

## **OCDLA HOT SHEET: Paramedic Blood Draws for DUI**

*Andrews v. State ex rel., DPS, 2014 OK CIV APP 19, cert. denied (Ok. Jan. 27, 2014).*

**Josh D. Lee & Caitlin Bowers Towles**

**Ward Lee & Coats, PLC – Vinita, Oklahoma**

**The Bottom Line:** Court of Civil Appeals says Paramedics/EMTs are **NOT** approved to withdraw blood for Oklahoma Implied Consent purposes.

**The Issues:** There are only 3 ways a person may be authorized to withdraw blood for IC purposes:

- 1) By being specifically designated in Okla. Stat. tit. 47, § 752(A);
- 2) By being specifically designated in Okla. Admin. Code 40:10-9-1; or
- 3) By being a qualified person who is specifically *and properly* authorized by the Board of Tests (BOT) pursuant to § 752(A).

Paramedics are not specifically listed in § 752(A) or OAC 40:10-9-1. So, the state has attempted to get them on the approved list in two different ways:

**Action No. 01-1:** The Director of the BOT signed this action in 2001 attempting to authorize paramedics to withdraw blood for IC purposes. In *Andrews*, Plaintiff argued, and the Court agreed, that the rules of the OAC were not followed when promulgating Action No. 01-1, and, therefore, the Action is “only a *proposed* rule that has yet to be enacted.” As such, this was a failed attempt by the state to authorize paramedics to withdraw blood.

**The Fishing Expedition:** We call the State’s next argument the fishing expedition because that’s what DPS lawyer Mark Bright went on when he conjured up this next argument. He argued that the “or other persons designated by law” language contained in OAC 40:10-9-1 translates to mean that ANY administrative code provision—even those that have absolutely nothing to do with IC or the BOT—authorizing EMTs to withdraw blood for any purpose grants them authority to do so in the IC arena. The State then pointed to OAC 310:641-5-30, which approves EMTs to withdraw blood in emergency situations. OAC Title 310 governs the Oklahoma State Department of Health and has nothing to do with the BOT. Moreover, 40:10-9-1 internally (and specifically) refers back to 47 O.S. § 752, thereby expressly limiting what law the BOT may look to in determining who is designated to withdraw blood for IC purposes. Luckily, the Court wasn’t up for a fishing trip.

**The Catch:** So far, this case only applies to the civil side of things. Unfortunately, the Oklahoma Court of Criminal Appeals incorrectly applied administrative and civil law and held in *Bemo v. State*, 2013 OK CR 4, that paramedics are approved to withdraw blood for IC purposes. However, it appears that the Court of Criminal Appeals did not fully consider or address the issues present in the case. As such, it is not exactly on point with *Andrews*. Furthermore, the Court of Civil Appeals and the Supreme Court are the civil experts, and this issue is rooted in civil interpretation. So, the Court of Civil Appeals and the Supreme Court should carry the day over the Court of Criminal Appeals’ flawed statutory interpretation and civil law conclusion in *Bemo*. We will be arguing this exact issue soon.

**Documents relating to this case have been uploaded to our website for your use.**

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