

Chapter 7

**Legal and Ethical
Responsibilities of
the Physician**

Please note that this chapter is provided for informational purposes only. It is not intended to constitute legal advice. If legal advice is required, the services of a competent professional should be sought.

Upon further evaluation of Mrs. Allen, you diagnose her with Alzheimer's disease. It is readily apparent that her condition has progressed to the extent that she is no longer safe to drive and that rehabilitation is not likely to improve her driving safety. You tell Mrs. Allen that she must retire from driving for her own safety and the safety of others on the road. You also explain that the state reporting law requires you to report her to the DMV. Initially, Mrs. Allen does not comprehend, but when you specifically tell her that she can no longer drive herself to the grocery store every day, she becomes agitated and screams, "I hate you!" and "I'm going to sue you!" The daughter understands your decision to report Mrs. Allen to the DMV, but is now concerned that she will encounter legal problems if her mother attempts to drive without a license. She asks if it is absolutely necessary for you to report her mother. What do you say?

Driving is a difficult topic to address, particularly when there is the risk of damaging the patient-physician relationship, violating patient confidentiality, and potentially losing patients. To complicate matters, many physicians are uncertain of their legal responsibility, if any, to report unsafe drives to their state Department of Motor Vehicles (DMV).^{1,2} As a result, physicians are often faced with a dilemma:

Should they report the unsafe driver to the state DMV at the expense of breaching confidentiality and potentially damaging the patient-physician relationship, or should they forego reporting and risk being liable for any future patient or third-party injuries?

This chapter will help clarify your legal and ethical responsibilities. In particular, we will discuss the duties of the physician, offer recommendations on how to balance these duties, and provide strategies for putting them into practice. To aid you in navigating legal terminology and concepts, we have assembled a table of definitions (see Figure 7.1). Because reporting laws vary by state, we have compiled a state-by-state reference list of reporting laws, licensing requirements, license renewal information, and DMV contact information. This list can be found in Chapter 8.

The Physician's Legal and Ethical Duties

Current legal and ethical debates highlight duties of the physician that are relevant to the issue of driving. These include:

Protecting the patient

Protecting the patient's physical and mental health is considered the physician's primary responsibility. This includes not only treatment and prevention of illness, but also caring for the patient's safety. With regards to driving, physicians should advise and counsel their patients about medical conditions and possible medication side effects that may impair their ability to drive safely. Case law illustrates that failure to advise the patient about such medical conditions and medication side effects is considered negligent behavior.^{3,5}

'Duty to Protect,' or protecting public safety

In addition to caring for their patients' health, physicians may, in certain circumstances and jurisdictions, have some responsibility for protecting the safety of the public.^{*6,7} With regards to driving, legal precedents demonstrate that in some cases, physicians can be held liable for their patient's car crash and for third-party injuries caused by their patient. Several cases have found physicians liable for third-party injuries because they failed to advise their patients about medication side effects,^{3,4,8,9} medical conditions,^{5,10-12} and medical apparatus¹³ that may impair driving performance.

Maintaining patient confidentiality

Confidentiality is defined as the physician's ethical obligation to keep information about the patient and his/her care unavailable to those—including the patient's family, the patient's attorney, and the government—who do not have the authorization to receive this information.^{14,15} Confidentiality is crucial within the physician-patient relationship because it encourages the free exchange of information, allowing the patient to describe symptoms for diagnosis and treatment.¹⁶ Without confidence in the confidentiality of their care, individuals may be less likely to seek treatment, disclose information for effective treatment, or trust the health care professional.

There are several exceptions to maintaining confidentiality. Information may be released if the patient gives his/her consent. Also, information may be released without patient authorization in order to comply with various reporting statutes (such as child abuse reporting statutes) and court orders.

