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Opinion No. 05-069

Duty of Health Care Providers to Report Potential DUI or Drug Use / Right Against Self-Incrimination

QUESTION

The proposed amendment to Section 3 of Senate Bill 1873 would require a health care provider to notify law enforcement authorities to investigate when: (1) the provider has a reasonable belief that the patient was the operator of a vehicle involved in a collision; and (2) positive drug or alcohol test results notify the provider that the patient was at least potentially impaired due to the use of drugs or alcohol. Does this proposed amendment violate a criminal defendant's protection against self-incrimination under the Tennessee or United States Constitutions?

OPINION

No. Under neither the Tennessee nor United States Constitution does the reporting of blood test results by a physician to law enforcement violate a criminal defendant's right against self-incrimination.

ANALYSIS

The Fifth Amendment to the United States Constitution provides that "no person ... shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V; *see also Malloy v. Hogan*, 378 U.S. 1, 6 (1964) (holding that the Fifth Amendment protection against compulsory self-incrimination is applicable to the states through the Fourteenth Amendment). Article I, section 9 of the Tennessee Constitution provides that "in all criminal prosecutions, the accused ... shall not be compelled to give evidence against himself." Tenn. Const. art. I, § 9.

It is well established that the United States Constitution permits the *compelled* taking of a blood sample from a person accused of driving under the influence of an intoxicant with or without the permission of the accused. *Schmerber v. California*, 384 U.S. 757, 86 S.Ct. 1926, 16 L.Ed.2d 908 (1966). The results of such testing are also admissible as evidence without violating

the accused's privilege against self-incrimination. *Id.* at 765. Our Supreme Court has adopted a similar view with regard to Article I, Section 9 of the Tennessee Constitution. *State v. Frasier*, 914 S.W.2d 467, 472-73 (Tenn.1996).

If compelled blood alcohol testing does not violate an accused's right against self-incrimination, it follows that reporting the results of blood alcohol testing under the circumstances contemplated by the proposed amendment to Senate Bill 1893 would not either.

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