

File No.

SEARCH WARRANT FOR BLOOD OR URINE IN DWI CASES

IN THE MATTER OF

Name _____

Date Issued _____ AM PM

Name Of Applicant _____

Name Of Additional Affiant _____

Name Of Additional Affiant _____

RETURN OF SERVICE

I certify that this Search Warrant was received and executed as follows:

Date Received _____ AM PM

Date Executed _____ AM PM

I made a search of _____

_____ as commanded.

I seized the items listed on the attached inventory.

I did not seize any items.

This Warrant WAS NOT executed within forty-eight (48) hours of the date and time of issuance and I hereby return it not executed.

Name Of Officer Making Return (type or print) _____

Signature Of Officer Making Return _____

Department Or Agency Of Officer _____ Incident Number _____

STATE OF NORTH CAROLINA

In The General Court Of Justice
District Court Division

_____ County

To any officer with authority and jurisdiction to conduct the search authorized by this Search Warrant:

I, the undersigned, find that there is probable cause to believe that the property and person described in the application on the reverse side and on the attached sheets and related to the commission of a crime is located as described in the application.

You are commanded to take the person named in the application to a physician, registered nurse, emergency medical technician or other qualified person to obtain sample(s) of blood and/or urine described in the application from the person named in the application. You are to seize the sample(s), have the sample(s) tested for one or more impairing substances and keep the unconsumed sample(s) subject to court order and process the person according to law.

You are directed to execute this Search Warrant within forty-eight (48) hours from the time indicated on this Warrant and make due return to the Clerk of the issuing court.

This Search Warrant is issued upon information furnished under oath or affirmation by the person(s) shown.

Date _____ Name (type or print) _____ Signature _____

Deputy CSC Assistant CSC CSC Magistrate District Ct. Judge Superior Ct. Judge

NOTE: When issuing a search warrant, the issuing official must retain a copy of the warrant and warrant application and must promptly file them with the clerk. G.S. 15A-245(b).

This Search Warrant was delivered to me on the date and at the time shown below when the Office of the Clerk of Superior Court is closed for the transaction of business. By signing below, I certify that I will deliver this Search Warrant to the Office of the Clerk of Superior court as soon as possible on the Clerk's next business day.

Date _____ Time AM PM Name Of Magistrate (type or print) _____ Signature Of Magistrate _____

This Search Warrant was returned to the undersigned clerk on the date and time shown below.

Date _____ Time AM PM Name Of Clerk (type or print) _____ Signature Of Clerk _____

Dep. CSC Asst. CSC CSC

Original - File **Copy** - For Search of a Person, to Person from Whom Items Taken
Copy - For Search of Vehicle/Premises, to Owner or Person in Apparent Control; if No Such Person Present, Leave Copy Affixed Thereon
 (Over)

APPLICATION FOR SEARCH WARRANT FOR BODILY FLUIDS

(Attach additional sheets if necessary.)

Name Of Law Enforcement Officer (Applicant)		Rank		Police/Sheriff	
Name Of Individual To Be Searched		Race		Male <input type="checkbox"/> Female <input type="checkbox"/>	
Location Of Individual To Be Searched		Fluid To Be Seized		Blood <input type="checkbox"/> Urine <input type="checkbox"/>	
Crime(s) Charged <input type="checkbox"/> Commercial DWI. G.S. 20-138.2.					
<input type="checkbox"/> DWI. G.S. 20-138.1. <input type="checkbox"/> Death By Vehicle. G.S. 20-141.4.					
<input type="checkbox"/> Habitual DWI. G.S. 20-138.5 <input type="checkbox"/> Other (specify)					

I, the law enforcement officer named above, being duly sworn, request that the Court issue a warrant to search the person of the individual named above, who may be found at the location described above, and to seize sample(s) of the above-specified bodily fluid(s) of that individual.

I swear to the following facts to establish probable cause for the issuance of a search warrant.

I am a sworn law enforcement officer of the above-named agency. As such, I am empowered to search for and seize evidence described in N.C. General Statutes Chapter 14, Criminal Law, Chapter 20, Motor Vehicle Law, and Chapter 90, Controlled Substances. I have received training in the detection and apprehension of impaired drivers and the investigation of motor vehicle collisions. I have been a sworn law enforcement officer for over _____ years and during that time I have investigated over _____ incidents of offenses related to impaired driving.

1. I rely on the facts stated in the following report(s), of which a copy or copies is/are attached and incorporated by reference: (Attach a copy of the report(s) checked below if available and if either contains relevant facts.)

