOD TEST.

Criteria for Requesting. A blood sample may be requested in the following situations:

- The arrestee indicates a willingness to submit to a blood test incidental to a *Driving Under the Influence* (DUI) arrest; or,
- The arrestee is in custody for a *misdemeanor* or felony and the level of intoxication would be an essential element in the alleged violation; or,
- The arrestee is unconscious or is so impaired and is unable to consent to a chemical test. When such a condition exists, the following steps shall be taken in order to determine if the arrestee is a hemophiliac or a heart patient possibly using anticoagulant medication:
 - Check for medical information on the arrestee's person such as a "Medic Alert" bracelet or necklace, or any other item indicative of the arrestee's medical background;
 - If a relative or a friend of the arrestee is present who can provide information about the arrestee's medical condition, record the name, the relationship to the arrestee, and the statements of that person in the arrest report; and,
 - Inform the attending physician of all information in the officer's possession which may have a bearing on the arrestee's physical condition.

The Supreme Court acknowledged **at least two** situations where an unavoidable delay could justify a **warrantless** blood draw *as follows*:

- **No magistrate available.** Improvements in communication technology do not guarantee that a magistrate judge will be available when an officer needs a warrant after making a late-night arrest; *or*,
- **Delays from the application process.** Exigent circumstances justifying a warrantless blood sample may arise in the regular course of law enforcement due to delays from the warrant application process (e.g., equipment malfunctions).

Note: If an exigency exists, both the supervisor and officer should consult with their bureau traffic watch commander for concurrence and document the exigency in the Arrest Report, Form 05.02.00. *The dissipation of alcohol in the bloodstream is not, in and of itself, a sufficient exigency to justify a warrantless blood draw (Missouri v. McNeely).*

Search Warrant. *Department employees must utilize the following procedures to obtain a search warrant when it is necessary to obtain a blood sample from an arrestee for a misdemeanor or felony DUI who refuses to comply with the "implied consent" law.*

Requesting Forced Blood Sample Withdrawal. A forced blood sample may be obtained from an arrestee only when **all** of the following conditions have been met:

- The arrestee is in custody for a *misdemeanor or felony* traffic offense; **and**,
- The arrestee refuses to voluntarily submit to **any of the available chemical tests**; **and**,
- Prior approval from a traffic *watch commander* has been obtained; **and**,

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- A supervisor is present at the medical facility (e.g., *Custody Services*, local hospital) to witness the withdrawal of blood from the *arrestee*; **and**,
- *A search warrant has been obtained (if no exigency exists).*

Exception: An arrestee whose medical condition prohibits a blood sample from being taken shall not be forced to submit to a blood test.

Officer's Responsibilities. If after an officer has given the chemical consent admonition to the arrestee and he *or* she refuses to provide a *blood* sample (Vehicle Code Section 23612 – Implied Consent for Chemical Testing), *the officer shall:*

- Notify a supervisor;
- *After the supervisor witnesses the refusal, the officer must complete the Chemical Test Admonition portion of the Driving Under the Influence Arrest Report Supplemental, Form 05.02.05;*
- Record observations, and complete the Request of Medical Professional & Consent for Withdrawal of Blood, Form 04.35.00;
- Seek advice *and approval* from the concerned bureau traffic watch commander prior to obtaining a search warrant. *If the bureau traffic watch commander concurs, complete the Affidavit in Support of Search Warrant, Form 12.25.05;*
- *Contact Real-Time Analysis and Critical Response (RACR) Division to be connected with the Los Angeles County District Attorneys 24-hour Command Post in order to be transferred to a judge;*
- *Once approval is obtained from the judge, officers shall transport the arrestee to a Custody Services Division jail dispensary or local hospital for a blood sample withdrawal;*

Note: *If the hospital refuses to withdraw blood, officers shall document the hospital's refusal in the Arrest Report.*

