

Dealing with Patients Who Have Compromised Driving Ability

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An article on this topic originally appeared in the Fall 2005 issue of Dateline. The following article reflects changes in the law that have taken place since that publication

One of the most difficult decisions an individual faces is whether and when to surrender his/her driver's license and stop driving. The loss of independence that results may be so difficult to accept that an individual may refuse to do so voluntarily. Although a person may have a safe driving history, the development of some physical and mental conditions may preclude his/her safe operation of a motor vehicle. The decision to discontinue driving is a dilemma that is not unique to older drivers. Younger patients may have or develop seizure disorders, visual difficulties, hearing problems, or other mental or physical conditions that affect the neuromuscular system and alter depth perception and reflexes. As a result, physicians are often in a quandary regarding the extent to which they are obliged to report to the New York State Department of Motor Vehicles (DMV) when they believe a patient should not be operating a motor vehicle.

The DMV may suspend or revoke a driver's license if there are reasonable grounds to believe that a licensed driver is not qualified to drive a motor vehicle.¹ However, it is the responsibility of the person holding the license to report the loss of use of one or both hands or arms, one or both feet or legs, or one eye.² If the patient loses the use of both eyes, his/ her New York State driver's license shall be null and void.³ Finally, State law provides that whenever a driver is required to give the Commissioner of Motor Vehicles notice of a disability, "no person shall operate any motor vehicle until such notice has been given."⁴

When the DMV receives notice of a potentially unsafe driver, it can require the driver to undergo an evaluation, a vision, written, or road retest, or a medical examination. Age alone, however, must not be the determining factor when the DMV takes action against a licensee.⁵ The Commissioner may not revoke or suspend a driver's license in an arbitrary or capricious manner.⁶ There must be a reasonable basis for doing so.

Physicians are often aware that patients rarely comply with the requirement to report a disabling condition. The DMV receives information about the skills and abilities of drivers from

¹ Vehicle and Traffic Law § 506 (1).

² Vehicle and Traffic Law § 506 (4).

³ Vehicle and Traffic Law § 506 (5).

⁴ Vehicle and Traffic Law § 509 (9).

⁵ Feely v. Hulst, 27 A.D. 2d 953 (2d Dep't, 1967).

⁶ Application of Sidney, 24 Misc. 2d 335 (1960), aff'd, 13 A.D. 2d 613 (4th Dep't, 1961).

a variety of sources. These include responses to medical questions posed on the renewal application, accident reports (including statements provided to the police as part of a police report or investigation), and letters from family members or other third parties. While many physicians believe they have a duty to notify the State when they identify a potentially unsafe driver, the law does not support their position. In fact, the physician has no legal obligation to report to the DMV that a patient has a medical condition that might reasonably impair his/her ability to drive, e.g. uncontrolled seizures, blindness or other severe visual impairment, dementia or an injury to one or more limbs that affects his/her driving ability, judgment, or reflexes. Further, the physician cannot report any protected health information (PHI) to the DMV without first obtaining the patient's consent. The DMV, on its website,⁷ advises that a physician is not required to report a medical condition, but, in the interest of the health and safety of all highway users, the physician should do so promptly. This statement conflicts with both HIPAA and New York State patient confidentiality laws, which require patient consent, and thus adds to the confusion.

In order to avoid violating state and federal confidentiality laws, physicians must understand the distinction between mandatory reporting and permissive reporting made without patient consent. HIPAA regulations permit health care providers to divulge a patient's protected health information (PHI) without a patient's authorization only if such disclosure is required by law. However, disclosure of PHI without the patient's written authorization (unless required by law) may lead to allegations of professional misconduct.⁸ State law also protects the confidentiality of any personal information a patient provides to an individual who is licensed to practice medicine, a registered nurse, a licensed practical nurse, a dentist or a chiropractor.⁹ There is no legal requirement under New York law for a physician to report any medical condition to the DMV, even in the event of blindness or uncontrolled seizures. Therefore, physicians should obtain the patient's written authorization prior to releasing any information to the DMV, including completing medical evaluation reports for license renewal forms.