Affidavit and Revocation Report (AOC-CVR-1A/DHHS 3907).

Driving While Impaired Report Form/Alcohol Influence Report Form.

2. The following facts establish on or about the _____ day of _____, at _____ AM PM, the individual named above was operating a (commercial motor) vehicle, to wit: (type, make and year) _____ on _____ a _____ highway/street public vehicular area in _____ County at or near the city/town of _____ in violation of the statute(s) specified above: (check all that apply)

a. At the time and place stated above:

- I observed the above-named individual operating the above-described vehicle.
- I observed the above-described vehicle being operated in the following manner:

b. On or about the date stated above, at _____ AM PM, I responded to a report of a vehicle crash and, after arriving at the scene, I ascertained that the above-named individual was operating the described vehicle at the time and place stated from the following facts:

c. The above-named individual admitted to me operating the described vehicle at the time and place indicated.

d. On or about the date stated above, at _____ AM PM

- I detected a strong moderate faint odor of alcohol coming from the breath of the above-named person:
- at the scene.
- at the following hospital _____
- at other location _____
- I observed the following behaviors of the individual named above, which evidence impairment of the person's mental and/or physical faculties as follows:

e. The above-named individual stated to me that before or while operating the described vehicle he/she:

- had consumed alcohol.
- was consuming alcohol.
- had consumed controlled substance, to wit: _____
- had consumed other impairing substance, to wit: _____

f. The above-named individual refused to submit to a chemical analysis.

g. I observed the following facts:

h. Other reliable persons stated to me the following facts: (NOTE: Name officer or witness(es) and list facts related to impairment, vehicle operation, etc.)

3. The above-named individual has previously been convicted of one or more offenses involving impaired driving.

Based on all the foregoing, and on my training in detecting impaired driving violations and my experience as a law enforcement officer, I have formed an opinion satisfactory to myself that the above-named person had consumed a sufficient quantity of some impairing substance(s) as to appreciably impair that person's physical or mental faculties or both, and that the person drove the above-described vehicle on the above-described highway or public vehicular area while under the influence of impairing substance(s). It is my further opinion that evidence of impairing substance(s) is at this time present in the body or bodily fluids of the above-named person, and that unless a warrant is issued and executed without delay, the evidence may dissipate and be lost.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		Date	Signature Of Applicant
Signature	Date My Commission Expires	County Where Notarized	
<input type="checkbox"/> Magistrate	<input type="checkbox"/> Dep. CSC	<input type="checkbox"/> Asst. CSC	<input type="checkbox"/> CSC
<input type="checkbox"/> Judge	<input type="checkbox"/> Notary Public	SEAL	

North Carolina Criminal Law

A UNC School of Government Blog

Obtaining Medical Records in DWI Cases

Posted on Jan. 27, 2020, 4:44 pm by [Shea Denning](#)



When a person suspected of driving while impaired is involved in a crash and receives medical treatment, the State may wish to obtain the person's medical records for use in criminal prosecution. What standards and procedures govern the disclosure of such records?

Medical records are confidential. G.S. 8-53

renders confidential information obtained by a health care provider in "attending a patient in a professional character," that is "necessary to enable him to prescribe for such patient as a physician, or to do any act for him as a surgeon." Thus, a health care provider may not be required to disclose such information.

Moreover, when confidential information of this sort is memorialized in medical records, and the patient is living, G.S. 8-53 provides that it may be disclosed only with permission of the patient or pursuant to an order issued by the appropriate judicial official (or the Industrial Commission in appropriate cases).

STATE OF NORTH CAROLINA
COUNTY OF ALAMANCE

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

IN THE MATTER OF THE
INVESTIGATION OF A
TRAFFIC FATALITY

ORDER FOR
MOSES CONE HOSPITAL
MEDICAL RECORDS

PURSUANT to an Application for Order for Moses Cone Medical Records filed by the Office of the District Attorney for Prosecutorial District 15-A, the Court finds the following:

1. On Friday, June 21, 2013 at or about 1444 hours, the Elon Police Department responded to University Drive and Manning Drive in reference to a vehicle roll over and pin in. When officers from the Elon Police Department arrived, it was discovered that a green Jeep was upside down and a Chevy Impala had significant damage to it.
2. The occupant of the Jeep was William Lee Scott, W/M, DOB 07/08/1977, and the occupant of the Impala was Veocia Collins Warren, B/F, DOB 08/03/1950. Veocia Collins Warren was pronounced dead at the scene and taken to Alamance Regional Medical Center. William Lee Scott was transported to Moses Cone Hospital where he was treated and released.
3. Due to the motor vehicle accident resulting in the death of another, and in order to complete the investigation and to determine if William Lee Scott was impaired, the Elon Police Department is in need of all medical records from Moses Cone Hospital for William Lee Scott, W/M, DOB 07/08/1977 on June 21, 2013 between 1500 hrs. and 1545 hrs.

