



MOUNT SINAI HEALTH SYSTEM POLICY & PROCEDURE

Mount Sinai Beth Israel
Mount Sinai Brooklyn
Mount Sinai Hospital
Mount Sinai Morningside
Mount Sinai Queens
Mount Sinai West
New York Eye & Ear Infirmary

POLICY TITLE:	Conducting Forensic Testing at the Request of Law Enforcement		
POLICY NUMBER:	MSHS 132	LAST REVIEWED DATE:	12/2022
EFFECTIVE DATE:	09/2021	POLICY OWNER:	MSHS Administration/ Emergency Medicine

I. PURPOSE

The purpose of this policy is to describe the protocols to be followed when forensic testing (i.e., the gathering of specimens for analysis and use in legal proceedings) is requested by law enforcement for patients receiving care within the Mount Sinai Health System.

II. SCOPE

This policy applies to all members of the Mount Sinai Health System workforce including, but not limited to, employees, medical staff, volunteers, students, and other persons performing work for or within the Mount Sinai Health System.

III. DEFINITIONS

Forensic Testing: gathering of specimens for the purpose of analysis and use in legal proceedings

Chain of Custody: process for securing evidence and documenting the chronological history of persons in possession of evidence

Police Custody: when one's freedom of action is curtailed by the police

Warrant: a document issued by a government official authorizing the police or some other body to make an arrest, search premises, or carry out some other action relating to the administration of justice

Subpoena: a document that may be issued by law enforcement requiring the production of information or obtaining of specimens

Court order: a judge signed order

Exigent Circumstance: criminal law allows law enforcement to seize evidence without a warrant due to dire consequences such as imminent danger to a potential victim, imminent destruction of evidence or the imminent escape of a suspect.

IV. TESTING CRITERIA

A. Testing for the Purpose of Clinical Care:

Testing performed for a clinical indication (e.g., blood alcohol level, urine drug screen for a patient with altered mental status of unknown etiology) is not considered forensic testing. Neither samples obtained for clinical testing nor the results of these tests may be provided to law enforcement unless the patient consents or law enforcement presents a subpoena or warrant.

B. Forensic Testing: Chemical Testing of an Operator of a Motor Vehicle

Consent: In New York State, any operator of a motor vehicle is deemed by law to have given implied consent to submit to one or more chemical tests (via breath, blood, urine, or saliva) at the request of law enforcement. If law enforcement has reasonable grounds to believe that the patient was operating a motor vehicle under the influence of alcohol or drugs, they may request that a specimen be obtained from the patient for chemical testing. Requested specimens may only be obtained by registered nurses, advanced practice professionals or physicians employed by MSHS. Law enforcement personnel or other entities not credentialed within MSHS are not permitted to obtain samples from patients. MSHS clinical staff should comply with law enforcement requests for chemical testing of a patient in the following circumstances:

1. Express Consent for Patients with Decisional Capacity

Patients with decisional capacity who are suspected of operating a motor vehicle under the influence of alcohol or drugs must expressly consent to or decline chemical testing when requested by law enforcement. If the patient consents to chemical testing, the details of the consent should be documented in the medical record, and the MSHS clinical staff should obtain the requested specimens. The specimens should be handled according to the chain of custody protocol outlined below and released to law enforcement. If the patient consents to chemical testing at the time of the request, but not to the release of the specimen without a subpoena or warrant, MSHS should hold on to the specimens in accordance with the chain of custody until a subpoena or warrant is presented. **If the patient refuses chemical testing, MSHS clinical staff are not permitted to proceed with testing unless a subpoena or warrant is presented by law enforcement at the time of the request. If the patient continues to refuse in spite of a subpoena or warrant, consequences of such refusal should be explained, and if the patient continues to refuse, staff may not proceed with testing.**

2. Implied Consent for Patients who are Unconscious or Otherwise Lacking Decisional Capacity

In New York State, any operator of a motor vehicle is deemed by law to have given implied consent to submit to one or more chemical tests (via breath, blood, urine, or saliva) at the request of law enforcement. If law enforcement requests chemical testing based on 1) the reasonable belief that the patient was operating a motor vehicle under the influence of alcohol or drugs and 2) exigent circumstances (insufficient time to obtain a subpoena/warrant before evidence is lost), the MSHS clinical staff should obtain the requested specimens. It should be recorded in the medical record that law enforcement made this request and clinical staff complied under the implied consent standard as dictated by New York State law. The specimens should be handled according to the chain of custody protocol outlined below and should not be released to law enforcement until a subpoena/warrant is presented.

3. Subpoena/Warrant for Chemical Testing Presented by Law Enforcement

Law enforcement may present a subpoena/warrant that compels a motor vehicle operator to submit to chemical testing. MSHS clinical staff should obtain the requested specimens specified in the subpoena/warrant. The following are usual grounds for subpoena:

- a. the individual operated a motor vehicle under the influence of alcohol or drugs;
- b. in the course of operating that vehicle, the individual killed or inflicted serious physical injury on another person;
- c. the individual was arrested, and the individual refused to submit to chemical testing.

Refusal: If the patient refuses chemical testing, MSHS clinical staff are not permitted to proceed with testing unless a subpoena or warrant is presented by law enforcement at the time of the request. In the case of refusal, law enforcement should be allowed to explain to the patient the consequences under New York State law (e.g., fine, loss of license). If law enforcement presents a subpoena or warrant and, despite this, the patient continues to refuse to submit to chemical testing, MSHS clinical staff should notify the Office of Legal Counsel. MSHS clinical staff should not use force or put themselves in harm's way in order to obtain a specimen for non-clinical purposes from a patient who is refusing.

