

## **APPENDIX 10: AMERICAN MEDICAL ASSOCIATION COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS REPORT ON IMPAIRED DRIVERS**

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### **REPORTS OF COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS**

The following reports, 1-5, were presented by Herbert Rakatansky, MD, Chair:

#### **1. IMPAIRED DRIVERS AND THEIR PHYSICIANS HOUSE ACTION: RECOMMENDATIONS ADOPTED AND REMAINDER OF REPORT FILED**

##### **INTRODUCTION**

At the Interim Meeting in 1996, the House of Delegates referred Resolution 216, questioning the ethical implications of requiring emergency department physicians to report impaired drivers, to the Board of Trustees. At the Interim Meeting in 1997, the House of Delegates adopted Resolution 510, which asked the AMA to study physicians' legal and ethical obligations with respect to reporting physical and mental conditions which may impair a patient's ability to drive.

In this report, the Council briefly addresses state laws for reporting impaired drivers and focuses on the ethical obligations of physicians when faced with patients whose driving is impaired by physical and mental conditions.

##### **BACKGROUND**

Automobile crashes are the third leading cause of death and injury in the United States with 40,000 to 50,000 people killed in about two million accidents per year. Alcohol and speeding are two prevailing factors in motor vehicle crashes but inattentiveness, fatigue, and sleepiness are also primary contributing factors. All of these factors can arise from a variety of recognized medical conditions.

Physicians are in a unique position to anticipate the impact of physical and mental conditions on driving impairment. This position of knowledge also carries implications for intervention that pose ethical challenges to the physician. Motivated by a respect for the individual and a desire to promote patient autonomy, physicians traditionally have allowed the patient to make the ultimate decision whether to continue driving. The decision not to interfere with the patient's decision to drive also may derive from a physician's commitment to a patient's well-being. The privilege of driving is a source of freedom and empowerment for many individuals. Removing this privilege has its risks. The loss of the ability to be independently mobile can be a devastating psychological blow for an elderly patient. It also may restrict a patient's access to needed medical and social services or to employment venues.

##### **STATE REPORTING LAWS**

Virtually all states have established policies for identifying drivers with physical or mental impairments. Mandatory reporting laws for intoxicated drivers are not uncommon. A few states have mandatory reporting laws with respect to a specific set of disorders (e.g. Delaware, New Jersey, and Nevada require reporting for epilepsy; California, for dementia). The majority of states provide merely an opportunity for physicians to report on a permissive basis.

Although mandatory reporting laws leave physicians with little discretion, permissive reporting laws may leave physicians with little guidance and more vulnerable to legal liability. On the one hand, if the physician does report a medical impairment to driving authorities, the patient may be concerned about the breach of confidentiality. On the other hand, if the physician fails to report a medical impairment, the victim of the patient's reckless driving or the victim's family may hold the physician responsible for failure to report.

The purpose of this report is not to debate the advantages and disadvantages of mandatory versus permissive reporting laws. Whether permissive or mandatory, statutes should uphold the best interests of patients and

community, and should safeguard physicians from liability when reporting in good faith. Physicians should work with their state medical societies to create appropriate protections.

## ISSUES OF CONFIDENTIALITY

The obligation to protect a patient's confidentiality places the physician in a particularly difficult situation when considering whether to report driving impairments. Confidentiality is a cornerstone of the patient-physician relationship. It allows people to discuss sensitive issues openly with their physicians, thus enabling the physicians to provide appropriate medical care.

Confidentiality protections, however, are not absolute and exceptions do exist. Opinion 5.05, "Confidentiality," of the Council on Ethical and Judicial Affairs states: "The obligation to safeguard patient confidences is subject to certain exceptions which are ethically and legally justified because of overriding social considerations." Physicians are custodians of the public trust and have a duty to warn society about certain public health hazards. For example, physicians have a legal duty in some situations to warn identifiable third parties who are the subjects of serious threats of harm. In addition, physicians are commonly required by statute or ordinance to report cases of communicable diseases, or gunshot and knife wounds. These general exceptions identify the limits of confidentiality and provide a basis for deriving additional duties on the part of physicians to protect the public.