IT IS THEREFORE ORDERED PURSUANT TO NCGS 8-53, THAT FOR GOOD CAUSE SHOWN AND FOR THE PROPER ADMINISTRATION OF JUSTICE, that Moses Cone Hospital provide to Officer Giannotti of the Elon Police Department the following:

Any and all medical records including the results of his blood work/screen or toxicology report and the blood itself pertaining to William Lee Scott, W/M, DOB 07/08/1977 on June 21, 2013 between 1500 hrs. and 1545 hrs.

In addition, federal regulations impose restrictions on health care providers' disclosure of protected health information. 45 C.F.R. Parts 160, 164. Health care providers subject to these requirements may disclose such information for a law enforcement purposes to a law enforcement official in compliance with a court order or court-ordered warrant, or a subpoena or summons issued by a judicial official. 45 C.F.R. 164.512.

Exception to confidentiality rules in crash cases. Notwithstanding these confidentiality rules, G.S. 90-21.20B(a1) requires a health care provider providing medical treatment to a person involved in a vehicle crash to disclose certain information to a law enforcement officer. The health care provider must, upon request, disclose the following information to any law enforcement officer investigating the crash:

- the patient's name,
- the patient's current location, and
- whether the patient appears to be impaired by alcohol, drugs, or another substance.

Id. The statute further requires that law enforcement officers be provided access to visit and interview a person involved in a vehicle crash.

Permissible methods for disclosure.

Court order. As mentioned above, G.S. 8-53 permits disclosure of confidential medical information pursuant to court order. Specifically, G.S. 8-53 provides that a resident or presiding judge may at or prior to trial compel disclosure of confidential medical information "if in his opinion disclosure is necessary to a proper administration of justice." If the case is in district court, the judge must be a district court judge, and if the case is in superior court, the judge must be a superior court judge. *Id.*

Burden of proof. North Carolina's appellate courts have held in related contexts that when the State seeks to compel a third-party to disclose private information in the interests of justice, it must present to the trial judge an affidavit or similar evidence setting forth information showing reasonable grounds to suspect that a crime has been committed and that the records sought are likely to bear upon the investigation of that crime. *In re Superior Court Order*, 315 N.C. 378 (1986) (applying standard to disclosure of bank records); *In re Brooks*, 143 N.C. App. 601 (2001) (applying standard to disclosure of officers' personnel files). The proffer of an affidavit or similar evidence is essential as it enables the trial court to "make an independent decision as to whether the interests of justice require the issuance of an order rather than relying solely upon the opinion of the prosecuting attorney." *In re Superior Court Order*, 315 N.C. at 381 (1986).

Search warrant. G.S. 90-21.20B also sets forth rules governing the disclosure of identifiable health information (essentially, medical records). It requires a health care provider to disclose such information *related to a person involved in a vehicle crash* as specified in a search warrant or an order issued by a judicial official. G.S. 90-21.20B(a1).

A more broadly applicable subsection of that statute—not limited to records of a person involved in a vehicle crash—permits a health care provider to disclose to a law enforcement officer protected health information to the extent such information may be disclosed under federal regulations and is not specifically prohibited from disclosure by other state or federal law. G.S. 90-21.20B(a).

***State v. Smith*, 248 N.C. App. 804 (2016).** The court of appeals in *Smith* rejected the defendant's argument that medical records establishing his elevated blood alcohol concentration after he crashed his motorcycle were improperly obtained pursuant to a

search warrant and improperly admitted at trial. The defendant argued that pursuant to G.S. 8-53, disclosure of his medical records could be compelled only by judicial order based upon a determination that the disclosure was necessary to a proper administration of justice. The State countered that G.S. 90-21.20B permits disclosure notwithstanding other provisions of law.

The court first determined that the disclosure was permitted by G.S. 90-21.20B(a) since federal regulations allow disclosure of such information pursuant to a "court-ordered warrant." In addition, disclosure was authorized under G.S. 90-21.20B(a1) as the defendant was involved in a vehicle crash and this statutory provision permits disclosure of otherwise confidential health information pursuant to a search warrant.