* It should be noted that the Tarasoff ruling per se, upon which the principles of 'Duty to Warn' and 'Duty to Protect' are based, originally applied only in the state of California and now applies only in certain jurisdictions. The U.S. Supreme Court has not heard a case involving these principles. Many states have adopted statutes to help clarify steps that are considered reasonable when a physician is presented with someone making a threat of harm to a third party.⁶

Figure 7.1 Common Terminology

Mandatory Medical Reporting Laws: In some states, physicians are required to report patients who have specific medical conditions (eg, epilepsy, dementia) to their state Department of Motor Vehicles (DMV). These states generally provide specific guidelines and forms that can be obtained through the DMV.

Physician Reporting Laws: Other states require physicians to report ‘unsafe’ drivers to their state DMV, with varying guidelines for defining ‘unsafe.’ The physician may need to provide (a) the patient’s diagnosis and (b) any evidence of a functional impairment that can affect driving (eg, results of neurological testing) to prove that the patient is an unsafe driver.¹⁹

Physician Liability: Case law illustrates situations in which the physician was held liable for civil damages caused by his/her patient’s car crash when there was a clear failure to report an at-risk driver to the DMV prior to the incident.

Immunity for Reporting: Several states exempt physicians from liability for civil damages brought by the patient if the physician reported the patient to the DMV beforehand.

Anonymity and Legal Protection: Several states offer anonymous reporting and/or legal protection against civil actions for damages caused by reporting in good faith. Many states will maintain the confidentiality of the reporter, unless otherwise required by a court order.

Duty to Protect: Case law in certain jurisdictions demonstrates that physicians have a legal duty to warn the public of danger their patients may cause, especially in the case of identifiable third parties.²⁰ With respect to driving, mandatory reporting laws and physician reporting laws provide physicians with guidance regarding their duty to protect.

Renewal Procedures: License renewal procedures vary by state. Some states have age-based renewal procedures; that is, at a given age, the state may reduce the time interval between license renewal, restrict license renewal by mail, require specific vision, traffic law and sign knowledge testing, and/or require on-road testing. Very few states require a physician’s report for license renewal.¹⁷

Restricted Driver’s License: Some states offer the restricted license as an alternative to revoking a driver’s license. Typical restrictions include prohibiting night driving, restricting driving to a certain radius, requiring adaptive devices, and shortening the renewal interval.

Medical Advisory Boards: Medical Advisory Boards (MAB) generally consist of local physicians who work in conjunction with the DMV to determine whether mental or physical conditions may affect an individual’s ability to drive safely. MABs vary between states in size, role, and level of involvement.

Driver Rehabilitation Programs: These programs, run by driver rehabilitation specialists (DRS), help identify at-risk drivers and improve driver safety through adaptive devices and techniques. Clients typically receive a clinical evaluation, driving evaluation, and—if necessary—vehicle modifications and training. (Driver assessment and rehabilitation are discussed in greater detail in Chapter 5.)

Many physicians are reluctant to report impaired drivers to the DMV for fear of jeopardizing the patient-physician relationship,¹⁷ breaching patient confidentiality, and—more recently—violating the Health Insurance Portability and Accountability Act of 1996 (HIPAA). However, while some courts have previously held the health care system liable for breaching confidentiality,¹⁷ physicians generally enjoy immunity for complying with mandatory reporting statutes in good faith.¹⁴ Some states specifically protect health care professionals from liability for reporting unsafe drivers in good faith. Furthermore, the *HIPAA Standards for Privacy of Individually Identifiable Health Information* (“Privacy Rule”) permit health care providers to disclose protected health information without individual authorization *as required by law*. It also permits health care providers to disclose protected health information to public health authorities authorized by law to collect or receive such information for preventing or controlling disease, injury, or disability.¹⁸

Adhering to State Reporting Laws

Physicians must know and comply with their state’s reporting laws. Because each state has its own reporting laws, we have provided a state-by-state reference list in the following chapter.

Please note that in states where there are no laws authorizing physicians to report patients to the DMV, physicians must have patient consent in order to disclose medical information. In these states, physicians who disclose medical information without patient consent may be held liable for breach of confidentiality. Nonetheless, this should not dissuade physicians from reporting when it is necessary and justified, as reporting may provide protection from liability for future civil damages.

Before consulting the reference list in Chapter 8, you may wish to familiarize yourself with the legal terms and concepts provided in Figure 7.1.

