



**GUIDELINES FOR DOCTORS,  
NURSES AND GARDAÍ  
FOR THE TAKING OF BLOOD SPECIMENS  
FROM INCAPACITATED DRIVERS  
UNDER THE ROAD TRAFFIC ACT 2010  
(AS AMENDED BY THE ROAD TRAFFIC ACT 2014)**

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## **Legal Disclaimer:**

*These guidelines are of a condensed and general informative nature only. They do not purport to give medical, medico-legal or legal advice. They should not be relied upon in determining legal rights or other decisions under the Road Traffic Acts. Readers and users are advised to verify with their professional bodies and legal advisors any information on which they may wish to rely.*

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Irish Association for Emergency Medicine  
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# GUIDLINES FOR DOCTORS, NURSES AND GARDAÍ FOR THE TAKING OF BLOOD SPECIMENS FROM INCAPACITATED DRIVERS

## Introduction

The Road Traffic Act 2010 (as amended by the Road Traffic Act 2014) permits the taking of a specimen of blood by a designated doctor or nurse from a person who is incapable of complying with a requirement of a member of An Garda Síochána to permit the designated doctor or nurse to take a specimen of his or her blood. This legislation now deals with the situation where a driver is incapacitated and thereby incapable of permitting a specimen to be taken and setting out the position with respect to the analysis for intoxicants of those specimens and for the issuing of the statutory certificate under the legislation.

## **Road Traffic Act 2010 (as amended by section 12 of the Road Traffic Act 2014)**<sup>1, 2</sup>

This legislation sets out the obligation for a driver to provide a blood or urine specimen while in hospital in the circumstances where a Garda has formed the opinion that the person was driving or attempting to drive a vehicle where an event occurred in relation to a vehicle in consequence of which or following which the person is injured. If the Garda forms the opinion that the driver is incapable of complying with the legal requirement of permitting a sample of blood to be taken or of urine to be provided, that Garda has the power to direct a designated doctor or designated nurse to take a specimen of blood from the driver. Before the Garda directs a designated doctor or nurse to take the specimen, the Garda must consult with a doctor treating the driver and if the doctor treating the driver advises the Garda that such a direction would be prejudicial to the health of the person then the Garda shall not make such direction. Once a Garda has made such a direction, then it shall be lawful for the designated doctor or nurse to take a specimen of blood from the incapacitated driver.

The specimen of blood when taken in accordance with the legislation must be forwarded by the Garda to the Medical Bureau of Road Safety (the Bureau) with the statutory documentation and also a label, notice or statement in writing if the specimen was taken in the circumstances of the driver being incapacitated. The Bureau must analyse the blood specimen and determine the concentration of alcohol or (as may be appropriate) the

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<sup>1</sup> <http://www.irishstatutebook.ie/pdf/2010/en.act.2010.0025.pdf> and <http://www.irishstatutebook.ie/pdf/2014/en.act.2014.0003.pdf>

<sup>2</sup> cf. also s.8 of the Road Traffic (No. 2) Act 2011

presence of a drug or drugs in that specimen. However, the Bureau shall not issue a completed statutory certificate with the result of the analysis unless it has received a notification from a member of An Garda Síochána that the driver has given permission for the completed statutory certificate to be issued in accordance with law. The Garda must require this of the driver not later than six months after the taking of the specimen if the driver who had been incapacitated at the time the blood sample was taken later regains capacity to give permission for the statutory certificate to be issued. If without reasonable excuse, the driver refuses to or fails to give that permission that is a criminal offence.

### **Assessing Capacity**

Under the Road Traffic legislation it is the responsibility of the Garda to form the opinion that the driver is incapacitated. Nevertheless, before taking a specimen, a designated doctor or nurse should be satisfied that the driver lacks the capacity to consent and that the circumstances therefore fall within the relevant provisions of the legislation. It is important that doctors and nurses document their decision about mental capacity with great care.

### **Competent Drivers**

If the driver is deemed by the Garda to have capacity to comply with the requirement for the taking of a blood specimen then these guidelines relating to incapacity do not apply and the relevant provisions of the Road Traffic Act in relation to refusal or failing to comply with the requirement apply.

### **Incapacitated Drivers**

Where the driver is deemed not to have capacity to give consent, a specimen may lawfully be taken under the legislation. Although doctors are legally permitted to take the blood specimen, they cannot be required to do so should they have proper ethical and professional reasons to decline.

