



# State v. Atwood (Minn, 2018)

## Does a blood sample obtained by a physician in the course of treatment constitute privileged information?

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### Abstract

Physician-patient privilege has been created under the law to facilitate disclosure of sensitive information by the patient to their clinicians without the risk of the information becoming public. In Minnesota, this privilege has been created under MN Statute § 595.02. If a person does not or cannot provide a blood sample to the police, can police obtain his blood sample from the hospital and use it as evidence to bring charges of driving while intoxicated? Or, does the patient have a right to get this information excluded from evidence because it constitutes privileged information? This question was recently addressed in *State vs. Atwood* (A7-1463, MN Court of Appeals, 2018). In this poster, we will discuss the holding of the Minnesota Court of Appeals and its ramifications for physician-patient privilege in Minnesota, especially as it relates to the field of psychiatry.

### Facts of the Case

On June 10, 2016, Heath Allen Atwood was involved in an all-terrain vehicle accident. A Deputy Sheriff responded providing medical care. While providing care, he smelled alcohol on Mr. Atwood's breath. Mr. Atwood was taken by ambulance to the hospital.

On the way to the hospital, the deputy obtained a copy of the Minnesota implied-consent advisory form. The deputy was unable to read the implied-consent advisory to the patient due to the patient receiving medical treatment and being flown to another hospital for further treatment.

The deputy learned about the hospital storing a vial of the respondent's blood. He obtained a search warrant to seize this specimen. Lab analysis of this specimen showed Mr. Atwood's blood alcohol concentration (BAC) was over the legal limit at 0.155.

Mr. Atwood was charged with two counts of fourth-degree driving while impaired as a result. He moved to have the blood sample and the subsequent BAC test suppressed, invoking physician-patient privilege pursuant to MN Statute § 595.02, subd. 1 (d). The district court granted this motion, justifying the sample is information subject to the Minnesota's physician-patient privilege clause.

### Procedural History

The District Court held:

- The respondent's motion to suppress the blood sample from evidence was granted.
- The blood sample was protected by Minnesota's physician-patient privilege pursuant to MN Statute § 595.02, subd. 1(d).

The State appealed

The MN Court of Appeals reversed and remanded on all these issues.

Atwood appealed to the MN Supreme Court with petition for further review of the decision being granted. A later date of time for the argument of the court will be set.



### Issue

1) Is a blood sample "information" for the purposes of MN Statute § 595.02, subd. 1(d).

### Holding

The Minnesota Court of Appeals held that:

The seizure of a patient's blood sample pursuant to a search warrant addressed to a hospital does not violate the statutory physician-patient privilege because a blood sample collected by the hospital as part of medical treatment does not constitute "information" under the plain language of MN Statute § 595.02, subd. 1(d) (2016).

### Rationale

**The blood sample is neither "information" nor "any opinion based thereon."**

- MN physician-patient privilege provides that a "licensed physician...shall not, without the consent of the patient, be allowed to disclose any information or any opinion based thereon."
- Previous related cases, *State v. Staat* and *State v. Heaney* are not binding in determining that the blood sample is privileged due to these issues being dicta, an opinion not essential to the decision.
- The issue at matter is of statutory-interpretation revolving around the word "information," as detailed in the statute.
- "Information" is about something and is by nature "not physical."
- A blood sample is "material and does not, by itself, provide any information."
- Information about a patient cannot be obtained by "...solely looking at a physical blood sample."
- As a result, a blood sample is not covered under the physician-patient privilege.

### Discussion

As a result of this case, Mr. Atwood's blood sample was determined to be admissible evidence, as it is not privileged information. This evidence is essential to the prosecution's case, as it is the basis for proving the respondent was driving under the influence. Mr. Atwood has appealed this decision with potential ruling by the MN Supreme Court, which could set further legal precedent regarding this issue.

This issue is relevant to the medical community, given that what constitutes physician-privileged information is essential to daily medical practice. From initial review, most physicians would likely consider a blood sample privileged information, which makes this case even more intriguing. Can one then infer from this ruling, that a blood sample and the data contained within are not privileged in MN in all circumstances? How should health systems in MN interpret and respond to this ruling? This could have far reaching impact, especially for medical-legal cases in the future. The MN Supreme Court will likely be the final say in this matter.

### References

*State v. Atwood*, A17-1463 (Minn. 2018).