

Unfit or Impaired Drivers ... To Report or Not Report?

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The issue of whether to report a patient who is determined to be unsafe behind the wheel is challenging and complex. Consider the following scenario:

Frank Long was 70 years old, took no prescription medications and was in excellent health when he made an appointment to see his internist, Marie Jacobson, M.D. It was rare for Frank to make an appointment with his physician between regular yearly check-ups, so Dr. Jacobson knew something was wrong when she saw him on the schedule.

Frank arrived for the appointment accompanied by his wife, Norma Long. When asked what brought him to the office, Norma explained that a week earlier, her husband had been driving her to the grocery store when she noticed the car slowing down and drifting to the right. She said she called his name repeatedly, but he was staring straight ahead like he was in a trance and didn't respond. When the car bumped into a curb, he "woke up." Norma wanted to drive home, but Frank said he was fine and drove the rest of the way without incident.

Norma then insisted that Frank see Dr. Jacobson. Norma also stated that she had observed this behavior at least once



before when Frank wasn't driving. Frank responded that he was probably just "ignoring" Norma.

Upon questioning, Frank admitted that he remembered nothing about what happened before the car hit the curb. He said he had no other symptoms and otherwise felt fine.

Dr. Jacobson performed a complete physical exam and everything was within normal limits, as usual. However, she wanted to order some tests and a neurological consult to make sure everything was all right.

Frank argued that he didn't need any tests or consults—he only made the appointment at his wife's insistence and didn't believe he needed any medical intervention.

Dr. Jacobson advised Frank that his

blackout could have been indicative of a more serious problem. She said she wouldn't order a test unless she felt it was necessary to direct her subsequent treatment. She went on to say: "Technically, I should report this to the DMV¹ as a possible seizure disorder and have them pull your driver's license, at least temporarily, until we determine what is going on." (The state in which Frank resided and Dr. Jacobson practiced mandated reporting to the state's department of motor vehicles when a condition, disorder or disability could impair the safe operation of a motor vehicle.)

Shocked into attention by the possible loss of his license, Frank agreed to the neurologic consult and to have the tests conducted—as long as Dr. Jacobson

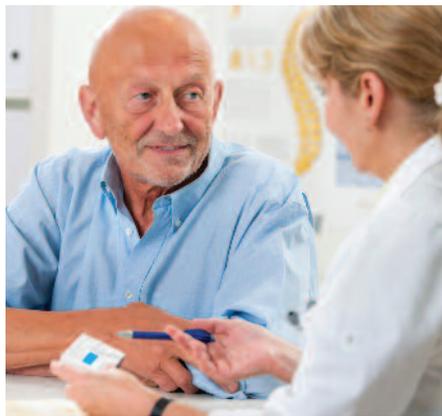
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A physician's decision to report a patient for the compromised ability to drive safely is a complex one.

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agreed not to report him as an unsafe driver. He promised to limit his driving to only absolutely necessary short trips around town until Dr. Jacobson had the results of his tests and a definitive diagnosis.

After much back and forth, Frank wore Dr. Jacobson down, and she complied with his request. She cautioned him to restrict his driving to as little as possible and to be sure Norma accompanied him in the car any time he drove. Dr. Jacobson thoroughly documented her findings, as well as this discussion with the patient.



Two weeks later, Frank was involved in a serious motor vehicle accident while driving alone. Witnesses reported that he failed to stop at a red light and drove straight into a busy intersection. His car hit another vehicle, which was spun around 180 degrees and was hit head on by the car that was following it. Frank sustained moderate injuries and was taken to the hospital by ambulance. A front-seat passenger in another vehicle was seriously injured, had to be mechanically extricated from the vehicle,

and was airlifted to the nearby trauma center. Frank recovered from his injuries, but the passenger in the other car was left unable to walk and requiring skilled nursing care for the remainder of her life.

