

# Virtual Mentor

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## HEALTH LAW

### Physicians' Legal Responsibility to Report Impaired Drivers

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There are times when the danger that a driver poses to other people and property outweighs the significant benefits of driving. Sometimes drivers act voluntarily in ways that make them unsafe, such as driving while intoxicated or exhausted. In these circumstances, we rightfully hold them responsible for injury or damage caused by their choices. At other times, though, one's ability to drive is impaired by a medical condition. Even in these instances where the impairment is involuntary, individuals may lose their privilege to drive. To ensure the safety of all who share the roads, health professionals and caregivers are called upon to identify conditions that might compromise the driving abilities of patients and people they care for.

Generally, physicians have a legal and ethical obligation to maintain the confidentiality of patient information [1, 2], but there are recognized exceptions to this responsibility when the health of the public is concerned. Although driving is not typically a "public health" threat, many states provide exceptions to the rule of patient-physician confidentiality in cases where impairments pose potential danger. In our aging society, whose drivers may include more people "with physiological changes of normal aging as well as diseases and disabilities common in the elderly," these laws are especially applicable [3].

#### Laws Concerning Disclosure of Impaired Drivers

Many states have enacted laws to address the problem of impaired drivers. Some of these laws mandate disclosure to motor vehicle authorities, while, in others, disclosure is voluntary. Some states require reporting for specific conditions but not for others [4]. And the legal protection provided to physicians who report also varies from state to state.

Oregon, for example, has broad regulations. Its laws require physicians (especially primary care physicians) to report conditions that impair sensory, motor, and cognitive functioning to state authorities [5], and they provide comprehensive standards for determining when a driver is impaired. Oregon physicians who report potential problems in good faith are immune from civil claims made by patients they have reported [6]. Likewise, physicians who *do not* report are protected from liability they might otherwise face if an unreported patient causes injury to himself, others, or property [7].

Pennsylvania has strict reporting requirements on the books that have been interpreted more leniently by the courts. Physicians are obligated to report every

person over 15 years of age who has been diagnosed with certain specified disorders and disabilities (defined by the Medical Advisory Board) [8]. Pennsylvania physicians, unlike those in Oregon, are exempted from liability under the statute only if they report the impairment [9]. Despite the wording of the legislation, however, the courts have decided that the law does not impose a duty on physicians to protect third parties from the actions of patients; therefore, no physician has been held liable for failure to report [10].

Other states' physician reporting laws are more permissive. Montana's statute says that a "physician who diagnoses a physical or mental condition that, in the physician's judgment, will significantly impair a person's ability to safely operate a motor vehicle may *voluntarily* report [italics added]" the patient [11]. Like Oregon, Montana's statutes protect physicians from liability whether or not they report [12]. A recent Montana Supreme Court case affirmed the liability exemption when a plaintiff alleged that the physician-defendant was *negligent* for failing to diagnose and report impairment [13].

### **When Reporting Is not Required or Permitted**

Although a number of states mandate or permit physician reporting of diseases or illness that may impair driving abilities, those that don't address the physicians' role in reporting put physicians in a peculiar position. On the one hand, the American Medical Association's *Code of Medical Ethics* explicitly acknowledges that physicians have a responsibility "to recognize impairments in patients' driving ability that pose a strong threat to public safety and which ultimately may need to be reported to the Department of Motor Vehicles" [14]. On the other hand, the law may prohibit physicians from disclosing confidential information without an explicit exception. In other words, if informing driver's licensing agencies (i.e., the Department of Motor Vehicles) about potentially dangerous drivers is not a legally sanctioned reason for breaching confidentiality, physicians may be unable to disclose. So, if they follow their professional obligation to report patients (pursuant to detailed guidelines [14]), doctors may face civil and criminal liability for unauthorized disclosure under some state laws [15].

The other side of that confidentiality protection, of course, is that, where reporting is not authorized by law, physicians are unlikely to face civil liability for failing to disclose a potentially dangerous patient. There is some similarity between these laws and the duty to report under the rulings in *Tarasoff*, which require physicians to report a clear, significant danger to an identifiable party [16]. The difference with impaired driver legislation is that no identifiable person is in danger. Courts, therefore, are unlikely to find the physician civilly liable if a third party is injured due to a patient's impairment, even when the physician knew about it.

### **What Should Physicians Do?**

Physicians should be aware of their professional responsibilities and the legal requirements of the states in which they practice. When determining whether to report a patient's medical condition that may impair driving, physicians may have to

weigh conflicting guidelines: a professional obligation to report and a legal requirement to maintain confidentiality, even in the face of danger to the public.

Where obligated to report, physicians must do so. When reporting is voluntary, they should also consider their professional obligations before deciding on a course of action. Certainly, limited criminal and civil liability protections that place the physician at legal risk should be a factor in cases where reporting is not mandated.