- *Ensure a supervisor is present to witness the blood withdrawal;*
- *Once the blood sample is collected, the blood sample vial should be booked as evidence in an Analyzed Evidence - To Be Refrigerated Envelope. Officers shall document in the Arrest Report, the name of the person obtaining the blood sample and the exact time the blood sample was obtained;*

Note: *Ensure the names and serial numbers of the advising traffic watch commander, the booking approving watch commander, and the supervisor present during the forced blood withdrawal are written on the Arrest Report.*

- *Return all documents to the traffic watch commander for approval; and,*
- *Ensure the Return to Search Warrant has been completed, signed and returned to a judge or magistrate within 10 working days from the date of issuance.*

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Exception: An arrestee whose **medical condition prohibits** a blood sample (e.g. hemophiliac, heart patient, or usage of an anticoagulant medication) from being taken shall not be forced to submit to a blood withdrawal.

Requesting Withdrawal. Whenever a blood sample is to be obtained from an arrestee, the arresting officer shall direct a Request of *Medical Professional & Consent* for Withdrawal of Blood, Form 04.35.00, to any of the following hospital personnel:

- Physician;
- Registered nurse *or licensed vocational nurse*;
- *Certified phlebotomy technician*;
- Licensed clinical laboratory technologist; *or*,
- Licensed clinical bio-analyst.

Physician or Hospital Employee Refusal. When a physician or hospital employee authorized by Vehicle Code Section 23158 refuses to withdraw a blood sample, the officers having custody of the arrestee shall request a supervisor to respond to their location. Upon arrival, the responding supervisor shall:

- *Conduct an investigation into the circumstances of the arrest and the request to withdraw a blood sample to verify that Department policy was followed; and,*
- Verify the refusal by the hospital employee to withdraw blood.

If the hospital employee refuses to withdraw a blood sample, the supervisor shall then request the arrestee to submit to one of the other two remaining chemical tests. When the arrestee refuses the other tests, the supervisor shall advise the officers to complete the appropriate arrest report, including a notation regarding the absence of a chemical test.

Note: *The arrestee may be transported to a Custody Services Division jail dispensary to obtain the blood sample, if no other existing medical treatment is needed.*

After the arrestee is booked and all appropriate reports are completed, the concerned supervisor and officers shall each complete an Employee's Report, Form 15.07.00, recording all pertinent information regarding the refusal to withdraw blood. The completed Employee's Reports shall be forwarded through channels to *RACR Division*.

Obtaining and Packaging. The withdrawal of all blood samples shall be witnessed by the requesting officer. Officers obtaining blood samples for alcohol or drug analysis shall, in addition to following the procedures outlined on the Analyzed Evidence - To Be Refrigerated Envelope, Form 12.51.01, place the defendant's booking number above the officer's serial number when completing the Sealed Evidence Label. If there is no arrestee, the DR number shall be placed in the space above the booking officer's serial number. When there is more than one suspect and a DR number is used, both the DR number and the last names of the suspects shall be used.

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Officers obtaining whole blood samples from hospital employees shall:

- *Invert the vial several times to ensure that the preservatives in the vial mix with the blood;*
- *Complete the label on the vial with the suspect's name, date, DR number (if available), booking officer's initials, and the initials of the person conducting the blood withdrawal;*
- *Check the "Blood Grouping" box on the Analyzed Evidence - To Be Refrigerated Envelope and complete all other applicable reports;*
- *Place the vial in the Analyzed Evidence – To Be Refrigerated Envelope and seal the envelope with a Sealed Evidence Label bearing the date and DR number and the officer's payroll signature and serial number signed in ink; and,*
- *Affix the Biohazard Label to the **upper left corner** of the front of the Analyzed Evidence - To Be Refrigerated Envelope.*

Supervisor Approving. The supervisor approving the booking of the *blood* sample shall inspect the *blood* sample vial or container label to ensure that the required identifying information is included.