If the patient has not notified the DMV of a new medical condition, the physician should make a very serious attempt not only to obtain the patient's consent to notify the DMV, but also to dissuade the patient from driving. For reasons more fully explained below, this discussion must be documented to protect the physician from liability to third parties. If the patient authorizes the physician to discuss his/her concerns with family members, such as by filling out a HIPAA form, or if a family member is present during the discussion with the patient, the physician should inform the family member of the patient's duty to report the condition to the DMV. Further, the physician must warn both the patient and any family present of the consequences to the patient and others if the patient continues to refuse to stop driving. All efforts to convince the patient or family members must be fully documented in the patient's medical record. If the patient permits the physician to send a medical evaluation form to the DMV, the DMV may notify the driver that his/her license has been indefinitely suspended. The suspension will then continue until the physician has certified in writing that the patient's condition no longer interferes with his/her ability to drive. Physicians must be cautious not to succumb to the pressure of patients and families to certify that the patient is able to drive when the physician does not believe this to be true.

⁷ <http://dmv.ny.gov/driver-license/frequentlyasked-questions-medical-conditions>, accessed on 12/28/2015.

⁸ Education Law § 6530 (23).

⁹ CPLR § 4504 (a).

The DMV may also require a driver to undergo both vision and road tests if there are reasonable grounds to believe, that such retesting is necessary. For example, in one case, an individual who struck a flag person in a construction area had his license revoked. His physician was asked to submit a medical report to the DMV, and consent was obtained from the patient. The report confirmed that the patient had performed poorly on an eye test and that his condition would likely interfere with his ability to drive. As a result of this evaluation, the DMV ordered the patient to take a road test, which he then failed. This resulted in the revocation of his license. Upon appeal, the court found there was a reasonable basis for the action taken by the DMV.¹⁰

Physician's Duty When Driver has Experienced Loss of Consciousness or Seizures

All applicants, upon an original application for or renewal of a driver's license, must submit proof of fitness.¹¹ The Commissioner of Motor Vehicles may suspend or revoke a driver's license at any time because of a driver's physical or mental disability. If the DMV is advised, either by a police report or by the applicant's own admission on his/her application, that the applicant has lost consciousness, a physician's written statement is required stating that the patient has:

- not lost consciousness during the last 12 months.
- experienced a loss of consciousness that was solely related to a change in medication.
- experienced a loss of consciousness within the last 12 months, but the physician believes that the condition will not interfere with safe operation of a vehicle.¹²

The patient will not be granted a new license, or have a license restored, without the physician's statement. Once again, it should be emphasized that unless the patient consents, the physician has no independent duty to report this information to DMV, and it could result in a violation of confidentiality laws to make such a report.

Patients with Visual Acuity Problems which Affect Driving

When a patient requests that the physician administer a vision test for renewal of a driver's license, and the patient is unable to meet the visual standards set forth by the DMV, the physician must refuse to confirm that the patient has appropriate visual acuity as required by the DMV for such renewals. Applicants undergoing a visual acuity test must meet one of three standards. The DMV also requires that the examination be performed by certain licensed professionals including a physician, PA, ophthalmologist, optician, registered nurse or nurse professional.¹³ The professional who administers the visual examination must specify whether the patient has any limitations and whether the patient's visual acuity has deteriorated.

¹⁰ Yanulavich v. Appeals Bd. of Admin. Adjudication, Bureau of the N.Y. State Dep't of Motor Vehicles, et. al., 2 A.D. 3d 955 (3d Dep't, 2003).

¹¹ Vehicle and Traffic Law § 502 (1), 15 N.Y.C.R.R. § 9.1.

¹² 15 N.Y.C.R.R. § 9.3.

¹³ <http://dmv.ny.gov/driver-license/visionrequirements-restrictions> Accessed 1/14/16.

When a patient's vision has deteriorated to the point where he/she is legally blind, i.e. a central visual acuity of 20/200 or less in the better eye with the use of a corrective lens, or a visual field of 20 degrees or less, the physician must report this to the New York State Commission for the Blind and Visually Handicapped.¹⁴ This is the only mandatory reporting obligation on the part of physicians. Note that the report is not made to the DMV, nor does this obligation permit a report to the DMV. The written report to the Commission must include the patient's name, address, and age, as well as any additional information required by the Commission.¹⁵ The Commission for the Blind and Visually Handicapped has seven district offices located throughout New York State. When a vision test reveals that an individual is certified as legally blind, the DMV may deny his/her original or renewal application for a driver's license and suspend the individual's license or learner's permit.

