



Reporting patients with medical conditions affecting their fitness to drive

An article for physicians by physicians
Originally published December 2010, revised February 2011

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ABSTRACT

An overview of medico-legal problems resulting from physicians' decisions on whether or not to report patients with medical conditions that may make it dangerous to drive, or from physicians' decisions on whether or not to support the reinstatement of a licence to drive.

Many Canadians depend on being able to drive. Although many people consider driving to be a right, the law states that it is a privilege (*Highway Traffic Act* of Ontario, Part IV, section 31; similar provisions exist in other provinces). Losing this privilege, even when the loss is justified, can result in severe emotional stress and financial consequences. On the other hand, an unfit driver may endanger his or her life and the lives of others. For this reason, all provinces and territories have legislation for reporting patients who are unfit to drive.

In some jurisdictions, the legislation requires physicians to report any patient who, in their opinion, has a medical condition that may make it dangerous to drive. In other jurisdictions, reporting is at the physician's discretion—that is, physicians are permitted, but not required, to report.

Although a patient may wish to continue driving, the physician making a report must consider the safety of the patient and the community. The decision whether or not to restrict driving privileges is made by the provincial or territorial licensing authority.

Physicians may be uncertain about what conditions should be reported, or when a patient's cognitive or motor functional assessment justifies a report. It may be

helpful to consult the *Determining Medical Fitness to Operate Motor Vehicles: CMA Driver's Guide* (available at www.cma.ca), guidelines and consensus statements from specialty societies, and specialists in the involved clinical area. To operate some particular vehicles, drivers must meet special physical and mental requirements which may demand certain assessments and testing.

Each licensing authority provides a form for the purpose of reporting. When a report is not necessary but the patient has been cautioned not to drive, even for a short duration, it would be prudent to document this in the medical record.

MEDICO-LEGAL PROBLEMS

The CMPA reviewed its experience in assisting members with fitness to drive matters for the years 2005–2009. In the 67 closed medico-legal cases reviewed, approximately half were legal actions or threats of legal action and the other half were complaints to regulatory authorities (Colleges). In both categories, decisions in favour of the physician predominated. Less than five per cent were complaints to a hospital or privacy commissioner.

The review of the CMPA cases revealed three principal themes:

1. Allegations in legal actions that a physician failed to report a patient as unfit to drive because of a medical condition.
2. Complaints that a report had been made to a provincial or territorial licensing authority.
3. Complaints related to the refusal to support an application for restoration of driving privileges.

Reporting patients who work in aviation and railway services

Physicians are also required by law to report individuals with a medical condition who work in aviation or with a railway and are in a position critical to safety. For information on this reporting, please see the *Determining Medical Fitness to Operate Motor Vehicles: CMA Driver's Guide* at www.cma.ca.

CMPA members are encouraged to contact the CMPA about specific medico-legal concerns at 1 800 267-6522.

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FAILURE TO REPORT

Allegations of failure to warn and/or report generally followed motor vehicle accidents in which a person was injured or killed. In some cases the injured person or their family sued not only the driver but also the driver's physician. In some suits, they alleged the physician failed to advise the patient-driver not to drive, and/or failed to make a report to the licensing authority, when one or both of these actions was indicated. If they sued only the patient-driver, some patients (or their insurer) in turn sued the physician, alleging that if a report had been made as indicated, they would have been prevented from driving.

The majority of legal actions involving CMPA members relate to patients with the diagnoses of seizure disorder or epilepsy, other neurological disorders or vision problems.

Several lessons can be learned from the legal actions:

- Before making the report, talk with the patient about the nature and intent of the report to the authorities. Point out that a physician only reports the information. Any decision to restrict driving privileges is made by the licensing authority.
- As it takes time for the licensing authority to consider physicians' reports and decide on a course of action, patients who are considered medically unfit to drive should be warned not to do so until the authority has made and communicated a final decision.
- You should document in the medical record that you have warned the patient not to drive and are making a report to the licensing authority. It is also useful to note if the patient has been informed that the

process may take time and his or her response to the information.