Booking. Whole blood samples shall be booked in the *evidence* courier refrigerated temporary storage locker most convenient for the booking employee. The *evidence* courier shall be responsible for transporting items to be analyzed to *Forensic Science Division*.

Traffic Watch Commander's Responsibilities. *Upon being advised of a request for a forced blood withdrawal, the watch commander shall:*

- *Determine if the criteria for forced blood withdrawal is met;*
- *Ensure the investigating officer received advice from the concerned traffic watch commander;*
- *Ensure a supervisor is present during the blood withdrawal procedure;*

Note: The supervisor who is present at the scene of a forced blood withdrawal where a use of force becomes necessary, shall ensure that the use of force investigation is conducted by a non-involved supervisor.

- *Review the Affidavit in Support of Search Warrant, placing his or her initials and serial number on the bottom right hand corner confirming he or she reviewed the documents; and,*
- *For **misdemeanor** arrests, attach the original Affidavit in Support of Search Warrant to a copy of the Arrest Report, Form 05.02.00, and Traffic Collision Report, CHP 555 OPI 065, if applicable and forward to the Records Unit for processing.*

Records Unit's Responsibilities. *The Records Unit shall:*

- *Assign a DR number to the Arrest Report, Affidavit in Support of Search Warrant, and any other related document; and,*

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- *Ensure a copy of the Arrest Report, Affidavit in Support of Search Warrant, and any other related documents are hand carried to the warrant review officer or his or her designee in a timely manner.*

Warrant Review Officer's Responsibilities. *The warrant review officer shall conduct a final quality assurance review for completeness and accuracy of all warrant documentation and shall ensure that:*

- *The Return to Search Warrant has been completed by the arresting officer and signed by a judge or magistrate within 10 working days from the date of issuance;*
- *The Warrant Tracking Log, Form 08.17.05, entry is complete and accurate;*
- *The Property Report and the Receipt for Property Taken Into Custody forms match; and,*
- *Any errors, inaccuracies, or omissions within the Affidavit in Support of Search Warrant are promptly corrected prior to proper storage.*

Detective Officer In Charge Responsibilities. *The Area detective officer in charge shall determine that:*

- *The Affidavit in Support of Search Warrant is entered into the Warrant Tracking Log;*
- *The Return to Search Warrant is completed and filed with the court within 10 working days after being signed by the judge or magistrate; and,*
- *Any necessary follow-up investigation is conducted in a timely manner.*

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FORM USE LINK
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***04.35.00 REQUEST OF MEDICAL PROFESSIONAL & CONSENT FOR WITHDRAWAL
OF BLOOD, FORM 04.35.00.***

04.35.00-01 Use of Form. *This form shall be used to ensure that the purpose of the blood draw being requested is properly justified and documented.*

04.35.00-10 Completion. *This form shall be completed by the arresting officer and arrestee.*

04.35.00-80 Distribution.

1 - Original, attach to the Arrest Report.

1 - TOTAL

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FORM USE LINK
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12.25.05 AFFIDAVIT IN SUPPORT OF SEARCH WARRANT, FORM 12.25.05

12.25.05-01 Use of Form. *This form shall be used when it is necessary to obtain a blood sample from a misdemeanor or felony Driving Under the Influence suspect/arrestee who refuses to comply with the “implied consent” law, and exigent circumstances are not a factor.*

12.25.05-10 Completion. *This form shall be completed by the investigating officer.*

12.25.05-80 Distribution.

1 - Original, court clerk office.

1 - Copy, warrant review officer.

2 - TOTAL

**REQUEST OF MEDICAL PROFESSIONAL &
CONSENT FOR WITHDRAWAL OF BLOOD**

04.35.00 (05/17)

PAGE:	BOOKING NO.:	DR NO.:
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CONSENT

I, _____ A PEACE OFFICER READ/PARAPHRASED THE:

PRINT NAME SERIAL NO.

