

# The Arrest of a Nurse in Utah and Relevant Laws

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On July 26, 2017, Alex Wubbels, a nurse in the burn unit at the University of Utah in Salt Lake City, was arrested in an incident that has since been viewed widely on video captured from police body cameras. She refused to let a police phlebotomist draw blood from a patient in a coma—one of the parties involved in a fatal automobile crash. Besides being difficult to watch, this incident demonstrated the lack of understanding of two laws: one Utah state law and one of the tenets of the HIPAA Privacy Rule called “preemption.”

## The Facts of the Case

A suspect in a high speed chase crashed his car head-on into a semi-truck, causing a fire. The suspect died at the scene and paramedics brought the truck driver to the University of Utah burn unit. He was unconscious when the police officers arrived and requested a blood sample. The truck driver was not a suspect. The police detective, Jeff Payne, wanted to establish that the victim was *not* driving under the influence, as a protective measure.

He demanded that burn unit staff allow him to draw the blood. Wubbels, the staff nurse, refused, citing hospital policy that required a warrant, court order, or patient consent. Payne at that point stated his supervisor, Lt. James Tracy, ordered him to arrest Wubbels if she didn’t comply with his request. When she continued to refuse, Payne placed Wubbels under arrest, forcing her out the door and putting handcuffs on her. During the encounter a University of Utah police officer stood by and did not step in or assist Wubbels.<sup>1</sup>

A review of the applicable laws of this case must examine both state and federal regulations. The relevant laws (state, federal, and even case law) in this case are:

1. Utah Code, 41-6a-520: A person operating a motor vehicle has given implied consent to tests of their blood or breath in order to determine if that person is operating under the influence of alcohol or any drug.<sup>2</sup>
2. The United States Supreme Court ruled in June 2016 that implied consent laws for blood alcohol testing were lawful only when the penalty for refusing is a civil penalty and not a criminal penalty.<sup>3</sup>
3. The HIPAA Privacy Rule only allows information to be released to law enforcement when:
  - a. It is required by law (mandatory reporting)
  - b. There is a valid court order or warrant
  - c. The patient consents (42 CFR 164.512(a)(c)(e)(f))
4. Privacy Pre-emption Rule: When a state and a federal law are in conflict, the HIPAA Privacy Rule states that whichever law gives the patient more protection preempts any other law.

Payne believed that the Utah law allowed him to do the blood draw. In fact, it is reported that he said “We have implied consent.”<sup>4</sup> He might have thought the Supreme Court reinforced this opinion the year before.

## Utah Law

Utah allows testing when the officer believes the person was in violation of laws regarding driving under the influence. Specifically, the law states in 41-6a-520 (1)(b): “a test or tests authorized under this Subsection (1) must be administered at the direction of a peace officer having grounds to believe that person to have been operating or in actual physical control of a motor vehicle while in violation of any provision under Subsections (1)(a)(i) through (iii).”

In this case, Payne explicitly did not believe this was the case because in his report he stated he wanted to show the patient was not under the influence of drugs or alcohol. Therefore, the implied consent the officer was relying on was nonexistent. So while the US Supreme Court would have upheld Utah's law regarding implied consent, it would only do so when the officer believed the truck driver was in violation.

## Federal Privacy Rule

Even if this situation met the rule of law in Utah (that the driver was probably under the influence), the hospital might have used the HIPAA Privacy Rule. The Privacy Rule does not allow any information to be released to law enforcement unless it is with consent, a court order, subpoena, or summons. If law enforcement is attempting to identify a material witness, the rule only allows the name and address, type of injury, and condition. Finally, this situation does not fall under mandatory reporting or any of the other "required by law" exceptions to the necessity of an authorization or the compulsory process.

Because Utah law and the Privacy Rule are in conflict, the preemption comes into play. Generally, federal law has legal precedent. However, the Privacy Rule states at 45 §160.203 (b) that if a state law is more stringent than the federal standard, it will prevail. Further, 45 §160.202 (6) defines "more stringent" as providing greater privacy protection for the individual. The federal rule gave more protection to the patient than the state rule.