Whether they mandate reporting, prohibit it, or make it voluntary, the laws have much room for improvement. Ethically and professionally physicians' duties do not stop with existing laws; they are encouraged to "work with their state medical societies to create statutes that uphold the best interests of patients and community and that safeguard physicians from liability when reporting in good faith" [14].

A report to the relevant driver's licensing authority may be a service to the patient as well as to the public. While loss of driving privileges is almost certainly an inconvenience and can even be detrimental to a patient's well-being, the risk of injury or death to both the patient and third parties due to a medical impairment is too great a risk to ignore. Physicians should consider the options in their jurisdictions and keep the best interests of the patient—and the public—in mind.

#### Notes and References

1. See for example, Confidentiality of medical information. Haw Rev Stat sec 432D-21 (2008).
2. American Medical Association. Opinion 5.05 Confidentiality. *Code of Medical Ethics*. Chicago, IL: American Medical Association; 2006. [http://www.ama-assn.org/apps/pf\\_new/pf\\_online?f\\_n=browse&doc=policyfiles/HnE/E-5.05.HTM&&s\\_t= &st\\_p=&nth=1&prev\\_pol=policyfiles/HnE/E-4.07.HTM&nxt\\_pol=policyfiles/HnE/E-5.01.HTM&](http://www.ama-assn.org/apps/pf_new/pf_online?f_n=browse&doc=policyfiles/HnE/E-5.05.HTM&&s_t= &st_p=&nth=1&prev_pol=policyfiles/HnE/E-4.07.HTM&nxt_pol=policyfiles/HnE/E-5.01.HTM&). Accessed April 28, 2008.
3. Berger JT, Rosner F, Kark P, Bennett AJ. Reporting by physicians of impaired drivers and potentially impaired drivers. The Committee on Bioethical Issues of the Medical Society of the State of New York. *J Gen Intern Med*. 2000;15(9):667-672.
4. For example, California only requires reporting of disorders "characterized by lapses of consciousness." Reporting disorders characterized by lapses of consciousness. Cal Health & Safety sec 103900 (2006). <http://www.dmv.ca.gov/pubs/vctop/appndxa/hlthsaf/hs103900.htm>. Accessed May 8, 2008.
5. Severe and uncontrollable impairments that must be reported to DMV. Or Admin R sec 735-074-0110 (2008). [http://www.oregon.gov/ODOT/DMV/ATRISK/docs/Severe\\_Uncontrollable.pdf](http://www.oregon.gov/ODOT/DMV/ATRISK/docs/Severe_Uncontrollable.pdf). Accessed May 8, 2008.
6. Reports of persons with cognitive or functional impairment; rules; forms. Or Rev Stat sec 807.710 (2007).

7. Reports of persons with cognitive or functional impairment; rules; forms. Or Rev Stat sec 807.710(2)(a) (2007).
8. Reports by health care personnel. Pa Cons Stat sec 1518(b) (2008).
9. Immunity from civil and criminal liability. Pa Cons Stat sec 1518(f) (2008).
10. *Hospodar v Schick*, 885 A 2d 986, 988 (Pa Super 2005).
11. Report to department of justice by physicians. Mont Code Ann sec 37-2-311 (2007). <http://data.opi.mt.gov/bills/mca/37/2/37-2-311.htm>. Accessed May 8, 2008.
12. Physician's immunity from liability. Mont Code Ann sec 37-2-312 (2007). <http://data.opi.mt.gov/bills/mca/37/2/37-2-312.htm>. Accessed May 8, 2008.
13. *Sikorski v Johnson*, 143 P 3d 161 (Mont 2006).
14. American Medical Association. Opinion 2.24 Impaired drivers and their physicians. *AMA Code of Medical Ethics*. Chicago, IL: American Medical Association; 2006. [http://www.ama-assn.org/apps/pf\\_new/pf\\_online?f\\_n=resultLink&doc=policyfiles/HnE/E-2.24.HTM&s\\_t=Impaired+drivers+and+their+physicians.&catg=AMA/HnE&catg=AMA/BnGnC&catg=AMA/DIR&&nth=1&&st\\_p=0&nth=1&](http://www.ama-assn.org/apps/pf_new/pf_online?f_n=resultLink&doc=policyfiles/HnE/E-2.24.HTM&s_t=Impaired+drivers+and+their+physicians.&catg=AMA/HnE&catg=AMA/BnGnC&catg=AMA/DIR&&nth=1&&st_p=0&nth=1&). Accessed April 28, 2008.
15. See generally, Kane KM. Comment: Driving into the sunset: a proposal for mandatory reporting to the DMV by physicians treating unsafe elderly drivers. *U Haw L Rev*. 2005;25;59-83.
16. *Tarasoff v Regents of the University of California*, 551 P 2d 334 (Ca 1976).

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