- In situations where more than one physician is treating a patient, it is possible for each to assume that one of the others has made a report, when in fact no report has been made. The legislation therefore requires each treating physician to independently comply with the relevant reporting obligation.

The legislation on reporting provides protection for the physician against a legal action when the report is made in accordance with the legislation and in good faith, but does not prevent the patient from making a College complaint.

COMPLAINTS THAT A REPORT HAS BEEN MADE

In the CMPA cases reviewed, the majority of patients who believed a report should not have been made to the licensing authority filed a complaint with a College. The patient often challenged the accuracy of the diagnosis or its relevance to driving, or claimed that the act of reporting was a breach of confidentiality.

The medical conditions most often associated with these complaints are seizure disorders, drug and alcohol dependency, and psychiatric conditions.

In the majority of cases the Colleges have been supportive of the physician's decision to report.

COMPLAINTS ABOUT A REFUSAL TO ASSIST IN REINSTATEMENT

In the reviewed cases, some patients who had their licence suspended sought the assistance of their physician to have it reinstated. If the physician does not support the application, a complaint to the College might follow.

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Usually the patient claims full recovery or denies the condition has any effect on driving ability, whereas the physician is not satisfied that the patient has adequately recovered from their medical condition or that the condition is sufficiently controlled to permit the safe operation of a motor vehicle.

Common medical conditions involved in these cases include alcohol or drug abuse, recent cardiac problems, diabetes, seizure disorders and vision problems.

In such cases, careful consideration should be given to evaluating whether there has been significant change in the clinical condition that led to the original report and the restriction on the driver's licence, and whether any improvements alleviate the previous concerns. It is wise to document this consideration in the record and explain to the patient any reasons for declining the support.

THE PHYSICIANS' ROLE IN REPORTING

Physicians have an important role in reporting concerns about a patient's fitness to drive to the provincial or territorial licensing authorities. Physicians must consider both the safety of the patient and the welfare of the community. Clinical guidelines are available to help in these sometimes difficult decisions. Communicating to the patient the necessity and rationale for the completion of a report may help reduce conflict. CMPA members are encouraged to call the Association for advice if they have any medico-legal concerns.

RISK MANAGEMENT CONSIDERATIONS

- Have you considered the Canadian Medical Association or other medical organizations' recommendations on medical conditions

that may pose a danger when operating a motor vehicle? If you are uncertain about the law, call the CMPA for assistance.

- Have you consulted with colleagues or obtained functional assessments, if appropriate?
- Have you warned the patient not to drive, if appropriate?
- Have you familiarized yourself and complied with the relevant legislation in your jurisdiction?
- Where legislation makes reporting discretionary, have you considered whether the patient's condition or actions justifies a report?
- Have you informed the patient of your intention and/or obligation to report? Have you reminded him or her that any decision to restrict or revoke the licence rests with the provincial or territorial licensing authority? Have you cautioned the patient not to drive until the licensing authority has made a determination?
- Have you limited the information in the report to what is required by the legislation?
- Have you adequately documented your assessment, discussion, warning and advice to the patient regarding driving, and whether or not you have made a report?
- Before supporting an application for reinstatement, have you performed the appropriate clinical assessments and documented these?
- When in doubt seek advice from appropriate sources and carefully consider the risk posed to the public if the patient continues to drive.

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When the loss of independence can save a life!

An article for physicians by physicians
Originally published March 2007

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ABSTRACT

Legal and societal obligations to report drivers who may be unfit to drive.

OF INTEREST TO ALL PHYSICIANS

The CMPA recently received two investigation reports from a Québec coroner recommending it “raise physicians’ awareness of the human and legal risks of not reporting patients who are unfit to drive a motor vehicle.” The following article is in response to the coroner’s reports.

The CMPA generally advises that physicians may have an obligation to report to the motor vehicle licensing authorities their patients, regardless of age, who have a medical condition that may render them unfit to drive. An authoritative source to help physicians make this determination is the Canadian Medical Association (CMA) guide *Determining Medical Fitness to Operate Motor Vehicles, 7th edition*. Copies are now available from the CMA Member Service Centre, 1 888 855-2555 or cmamsc@cma.ca. The guide is also available on the CMA website at www.cma.ca/drivers2007.