In practice and in accordance with medical ethics, it is important to maintain the clear separation between the clinical care a patient is receiving and any forensic procedures. It should be standard practice that the blood specimen is taken by a designated doctor or nurse with forensic experience and separate to the treating doctor or nurse.

## **The Garda**

Under the Road Traffic legislation where an event occurs in a public place in relation to a mechanically propelled vehicle in consequence of, or following which a person is injured and admitted to or attends at a hospital and a member of the Garda is of the opinion that at the time of the incident the person was driving or attempting to drive the vehicle and forms the opinion that the driver is incapacitated, then the Garda shall direct a designated doctor or designated nurse to take a blood specimen. It is the responsibility of the Garda to form these opinions and also to consult with a doctor treating the person whether the taking of a specimen of blood would be detrimental to the health of that person. If the Garda is satisfied that the conditions for taking a blood specimen from a driver under the Road Traffic legislation have been met then the blood specimen may lawfully be taken and the usual procedures for the taking of the sample and its forwarding to the Medical Bureau of Road Safety are followed.

If the driver regains capacity and is still in hospital, the doctor who is then in immediate charge of that patient's care must be informed in advance by the Garda that permission for the issuing of the statutory certificate with the result is to be sought from the patient. In the event of the tragic death of the driver, the Gardaí will notify the Bureau accordingly.

## **The Designated Doctor or Designated Nurse**

Whether or not the driver has capacity to give consent to the doctor or nurse for a blood specimen rests with the Garda under the legislation. A doctor or nurse could not be charged with assault if in good faith he or she took the blood specimen without consent once the requesting Garda was satisfied that the relevant legal provisions have been fulfilled. This does not however relieve the doctor or nurse from considering further if there are any ethical or professional issues arising in these circumstances and the doctor or nurse cannot be required by the Garda to take a blood specimen even in circumstances where it has been deemed to be lawful.

A designated doctor or nurse may still use clinical and professional judgment and decline to take a blood specimen: a) if there are medical reasons why such a specimen should not be taken; b) if to do so would be detrimental to the driver's care and treatment; c) if the incapacitated but conscious driver refuses or resists, since it is not ethically or professionally acceptable for the designated doctor or designated nurse to use force or restraint; or d) if the person is expected to recover capacity within a short period of time.

The designated doctor or nurse requested to take the blood specimen should seek to consult with the treating doctor in these clinical circumstances. The driver is not committing an offence if the doctor or nurse does not consider it appropriate or proper to take the blood specimen. It is important that doctors and nurses document their decisions with great care in these circumstances.

### **The Treating Doctor(s)**

Whether the driver is treated in the Emergency Department only or is also subsequently admitted as an in-patient in the hospital for further or ongoing care and treatment, then the doctor in immediate charge of the patient's clinical care must be informed if a blood specimen is required under the Road Traffic Acts. It is not the role of the treating doctor to determine whether the patient has capacity to consent or to consider whether taking the blood specimen is lawful. The doctor's role is restricted to making the decision in this context on medical grounds whether to permit the taking or provision of the blood specimen concerned. The circumstances would also include if the taking of a blood specimen were to lead to unacceptable delay to treatment or where peripheral access is difficult. If the treating doctor is consulted by the designated doctor or nurse, it is not necessary to reveal detailed clinical information about the patient to that doctor and such information should be confined to what is necessary for the designated doctor or nurse to make the appropriate decision in relation to that doctor's or nurse's responsibility.

If the driver regains capacity and is still in hospital, the doctor who is now in immediate charge of that patient's care must be informed in advance that permission for the issuing of the statutory certificate with the result is to be sought from the patient. That treating doctor should on professional and ethical grounds object if any part of this later procedure would be prejudicial to the patient's proper care or treatment. In the event of the tragic death of the driver, the doctor will notify the Gardaí as required under the law governing notification of deaths due to trauma or injury.

### **The Taking and Analysis of the Blood Specimen**

The specimen must be taken using the kit provided by the Medical Bureau of Road Safety under the Road Traffic Acts. Designated doctors and nurses should be familiar with the guidelines for the proper use of the kits provided. Designated doctors and nurses should be aware of potential problems with the reliability of blood samples taken from an existing access line or where certain drugs have been recently administered to the driver.

International forensic and medical studies recommend that where ever possible the blood sample should be taken from a peripheral access site distant to an access line, e.g. the opposite arm.

Once the specimen has been taken the designated doctor or designated nurse in the usual manner must divide the specimen into two parts and place each part in a container which he or she must immediately label and seal and complete the statutory form provided.