C. Forensic Testing: Chemical Testing of an Individual Who is Not an Operator of a Motor Vehicle

Consent: Law enforcement may request that a specimen be obtained from the patient for chemical testing on grounds not related to suspicion of operating a motor vehicle while under the influence of alcohol or drugs. In this case, the implied consent law for motor vehicle operators does not apply. Requested specimens should only be obtained if the patient consents or law enforcement presents a subpoena or warrant. Requested specimens may only be obtained by registered nurses, advanced practice professionals or physicians employed by MSHS. Law enforcement personnel or other entities not credentialed within MSHS are not permitted to obtain samples from patients. MSHS clinical staff should comply with law enforcement requests for chemical testing of a patient in the following circumstances:

- 1. Express Consent for Patients with Decisional Capacity:** Patients with decisional capacity must expressly consent to or decline chemical testing when requested by law enforcement. If the patient consents to chemical testing, the details of the consent should be documented in the medical record, and the MSHS clinical staff should obtain the requested specimens. The specimens should be handled according to the chain of custody protocol outlined below and released to law enforcement. If the patient consents to chemical testing at the time of the request, but not to the release of the specimen without a subpoena or warrant, MSHS should hold on to the specimens in accordance with the chain of custody until a subpoena or warrant is presented. **If the patient refuses chemical testing, MSHS clinical staff are not permitted to proceed with testing unless a subpoena or warrant is presented by law enforcement at the time of the request. If the patient continues to refuse in spite of a subpoena or warrant, consequences of such refusal should be explained, and if the patient continues to refuse, staff may not proceed with testing.**
- 2. Subpoena/Warrant for Chemical Testing Presented by Law Enforcement:** Law enforcement may present a subpoena/warrant that compels an individual to submit to chemical testing for reasons other than those related to the motor vehicle statute. MSHS clinical staff should in general obtain the requested specimens. However, if the clinical staff is concerned about the nature of or grounds for the subpoena or warrant, they may consult with the Office of Legal Counsel.

Exigent Circumstance: Criminal law allows law enforcement to seize evidence without a warrant due to dire consequences such as imminent danger to a potential victim, imminent destruction of evidence or the imminent escape of a suspect. If law enforcement requests chemical testing of an individual who is not a motor vehicle operator based on exigent circumstances, MSHS should consult with the Office of Legal Counsel. Specimens obtained under exigent circumstances should be held in accordance with the chain of custody until a subpoena or warrant is presented for release of the specimens to law enforcement.

Refusal: If the patient refuses chemical testing, MSHS clinical staff are not permitted to proceed with testing unless a subpoena or warrant is presented by law enforcement at the time of the request. If law enforcement presents a subpoena or warrant and, despite this, the patient continues to refuse to submit to chemical testing, MSHS clinical staff should notify the Office of Legal Counsel. MSHS clinical staff should not use force or put themselves in harm's way in order to obtain a specimen for non-clinical purposes from a patient who is refusing.

V. PROCEDURE

1. The first priority in the emergency department is to perform a medical screening examination (MSE) and to treat any identified emergency medical condition (EMC). Forensic testing should not delay or impede clinical care.
2. Requested specimens may only be obtained by registered nurses, advanced practice professionals or physicians employed by MSHS. Law enforcement personnel or other entities not



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credentialed within MSHS may be authorized to obtain specimens in the field; however, they are not permitted to obtain specimens from patients within MSHS facilities.

3. Law enforcement requests for patient belongings should be handled according to the same standards as requests for forensic testing specimens.
4. Documentation and Chain of Custody
 - a. Keep specimens obtained for forensic testing separate from specimens obtained for clinical purposes.
 - b. Ensure that law enforcement is present when the specimen is obtained in order to maintain chain of custody.
 - c. Use the forensic specimen kits provided by law enforcement if requested, unless the clinical staff has concerns about the safety or compatibility of the kits with existing MSHS clinical practice standards.
 - d. **Document** the following in the medical record:
 - i. the specimen was obtained at the request of law enforcement;
 - ii. the specimen was obtained 1) with consent, 2) under implied consent (in the case of a motor vehicle operator without decisional capacity, 3) or in response to a subpoena/warrant
 - iii. law enforcement was present when the specimen was obtained;
 - iv. kit number if supplied by law enforcement;
 - v. law enforcement official's name and badge number.
 - e. Complete the **Chain of Custody** form. Keep the form with the specimen at all times.
 - f. Place the specimen with the Chain of Custody form in the designated secure location at the clinical site. The designated location must have a logged entry point that requires badge or code access.
 - g. Do not leave the specimen unattended until it is in the secure location. It is the responsibility of the last person listed on the Chain of Custody form to maintain the chain of custody.
 - h. If the specimen requires refrigeration, ensure that the temperature monitoring log on the refrigerator is up to date.
5. Release of Evidence
 - a. If the specimen was obtained with the patient's **express consent**, a signed consent form is needed to release the specimen to law enforcement.
 - b. If the specimen was obtained under **implied consent**, the specimen may not be released to law enforcement until a subpoena/warrant is presented. Chain of custody must be maintained while a subpoena/warrant is pending.
 - c. When a specimen is released to law enforcement, it should be accompanied by the Chain of Custody form.
 - d. The specimen, with all required documentation listed above, is placed into the evidence bag provided by MSHS Security by the RN or the Provider

The Office of Legal Counsel may be contacted at any time for assistance.

REVIEW/REVISION HISTORY

Reviewed		12/2022						
Revised	6/2021							