Burden of proof. A search warrant may properly be issued based on probable cause that contraband or evidence of a crime will be found in a particular place. *State v. Benters*, 367 N.C. 660, 664 (2014). An application for a search warrant must be made in writing by sworn statement and must be supported by one or more affidavits setting forth the facts and circumstances establishing probable cause to believe that the items are in the places or in the possession of the individuals to be searched. G.S. 15A-244.

A recent case. Last week, the court of appeals in *State v. Scott*, ___ N.C. ___, ___ S.E.2d ___ (2020) considered how these rules applied to a court order directing a hospital to turn over medical records of a driver treated at the hospital following a fatal crash and any blood withdrawn from the driver.

Facts. The defendant was involved in a fatal crash in Elon. He was speeding when he crashed into a car turning left across his lane of travel. The driver of the other car was pronounced dead at the scene. The defendant was "in and out of consciousness" after the crash and was transported by ambulance to a Greensboro hospital.

An officer spoke to the defendant later in the day that the accident occurred. He did not detect signs that the defendant was impaired. In his accident report, he determined that the other vehicle was in the defendant's travel lane at the time of the crash.

Five days after the crash, an assistant district attorney petitioned a district court judge for an order directing the hospital to turn over the defendant's medical records and any blood it had withdrawn from the defendant. The hospital turned over three vials of defendant's blood, which were analyzed by the State Crime Lab, revealing a blood alcohol concentration (BAC) of .22.

The defendant was subsequently indicted for second degree murder.

Motion to suppress. The defendant moved to suppress the BAC evidence on the basis that it was seized in violation of the Fourth Amendment. The trial court denied the

motion, and the defendant was convicted at trial of second degree murder. He appealed, arguing that the trial court erred by denying his motion to suppress.

Court of appeals. The court of appeals determined that the district court improperly ordered that the medical records be disclosed and the blood be provided. The district court's order was based on nothing more than a bare allegation that a fatality had occurred. The State did not submit an affidavit or other evidence demonstrating reasonable suspicion that a crime had been committed and that the records and evidence sought were likely to bear on the investigation of that crime.

The court further determined that the superior court erred in denying the defendant's motion to suppress. The district court's order did not comport with G.S. 8-53 and the disclosure of the evidence was not proper under G.S. 90-21.20B(a1), which requires a valid court order or search warrant.

The court went on to conclude, however, that the error in admitting the evidence was not prejudicial. It reasoned that the malice necessary to establish second degree murder could have been predicated on defendant's high speed and reckless driving combined with his prior record of traffic offenses.

A dissent. Judge Brook concurred in part and dissented in part. He agreed with the majority that neither of the orders entered by the district or superior courts allowing the state to obtain and introduce evidence that the defendant was impaired at the time of the crash were based on evidence showing reasonable suspicion that defendant committed any crime. In addition, he expressly characterized the disclosure as a violation of the defendant's Fourth Amendment rights. Judge Brook dissented, however, from the majority's holding that the admission of this evidence did not constitute prejudicial error.

The dissent entitles the defendant to review as a matter of right, of course, so we will await the state supreme court's take on the issues in *Scott*.

Takeaways. Medical records are confidential, and when the State seeks their disclosure for purposes of a criminal investigation, it must follow the applicable statutory procedures. The State has two options: (1) apply for a search warrant supported by probable cause; (2) petition the court for disclosure of medical records. If the State chooses the latter option, an attorney must file the petition and he or she must provide evidence demonstrating reasonable suspicion that a crime had been committed and that the records and evidence sought are likely to bear on the investigation of that crime.

Update: I've received a couple of questions about whether the defendant must be notified of the application for a search warrant or the petition for a court order for disclosure of the defendant's medical records.

There is no requirement that the defendant be given notice of an application for a search warrant, regardless of whether it is applied for and issued before or after charges are filed. Jeff Welty addressed that issue [here](#).

If, however, an attorney petitions for the disclosure of medical records under G.S. 8-53 after the defendant has been charged, then the petitioning attorney must provide notice to the defendant or the defendant's attorney. Jeff addressed that issue in [this 2009 blog post](#).

Category: [Uncategorized](#) | Tags: [8-53](#), [90-21.20B](#), [disclosure](#), [DWI](#), [in re superior court order](#), [medical records](#), [state v. scott](#), [State v. Smith](#)

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