As soon as practicable after the taking of the blood specimen, the Garda must forward to the Bureau both sealed containers together with the completed statutory form with a label, notice or statement in writing that the specimen was taken from an incapacitated driver.

The Medical Bureau of Road Safety must analyse the specimen as soon as practicable but will not issue a completed statutory certificate unless the Bureau has received a notification from a member of the Gardaí that the driver has given permission for the completed certificate to be issued.

It is an offence for a competent person to refuse permission for the certificate to be issued unless there is a reasonable excuse. It is the intention that these procedures put the incapacitated driver in the same position as a driver who is competent at the time a blood specimen is taken.

***MBRS/DAC/November 2014***

**Table 1**

**SUMMARY OF PROFESSIONAL ROLES**

**GARDA**

- Forms opinion that the person was the driver and that a sample is required under the Road Traffic Act
- Forms opinion of incapacity to give consent following consultation with treating doctor
- Directs designated doctor or nurse to take blood specimen
- Forwards specimen containers and documents to the Medical Bureau of Road Safety
- Forwards notification of driver's subsequent permission to the Medical Bureau of Road Safety for the issuing of the statutory certificate or in the event of the driver's tragic death, notice of that event

**THE TREATING DOCTOR**

- Provides relevant clinical information to Garda and (where applicable) to designated doctor or nurse concerning any health condition affecting the capacity of the driver to consent and any prejudice to the driver's health at the time of taking the specimen.
- Provides relevant clinical information to Garda (if applicable) subsequently when permission is sought from the driver to issue the statutory certificate
- Notifies the Gardaí in the event of the tragic death of the driver

**DESIGNATED DOCTOR OR NURSE**

- Accepts direction of Garda to take blood sample from incapacitated driver if satisfied with professional, medical and ethical assessment of the circumstances
- Takes the sample following best medical and forensic practice and processes it in accordance with statutory requirements and Medical Bureau of Road Safety guidelines

**MEDICAL BUREAU OF ROAD SAFETY**

- Analyses specimen for intoxicants as soon as practicable
- Issues the statutory certificate only following receipt of notification from Gardaí of the required permission of the driver

**Table 2**

**SUMMARY OF PROCESS - STEP BY STEP**

1. Garda forms the opinion that at the time of the relevant incident the person was driving or attempting to drive the vehicle.
2. Garda consults with the treating doctor about the driver's capacity to give consent and about any prejudice to the driver's health.
3. Garda forms the opinion that the driver is incapable of complying with the obligation to provide a blood or urine sample.
4. Garda directs the designated doctor or nurse to take the blood sample.
5. The designated doctor or nurse considers the professional, medical and ethical issues and may consult with the treating doctor. If satisfied, then the designated doctor or nurse proceeds to take the sample in accordance with best medical practice and forensic guidelines.
6. Garda forwards the divided specimen in the two sealed containers together with the statutory form and required documentation stating that the sample was taken from an incapacitated driver.
7. Medical Bureau of Road Safety analyses the specimen as soon as practicable but will not issue a completed statutory certificate unless the required notification of the driver's permission has been received from the Gardaí.
8. Garda must require the permission of the driver within 6 months of the taking of the specimen for the statutory certificate to be issued in the circumstances of the driver regaining capacity. If the driver is still in hospital the Garda should consult with the doctor in charge of the driver's healthcare prior to requiring that driver's permission. In the event of the driver's tragic death, the treating doctor notifies the Gardaí who in turn notify the Medical Bureau of Road Safety of that event.

# Appendix 1

## MBRS NOTES FOR THE GUIDANCE OF DOCTORS/NURSES OBTAINING SPECIMENS IN CONNECTION WITH DRIVING OFFENCES

### BLOOD SPECIMENS

It is the function of the designated doctor/designated nurse to obtain from the person concerned a specimen of venous blood. It is an offence for the person concerned to refuse, or fail to comply with a requirement by the doctor/nurse in relation to the provision of the specimen.



Kits, for the collection of blood specimens, supplied by the Medical Bureau of Road Safety, are available in the Garda Station.

The kit for the collection of a blood specimen is identified by the letter B (in red) on the outside of the package.