- CHEMICAL TEST ADMONITION (23612 VC), AND
 ADDITIONAL CHEMICAL TEST ADMONITION, OR
 DRUG ADMONITION

ARRESTEE _____ CONSENTED TO THE BLOOD DRAW FOR THE

PRINT NAME

PURPOSE OF MAKING A BLOOD ALCOHOL/DRUG ANALYSIS TO DETERMINE THE AMOUNT OF ALCOHOL AND/OR DRUGS IN HIS OR HER BLOOD.

IF NO CONSENT GIVEN, COMPLETE SEARCH WARRANT AND PLACE SEARCH WARRANT NO. IN BOX BELOW.

OFFICER'S SIGNATURE DATE

ARRESTEE'S SIGNATURE DATE

Must check one:

- Consent given by the arrestee
 Search Warrant No.: _____

REQUEST OF MEDICAL PROFESSIONAL TO CONDUCT BLOOD DRAW

I, _____ A PEACE OFFICER, REQUEST THAT _____

PRINT NAME

TITLE/PRINT NAME

TAKE A BLOOD SAMPLE FROM ARRESTEE _____ FOR THE PURPOSE MAKING

PRINT NAME

BLOOD ALCOHOL AND/OR DRUG ANALYSIS TO DETERMINE THE AMOUNT OF ALCOHOL AND/OR DRUGS IN HIS OR HER BLOOD. THIS REQUEST IS IN COMPLIANCE WITH CALIFORNIA VEHICLE CODE SECTION 23612.

PER CALIFORNIA VEHICLE CODE SECTION 23612(a)(1)(C), CHEMICAL TESTS ARE INCIDENTAL TO ARRESTS AND ARE ADMINISTERED AT THE DIRECTION OF A PEACE OFFICER WHO HAS REASONABLE CAUSE TO BELIEVE THE PERSON WAS DRIVING A MOTOR VEHICLE IN VIOLATION OF CVC 23140, 23152 OR 23153.

DATE OF OFFENSE: _____ TYPE OF OFFENSE: 23140 CVC 23152 CVC 23153 CVC

LOCATION OF BLOOD DRAW: _____

"Notwithstanding any other provision of law, no licensed physician and surgeon, registered nurse, licensed vocational nurse, duly licensed clinical laboratory scientist or clinical laboratory bioanalyst, person who has been issued a 'certified phlebotomy technician' certificate pursuant to Section 1246 of the Business and Professions Code, unlicensed laboratory personnel regulated pursuant to Sections 1242, 1242.5, and 1246 of the Business and Professions Code, or certified paramedic, or hospital, laboratory, or clinic employing or utilizing the services of the licensed physician and surgeon, registered nurse, licensed vocational nurse, duly licensed clinical laboratory scientist or clinical laboratory bioanalyst, person who has been issued a 'certified phlebotomy technician' certificate pursuant to Section 1246 of the Business and Professions Code, unlicensed laboratory personnel regulated pursuant to Sections 1242, 1242.5, and 1246 of the Business and Professions Code, or certified paramedic, owning or leasing the premises on which tests are performed, shall incur any civil or criminal liability as a result of the administering of a blood test in a reasonable manner in a hospital, clinical laboratory, medical clinic environment, jail, or law enforcement facility, according to accepted venipuncture practices, without violence by the person administering the test, and when requested in writing by a peace officer to administer the test." CALIFORNIA VEHICLE CODE, Section 23158(d).

CAUTION: REQUEST ONLY A PERSON AUTHORIZED BY THE ABOVE LAW TO TAKE THE SAMPLE OF BLOOD.

AFFIDAVIT IN SUPPORT OF SEARCH WARRANT

I, Officer's Name, am a peace officer employed by the Los Angeles Police Department.