CASE 1

The first report received from the Québec coroner concerns the patient, an 81-year-old driver; his wife, aged 85 years; and the female driver of another vehicle involved in the accident.

The facts:

This patient suffered from bouts of confusion and a cardiac rhythm disorder. Following the installation of a pacemaker, the general practitioner recommended the patient’s family prevent him from driving his car until his condition could be evaluated by a cardiologist during a consultation booked five weeks later. Management of the senior citizens home where the couple lived was informed of the driving restriction and kept in

its possession the keys to the patient’s car. No report on the patient’s medical condition was sent to the appropriate authorities.

Two weeks later, as the patient was displaying much aggression at the fact his car keys had been taken from him, a staff member of the home gave him the keys. The family, having been informed of the situation, took no steps to recover the keys or prevent their father from driving his car.

Two weeks before the consultation with the cardiologist, the patient decided to bring his wife for a drive. In a moment of confusion, the patient crossed into the opposite lane. He did not react when the first drivers he met tried to alert him of his mistake. One of the vehicles, however, was unable to avoid him, resulting in a violent head-on collision. The patient’s wife died in the hours following the accident. The driver of the other vehicle was also injured. Suffering from retrograde amnesia, the patient did not remember the accident.

CASE 2

The second investigation report concerns a 73-year-old driver, who was to have a cataract removed from his right eye.

The facts:

Five weeks before the surgery to his right eye, the patient offered to drive a tenant of the senior citizens home from where he lived to the corner store. On the way back, the patient, wishing to make a left turn to enter the parking lot, cut off a vehicle coming in the opposite direction. The collision was unavoidable. The patient’s passenger died from his wounds and the three passengers in the oncoming vehicle were injured.

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During the police investigation, the patient admitted he had blurred vision in his right eye. While he had estimated the distance between his car and the oncoming vehicle to be 70 meters, eyewitnesses estimated it to be approximately 10 meters. No physician involved in this patient's care reported his condition to the appropriate authorities.

PHYSICIANS' LEGAL DUTY TO REPORT

In the majority of Canadian jurisdictions, physicians have a legal duty to report to the motor vehicle licensing authorities any patients who have a medical condition that may render them unfit to drive a motor vehicle. In Alberta, Nova Scotia and Québec, legislation gives physicians discretionary power as to whether or not to report a patient's medical condition. In all jurisdictions including Québec, legislation protects physicians who fulfill this obligation or who choose to report a patient's medical condition. This legal protection states that an action for damages cannot be brought against the physician for making such a report in good faith.

There is no equivalent legal protection, however, when the physician ignores or chooses not to report a patient's medical condition that may render the patient unfit to drive. In these situations, the physician exposes himself to a legal action alleging the accident would not have occurred if such a report had been made.

CMPA FITNESS-TO-DRIVE CASES

While the two reported cases involve senior citizens, the CMPA's experience shows patient drivers of all ages may be involved.

Between 2001 and 2005, the CMPA opened 39 medico-legal cases related to patients' fitness to drive. Almost half involved either a legal action or a threat of a legal action that included an allegation of failure to report a patient's medical condition that may render the patient unfit to drive.

The other half of the cases involved complaints to the regulatory authorities (Colleges). There were three principal kinds of complaints. The first is the failure to report a patient's medical condition to the appropriate authorities. The second is complaints from patients that a report has been made. The third is related to dissatisfaction that the physician would not agree to write to the authorities in support of the licence being reinstated.

Reporting a patient's medical condition is always a difficult step for both the physician and the patient, given how much patients rely on this means of transportation daily. The loss of a driver's licence is perceived by all to be a loss of independence.

However, as physicians it is important to remember that by failing to or choosing not to report a patient's medical condition, we risk depriving our patients of not only their independence, but also their lives, the lives of their loved ones and the lives of fellow citizens.

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