Putting it all together

With these competing legal and ethical duties, how can you fulfill them while legally protecting yourself? In this section, we provide recommendations for achieving this balance.

Counsel your patient.

Patients should be advised of medical conditions, procedures and medications that may impair driving performance. (A reference list of medical conditions and medications that may impair driving performance, with recommendations for each one, can be found in Chapter 9.)

Recommend driving cessation as needed.

As discussed in the previous chapters, you should recommend that a patient retire from driving if you believe that the patient's driving is unsafe and cannot be made safe by any available medical treatment, adaptive device, or adaptive technique. As always, base your clinical judgment on the patient's function rather than age, race, or gender.²¹

Know and comply with your state's reporting laws.

You must know and comply with your state's reporting laws (see the list in the following chapter). If you fail to follow these laws, you may be liable for patient and third-party injuries.

If your state has a mandatory medical reporting law, report the required medical condition(s) using the DMV's official form. If your state has a physician

reporting law, submit your report using the DMV's official form and/or any other reporting guidelines. If the DMV's guidelines do not state what patient information must be reported, provide only the minimum of information required to support your case.

Reduce the impact of breaching patient confidentiality.

In adhering to your state's reporting laws, you may find it necessary to breach your patient's confidentiality. However, you can do several things to reduce the impact of breaching confidentiality on the patient-physician relationship.

Before reporting your patient to the DMV, tell your patient what you are about to do. Explain that it is your legal responsibility to refer him/her to the state DMV, and describe what kind of follow-up he/she can expect from the DMV. Assure your patient that out of respect for his/her privacy, you will disclose only the minimum of information required and hold all other information confidential. Even in states that offer anonymous reporting, it is a good idea to be open with your patients.

When submitting your report, provide only the information required. Consider giving your patient a copy of his/her report. By providing your patients with as much information as possible, you can involve them in the process and give them a greater sense of control.

Before contacting your patient's family members and caregivers, request the patient's permission to speak with these parties. If your patient maintains decision-making capacity and denies permission for you to speak with these parties, you must respect the patient's wishes.

Document thoroughly.

Through documentation, you provide evidence of your efforts to assess and maintain your patient's driving safety. In the event of a patient or third-party crash injury, thorough documentation may protect you against a lawsuit.

To protect yourself legally, you should document your efforts, conversations, recommendations, and any referrals for further testing in the patient's chart.²² In other words, you should document all the steps of PPODS (see Chapter 1) that you have performed, including:

- Any direct observations of functional deficits, red flags, or crash-related injuries that lead you to believe that your patient may be at risk for medically impaired driving.
- Any counseling specific to driving (eg, documenting that the patient is aware of the warning signs of hypoglycemia and its effects on driving performance).
- Formal assessment of your patient's function (eg, documenting that the patient has undergone ADReS and including the ADReS scoring sheet in the chart).
- Any medical interventions and referrals you have made to improve the patient's function and any repeat testing to measure improvement.
- A copy of the driver rehabilitation specialist (DRS) report, if the patient has undergone driver assessment and/or rehabilitation.
- Your recommendation that the patient continue driving or cease driving. If you recommend that the patient cease driving, include a summary of your interventions (eg, 'discussed driving retirement with patient and sent letter to reinforce recommendation,' 'discussed transportation options and gave copy of *Getting By Without Driving*,' 'contacted family members

with patient's permission,' and 'reported patient to DMV with patient's knowledge'). Include copies of any written correspondence in the chart.

- Follow-up for degree of success in utilizing alternative transportation options and any signs of social isolation and depression. Document any further interventions, including referral to a social worker, geriatric care manager, or mental health professional.

Additional legal and ethical concerns

What should you do if you find yourself in a particularly challenging situation? In this section, we offer recommendations for several potential situations:

Situation 1: My patient threatens to sue me if I report him/her to the DMV.