On Date, at Time hours in the County of Los Angeles, I observed the following (check applicable boxes only): I saw Arrestee's Name driving stopped outside of vehicle

involved in a traffic collision at Location. While driven by Arrestee's Name, the vehicle was speeding weaving going slow. I stopped the vehicle contacted Arrestee's Name who exhibited the following objective symptoms of driving under the influence:

fumbling with vehicle controls fumbling with documents slurred speech rapid speech
 reddened eyes watery eyes dilated pupils odor of alcoholic beverage about the person
 unsteady admitted drinking admitted taking drugs showed signs of physical and mental impairment during the field sobriety test blood alcohol content measured _____ % on preliminary alcohol screening device. The arrestee refused preliminary alcohol screening refused to submit to breath or blood test after implied-consent admonition given by: Officer's Name.

Based on my training and my experience of _____ years as a peace officer, it is my opinion that the arrestee, Arrestee's Name operated a vehicle while under the influence of alcohol and/or drugs.

Arrestee's Name is a Arrestee's Descriptors (e.g., race, sex, approx. age, ht, wt), now detained at Location.

Unless a blood sample is obtained promptly, dissipation of alcohol and/or drugs may result in the destruction of evidence.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____, in Los Angeles County, California. Signed: Officer's Signature

SEARCH WARRANT No. _____

PC 1524(a)(13):

COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY PEACE OFFICER IN LOS ANGELES COUNTY:

Proof having been made before me this day by the incorporated affidavit above that there is probable cause for believing that a sample of the blood of Arrestee's Name, named and described above, will furnish evidence of the commission of a public offense, you are therefore commanded to make search of the person of Arrestee's Name at any time of the day or night by causing to be extracted, in a medically-approved manner, a blood sample to be submitted by you for laboratory analysis and to be retained by you, subject to order of the court.

Given under my hand, and dated this Day day of Month, Year.

Printed name: Judge's Printed Name

Signature: Judge's Signature

JUDGE OF THE SUPERIOR COURT

JUSTICE OF THE COURT OF APPEAL
STATE OF CALIFORNIA

AFFIDAVIT IN SUPPORT OF SEARCH WARRANT

I, _____, am a peace officer employed by the Los Angeles Police Department.

On _____, at _____ hours in the County of Los Angeles, I observed the following (check applicable boxes only): I saw _____ driving stopped outside of vehicle

involved in a traffic collision at _____. While driven by _____, the vehicle was speeding weaving going slow. I stopped the vehicle contacted

_____ who exhibited the following objective symptoms of driving under the influence:
 fumbling with vehicle controls fumbling with documents slurred speech rapid speech
 reddened eyes watery eyes dilated pupils odor of alcoholic beverage about the person
 unsteady admitted drinking admitted taking drugs showed signs of physical and mental impairment during the field sobriety test blood alcohol content measured _____ % on preliminary alcohol screening device. The arrestee refused preliminary alcohol screening refused to submit to breath or blood test after implied-consent admonition given by: _____.

Based on my training and my experience of _____ years as a peace officer, it is my opinion that the arrestee, _____ operated a vehicle while under the influence of alcohol and/or drugs.

_____ is a _____, now detained at _____.

Unless a blood sample is obtained promptly, dissipation of alcohol and/or drugs may result in the destruction of evidence.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____, in Los Angeles County, California. Signed: _____

SEARCH WARRANT No. _____

PC 1524(a)(13):

COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY PEACE OFFICER IN LOS ANGELES COUNTY:

Proof having been made before me this day by the incorporated affidavit above that there is probable cause for believing that a sample of the blood of _____, named and described above, will furnish evidence of the commission of a public offense, you are therefore commanded to make search of the person of _____ at any time of the day or night by causing to be extracted, in a medically-approved manner, a blood sample to be submitted by you for laboratory analysis and to be retained by you, subject to order of the court.

Given under my hand, and dated this _____ day of _____, _____.

Printed name: _____

Signature: _____

- JUDGE OF THE SUPERIOR COURT
- JUSTICE OF THE COURT OF APPEAL
STATE OF CALIFORNIA