*The total contents of the blood kit are as follows:*

1. Two cylindrical containers
2. Two specimen bottles
3. Relevant form in duplicate (ref. Section 15 of the Road Traffic Act 2010)
4. Two matching numbered red seals
5. An alcohol-free wipe
6. A syringe
7. A needle
8. A plaster
9. Four white labels
10. A pad for packing
11. A biohazard plastic bag with sleeve



Eject approximately equal volumes of the specimen into each of the specimen bottles provided . **CLOSE THE BOTTLES FIRMLY BY THE SCREW CAPS AND MIX BY REPEATED INVERSION.**

- Write the *name* of person from whom the specimen was taken, and the *date*, on each of the white labels, and apply one to each specimen bottle;
- CHECK THAT ALL SEAL NUMBERS CORRESPOND WITH THE NUMBERS ON THE REVERSE SIDE OF THE FORM.



- PLACE EACH SPECIMEN BOTTLE INTO A CONTAINER, SEAL EACH CONTAINER AROUND THE JOIN BY AFFIXING ONE OF THE RED SEALS HORIZONTALLY SO THAT THE SEAL ADHERES TO BOTH PARTS OF THE CONTAINER AND THEN LABEL EACH CONTAINER WITH NAME AND DATE USING THE REMAINING TWO WHITE LABELS.



- Complete forms in accordance with the Garda instructions, check legibility and if necessary write any words which are not clear, hand forms and containers to the Garda.

**NOTE:**

- Each specimen should, if possible, consist of approximately 5ml of blood. This will fill the bottle approximately to the shoulder. The syringe provided is of 10ml capacity and if filled or nearly filled will provide sufficient blood for two adequate specimens. If it is not possible to fill the syringe, an analysis will usually be possible if a quantity of blood not less than approximately 2ml is available for the purpose. To provide two specimens of this volume it will be necessary to withdraw 4ml of blood into the syringe and if this is not possible the doctor/nurse should record failure to obtain a sufficient quantity of blood and no specimens should be forwarded.
- If any mishap should occur to labels, seals or forms, a second kit may be opened to obtain whatever is necessary. If this mishap should occur to one or both of the seals, or if one or both of the forms have to be rejected, then a complete new set of forms, containers and seals should be used so that all four identification numbers correspond. Kits so opened should be handed to the Garda for return to the Medical Bureau.
- In the event of a specimen taken from a driver in hospital, give particular consideration while selecting the site for taking the specimen if the driver is receiving treatment via an access line. The blood sample should ideally be taken from a peripheral access site distant to the access line.

**The obtaining, handling and disposal of biological specimens and materials should be in accordance with Health & Safety requirements.**

## Appendix 2

### MBRS NOTES FOR THE GUIDANCE OF GARDAÍ

#### HANDLING SPECIMENS IN RELATION TO DRIVING OFFENCES

##### BLOOD SPECIMENS

Kits, for the collection of blood specimens, supplied by the Medical Bureau of Road Safety, are available in the Garda Station.

The kit for the collection of a blood specimen is identified by the letter B (in red) on the outside of the package.

**Please ensure that you provide a valid kit to the designed doctor/nurse.**

*The total contents of the blood kit are as follows:*



1. Two cylindrical containers.
2. Two specimen bottles.
3. Relevant form in duplicate (Ref. Section 15 of the Road Traffic Act, 2010)
4. Two matching numbered red seals.
5. An alcohol-free wipe.
6. A syringe.
7. A needle.
8. A plaster.
9. Four white labels.
10. A pad for packing.
11. A biohazard plastic bag with sleeve.

*After Section 15(2) has been complied with, the following additional steps must be followed for Health and Safety Requirements before forwarding specimen(s) to the Medical Bureau of Road Safety:*

1. Prior to placing the container(s) in the blood kit box, remove the dressing pads from wrapping and place securely around the container(s).





2. Insert the padded container(s) into the biohazard plastic bag – **ENSURE ALL AIR HAS BEEN REMOVED BEFORE SEALING THE BAG.**

3. Place the closed biohazard bag into the blood kit box.



4. Include the completed section 15 forms, duly stamped with the station's stamp on each copy, in the blood kit box.

In the event that the specimen has been taken under section 14(3A) RTA 2010 include a label, notice or statement in writing to that effect.

5. Pull out close label flaps.



6. Seal box. Forward box by registered post or deliver by hand to the Medical Bureau of Road Safety:

*Hours of Opening:*  
8.00 a.m. - 4.30 p.m.

**PLEASE NOTE:**

- If more than one kit is used, please return any opened kits to the Medical Bureau of Road Safety.
- Please ensure that all used materials are disposed of in accordance with Garda Health & Safety requirements.