A patient's threat to sue should by no means influence you against complying with your state's reporting laws. If a patient threatens to sue, there are several steps you can take to protect yourself in the event of a lawsuit:

- Know if your state has passed legislation specifically protecting health care professionals against liability for reporting unsafe drivers in good faith. (This information can be found in the following chapter.)
- Even if your state has not passed such legislation, physicians generally run little risk of liability for following mandatory reporting statutes in good faith.¹⁴ Consult your attorney or malpractice insurance carrier to determine your degree of risk.
- Make certain you have clearly documented your reasons for believing that the patient is an unsafe driver.

Be aware that physician-patient privilege does not prevent you from reporting your patient to the DMV. Physician-patient privilege, which is defined as the patient's right to prevent disclosure of any communication between the physician and patient by the physician, does not apply in cases of required reporting.

Situation 2: Should I report an unsafe driver even if my state does not have any reporting laws?

In this situation, the physician's first priority is to ensure that the unsafe driver does not drive. If this can be accomplished without having the patient's license revoked, then there may be no need to report the patient to the DMV.

However, if your patient refuses to stop driving despite your best efforts, then you must consider which is more likely to cause the greatest amount of harm: breaching the patient's confidentiality vs. allowing the patient to potentially injure himself/herself and third parties in a motor vehicle crash. According to AMA Ethical Opinion E-2.24 (listed in full in Chapter 1), "in situations where clear evidence of substantial driving impairment implies a strong threat to patient and public safety, and where the physician's advice to discontinue driving privileges is ignored, it is desirable and ethical to notify the Department of Motor Vehicles." Before reporting your patient, you may address the risk of liability for breaching patient confidentiality by following the steps listed under Situation 1.

Situation 3: My patient has had his/her license suspended by the DMV for unsafe driving, but I am aware that he/she continues to drive.

This patient is clearly violating the law, and several questions are raised: Is the physician responsible for upholding the law at the expense of breaching patient confidentiality? Since the license has been revoked by the DMV, is the driving safety of the patient now in the care of the DMV, the physician, or both?

There are several steps you can take in this situation:

- Ask your patient why he/she continues to drive. Address the specific causes brought up by your patient (see the previous chapter for recommendations). With your patient's permission, the family should be involved in finding solutions.
- Ask your patient if he/she understands that he/she is breaking the law. Reiterate your concerns about the patient's safety, and ask how he/she would feel about causing a crash and potentially being injured or injuring someone else. Discuss the financial and legal consequences of being involved in a crash without a license or auto insurance.
- If your patient is cognitively impaired and lacks insight into this problem, the issue must be discussed with the individual who holds decision-making authority for the patient and with any other caregivers. These parties should understand their responsibility to prevent the patient from driving.
- If your patient continues to drive and your state has a physician reporting law, adhere to the law by reporting your patient as an unsafe driver (even if you have already done so previously, resulting in the revocation of your patient's license). If your state does not have a physician reporting law, base your decision to report as in Situation 2. The DMV, as the agency that grants and revokes the driver's license, will follow up appropriately.

Situation 4: My patient threatens to find a new doctor if I report him/her to the DMV.

This situation, while unfortunate, should not prevent you from adhering to your state's reporting laws. As a physician, it is your responsibility to care for your patients' health and safety, regardless of such threats.

There are several strategies that may help you diffuse this situation:

- Reiterate the process and information used to support your recommendation that the patient retire from driving.
- Reiterate your concern for the safety of your patient, his/her passengers, and those sharing the road.
- Remind your patient that you try to provide the best possible care for his/her health and safety. State that driving safety is as much a part of patient care as encouraging patients to wear a safety belt, keep a smoke detector in the home, floss their teeth, and have regular physical check-ups.
- Encourage your patient to seek a second opinion. The patient may see a driver rehabilitation specialist if he/she has not already done so, or consult another physician.
- If your state DMV follows up on physician reports with driver retesting, inform the patient that just as it is your responsibility to report him/her to the DMV, it is the patient's responsibility to prove his/her driving safety to the DMV. Emphasize that the DMV makes the final decision, and that only the DMV can revoke the license. Remind your patient that you have done everything medically possible to help him/her pass the driver test.
- As always, maintain your professional behavior even if your patient ultimately makes the decision to seek a new physician.

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