Liability to the General Public

It is not uncommon for a physician to know that the patient should not be driving a motor vehicle, but the patient refuses to stop. The family may resist asking the patient to stop, or refuse to make a report to the DMV because of the convenience of having the patient continue to drive. Driving has very deep emotional significance. When patients consider this loss of independence, particularly in rural and suburban areas where there is no readily available public transportation, they often refuse to stop driving, despite the known risks.

Physicians have long been concerned about their liability to the general public for accidents which seriously injure the patient or an innocent third party. This concern is realistic, given the 2015 Court of Appeals decision in *Davis v. South Nassau Communities Hospital*. In *Davis*, a patient was treated for pain in the Emergency Department of a hospital. She received intravenous Dilaudid, an opioid narcotic painkiller, and Ativan, a medication used to treat anxiety. Despite the fact that the package insert for Dilaudid includes a warning that the drug might impair a patient's mental or physical ability to perform hazardous tasks such as driving, the providers failed to warn the patient of these adverse effects. The patient was discharged from the hospital 1½ hours after the medications were administered. Shortly after the patient was discharged, she was involved in a motor vehicle accident with a bus. The bus driver sued the hospital and emergency medicine physician group. The Court of Appeals held that the providers had a duty to the plaintiffs to warn the patient that the drugs she received would impair her ability to operate an automobile.¹⁶ The Court emphasized that the physician's duty was to warn the patient, but there was no obligation to restrain the patient or prevent the patient from leaving the hospital.¹⁷

Although it is not yet clear whether the holding in this decision will be expanded, the lesson to be learned from the *Davis* case is that it is prudent for the physician to fully inform and warn a patient of the risk of medical conditions which can impair the patient's ability to drive a car or heavy machinery, and to fully document those warnings in the patient's medical record. If the patient is properly warned, and this warning is well documented, it is less likely that a physician will be held liable for the patient's actions.

¹⁴ Unconsolidated Laws § 8704 (b).

¹⁵ Unconsolidated Laws § 8704 (a).

¹⁶ *Davis v. S. Nassau Communities Hosp.*, 2015 N.Y. Lexis 3897 at *3 -4.

¹⁷ *Id* at * 23 - 24.

Risk Management Tips

As noted above, it is critical to document in the patient's medical record that you advised the patient of his/her condition and how it impacts driving ability, including the risks of continuing to drive and the basis for those risks. If relevant, and you have consent to do so, also advise the patient's family that the patient should not be driving, due to the impact of the patient's medical condition and/or medications which impacts the ability to drive safely. Documentation must include the following information:

- How the patient's medical condition(s) and/or medications preclude the safe operation of a motor vehicle.
- All attempts made to warn the patient and, with appropriate consent, the family that the patient should discontinue driving or not drive because of the side effects of the medication or condition.
- All forms completed on behalf of the patient and sent to the DMV (after receiving the patient's written authorization).
- Copies of the patient's written authorization to release information.
- All attempts to obtain consent from the patient or his/her legal representative to release information about the driver's medical condition to the DMV.
- Copies of reports sent to the Commission for the Blind and Visually Handicapped, if applicable.
- Copies of records of any telephone calls with the patient and/or family regarding the patient's medical condition and medication and his/her inability to safely drive.

In conclusion, while physicians may have serious concerns about their duties to patients who are impaired or disabled in a manner which would impede safe driving, due care must be taken to avoid breaching the patient's confidentiality. Only when a report is mandatory or when a patient has given consent in writing to permit the physician to notify the DMV should such a report be made. However, all efforts must be made to warn the patient and, if applicable, the family. These warnings must be clearly documented to avoid liability to the general public.

If you have any questions, please contact counsel at Fager Amsler & Keller, LLP to discuss the particular facts of each situation.

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