## THE PHYSICIAN'S ROLE WITH RESPECT TO DRIVING IMPAIRMENTS

Physicians have an ethical responsibility to assess patients' physical or mental impairments that might adversely affect driving abilities. Each case must be evaluated separately since not all impairments may give rise to an obligation on the part of the physician. There are factors the physician must consider. First, the physician must be able to identify and document physical or mental impairments that clearly relate to the ability to drive. Second, the driver must pose a clear risk to public safety. While these guidelines may assist physicians in determining which patients raise serious concerns, they may not apply to all physicians and the circumstances under which they work. For instance, physicians who only treat patients on a short-term basis (*i.e.*, emergency physicians, trauma or related surgical subspecialty physicians) may not be in a position to evaluate either the extent or the effect of the impairment. Physicians ultimately must use their best judgement when determining when to report. Since there may be few clear-cut standards or valid measures to assess driving competency at the physician's immediate disposal, the determination of the inability to drive safely should be made by the state's Department of Motor Vehicles.

Before reporting is appropriate, however, there are a number of alternatives the physician might pursue. A tactful but candid discussion with the patient and family about the risks of driving is of primary importance. In addition, depending on the patient's medical condition, a physician may suggest to the patient that he or she seek further treatment, such as substance abuse treatment or occupational therapy. Physicians may also encourage the patient and the family to decide on a restricted driving schedule, such as shorter and fewer trips, driving during non-rush-hour traffic, daytime driving, and/or driving on slower roadways if these mechanisms would alleviate the danger posed. Efforts made by physicians to inform patients and their families, advise them of their options, and negotiate a workable plan may render reporting unnecessary.

There may be situations, however, 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 is ignored. In these unusual cases, it is desirable and ethical for physicians to notify the Department of Motor Vehicles about the medical conditions that may impair safe driving to enable the Department of Motor Vehicles to determine whether or not the patient can continue to drive. Physicians should disclose to the patient this responsibility to report and ensure that he or she understands. In fulfilling this duty, physicians should protect patient confidentiality by ensuring that only the minimal amount of pertinent information is released and that it is secured through proper channels. This reporting is for the protection of the patient and the community. This report does not address the issues of reporting medical information for the purpose of punishment or criminal prosecution.

## CONCLUSION

The problem of impaired drivers illustrates the fundamental conflict between the responsibility physicians have to society and their responsibility to individual patients. Upholding the ethical obligation to protect the public may, in part, entail reporting patients who suffer from impairments that could limit their ability to drive safely. Furthermore,

the patient who suffers from a driving-related impairment and continues to operate an automobile is a danger to himself or herself. By reporting such patients, the physician is protecting not only the public, but also the patient.

## RECOMMENDATIONS

The Council on Ethical and Judicial Affairs recommends that the following statements be adopted and that the remainder of this report be filed:

The purpose of this report is to articulate physicians' 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. It does not address the reporting of medical information for the purpose of punishment or criminal prosecution.

1. Physicians should assess patients' physical or mental impairments that might adversely affect driving abilities. Each case must be evaluated individually since not all impairments may give rise to an obligation on the part of the physician. Nor may all physicians be in a position to evaluate the extent or the effect of an impairment (*e.g.*, physicians who treat patients on a short-term basis). In making evaluations, physicians should consider the following factors:
  - a) the physician must be able to identify and document physical or mental impairments that clearly relate to the ability to drive;
  - b) the driver must pose a clear risk to public safety.
2. Before reporting, there are a number of initial steps physicians should take. A tactful but candid discussion with the patient and family about the risks of driving is of primary importance. Depending on the patient's medical condition, the physician may suggest to the patient that he or she seek further treatment, such as substance abuse treatment or occupational therapy. Physicians also may encourage the patient and the family to decide on a restricted driving schedule, such as shorter and fewer trips, driving during non-rush-hour traffic, daytime driving, and/or driving on slower roadways if these mechanisms would alleviate the danger posed. Efforts made by physicians to inform patients and their families, advise them of their options, and negotiate a workable plan may render reporting unnecessary.
3. Physicians should use their best judgement when determining when to report impairments that could limit a patient's ability to drive safely. 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.
4. The physician's role is to report medical conditions that would impair safe driving as dictated by his or her state's mandatory reporting laws and standards of medical practice. The determination of the inability to drive safely should be made by the state's Department of Motor Vehicles.
5. Physicians should disclose and explain to their patients this responsibility to report.
6. Physicians should protect patient confidentiality by ensuring that only the minimal amount of information is reported and that reasonable security measures are used in handling that information.
7. Physicians should 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.