There was also a written agreement between the police department and the hospital apparently outlining when the police department may obtain blood samples from patients suspected of being under the influence.<sup>5</sup> It sounds as though the agreement outlined the HIPAA Privacy Rule exceptions above, leading one to wonder what had happened in the past that made the agreement necessary. It is not a factor in this case, but does serve to illustrate how complex the laws are and why healthcare professionals need to understand how to comply with them.

## Outcomes of the Case

After Wubbels went to the press over a month later, with her attorney and recordings of her arrest from the officer's body camera, the following events occurred:

- On October 9, 2017, after an investigation, Payne was terminated from his job with the Salt Lake City Police Department. He has appealed that termination. Also, Tracy was demoted to officer and is also appealing the decision.<sup>6</sup>
- The University of Utah and the Salt Lake City Police Department signed an agreement on October 11, 2017. In it, the police department agreed to established procedures for performing law enforcement activities within the system's hospitals. This included dealing with supervisors (charge nurses and house supervisors) and waiting for supervisors to arrive in person when there are conflicts.<sup>7</sup>
- On October 31, 2017, Wubbels agreed to a settlement of \$500,000, with the cost being shared by the University of Utah and the Salt Lake City Police Department. The University of Utah shared in the responsibility because of the inaction by the University of Utah police department officer at the time of the arrest.
- The patient, whose blood was the subject of this situation, died from his injuries on September 25, 2017.

## Lessons for All Healthcare Providers

Could this situation happen at your facility? Certainly. It is imperative that health information management (HIM) departments, compliance officers, and privacy officers keep current on all laws, including case law. Healthcare professionals must ensure their organization's policies and procedures reflect the law, and be vigilant about tracking anything happening in the courts that might impact healthcare law.

Regularly—at least yearly—providers should review state healthcare laws, particularly laws affecting health information and compulsory process, and determine if changes to policies and procedures are needed. It's vitally important to understand how to determine which law, federal or state, applies in a given state.

Organizations should review their relationships with local law enforcement. Does the provider work cooperatively with the local police department? Does it have written procedures and/or agreements in place? These are prudent steps HIM professionals should take to avoid future conflict.

## Notes

1. Manson, Pamela. "Video shows Utah nurse screaming, being handcuffed after refusing to take blood from unconscious victim (video accompanying article)." *Salt Lake Tribune*. August, 31, 2017. [www.sltrib.com/news/2017/08/31/utah-nurse-arrested-after-complying-with-hospital-policy-that-bars-taking-blood-from-unconscious-victim/](http://www.sltrib.com/news/2017/08/31/utah-nurse-arrested-after-complying-with-hospital-policy-that-bars-taking-blood-from-unconscious-victim/).
2. Utah State Legislature. "Title 41 Chapter 6a Part 5 Section 520." Utah Motor Vehicle Traffic Code. [https://le.utah.gov/xcode/Title41/Chapter6A/41-6a-S520.html?v=C41-6a-S520\\_1800010118000101](https://le.utah.gov/xcode/Title41/Chapter6A/41-6a-S520.html?v=C41-6a-S520_1800010118000101).
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4. Manson, Pamela. "Utah nurse reaches \$500,000 settlement in dispute over her arrest for blocking cop from drawing blood from patient." *Salt Lake Tribune*. October 31, 2017. [www.sltrib.com/news/2017/10/31/utah-nurse-arrested-for-blocking-cop-from-drawing-blood-from-patient-receives-500000-settlement/](http://www.sltrib.com/news/2017/10/31/utah-nurse-arrested-for-blocking-cop-from-drawing-blood-from-patient-receives-500000-settlement/).
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6. Hawkins, Derek. "Utah police officer fired after manhandling, arresting nurse who was doing her job." *Washington Post*. October 11, 2017. [www.washingtonpost.com/news/morning-mix/wp/2017/10/10/utah-police-officer-fired-after-manhandling-arresting-nurse-who-was-doing-her-job/?utm\\_term=.45978e99f46b](http://www.washingtonpost.com/news/morning-mix/wp/2017/10/10/utah-police-officer-fired-after-manhandling-arresting-nurse-who-was-doing-her-job/?utm_term=.45978e99f46b).
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