Eyewitnesses reported that Frank never applied the brakes at the red light. Statements taken from pedestrians waiting at the crosswalk all described the driver who ran the red light (Frank) as staring wide eyed and straight ahead with both of his hands on the steering wheel with arms stiffly and fully extended. This posture was supported by the upper extremity and shoulder injuries Frank sustained.

In the investigation by the claims departments of the auto insurers, Dr. Jacobson's records were subpoenaed. The documentation of Frank's last visit proved extremely damaging to Dr. Jacobson. The attorneys for the people in the cars Frank hit brought third-party actions against her. These lawsuits alleged that Dr. Jacobson failed to report Frank to the state's department of motor vehicles and that she failed to restrict his driving until the etiology of his symptoms was determined. This failure resulted in an accident, as well as injuries and permanent disability to the plaintiff.

When Frank and Norma Long were deposed, both admitted that Frank never stopped or even limited his driving, despite Dr. Jacobson's recommendation and Frank's agreement to do so. The cases were settled on behalf of Dr. Jacobson by her professional liability insurance carrier. Frank's driver's license was permanently suspended by the DMV.

In addition, Dr. Jacobson was reported

to and sanctioned by her state medical board for violating the mandatory reporting requirement for patients who were deemed unfit or unable to operate a motor vehicle safely. Her medical license was suspended for six months.

Discussion

Motor vehicle accidents are one of the top five leading causes of death in this country. Not all accidents are directly related to the compromised ability of the driver, but it is a significant cause of these accidents.

Each state has its own licensing regulations for drivers of personal motor vehicles—there is no commonality about whether a physician must report a patient who is a potential risk to himself or herself and/or others. Although only a few states mandate physician reporting under certain circumstances, most states “encourage” reporting of unsafe or impaired drivers by anyone, whether it be by a healthcare professional, family member, friend, neighbor, or casual observer.

One issue specifically affecting physicians is whether the state offers immunity from civil liability to physicians who do report at-risk patients. Twenty five of the states with voluntary reporting do; 18 do not.² This is especially significant in light of the physician's fiduciary responsibility to protect patient confidentiality, particularly with the added legal responsibility under HIPAA.

Even when a state offers immunity, patients or family members may sue physicians for breaching confidentiality. However, if a physician has carefully documented the assessment of the

patient and his or her rationale resulted in good faith reporting, the courts will be likely to side with the physician.

Also, a physician's decision to report a patient to the state's transportation department or department of motor vehicles for the compromised ability to drive safely is significant to all involved. It is very difficult to report a patient without jeopardizing physician/patient rapport and the relationship.

An individual's ability to drive a vehicle is often equated with personal autonomy and independence. It can directly impact an individual's ability to earn a livelihood. Taking that privilege away can be devastating and have far-reaching ramifications for the patient and family members—even if the decision is solidly based on undisputable risk of harm that the patient's driving poses to him or herself and others.

Patients in these situations can respond with denial, anger and depression. Many physicians tend to avoid the situation, deferring to family members or another physician to assume the role of the "bad guy" who takes away a patient's car keys. However, just as often, a spouse or other family member will specifically ask for the physician's help. For example: "Please tell Frank that he shouldn't be driving anymore. He won't listen to me, and the kids don't want to make him mad." In such cases, it is best to educate the patient about why his driving ability is compromised, as well as the potential risk of harm to himself, his family and other drivers. In some case, patients will agree to give up driving on their own, eliminating the

physician's need to make a formal report.

The subject of unsafe drivers is commonly associated with drivers of advanced age and their associated changes and deficits of body and mind. With the aging of the Baby Boomers, the population of elderly drivers is increasing. However, generalities should be avoided—not all 70 year olds are at higher risk of an auto accident. Patients of all ages may be medically unfit to drive because they are impaired by an existing disease or medical condition, a physiologic impairment or disability, or a medication regimen.

In the previous scenario, age was irrelevant to the outcome. It was Frank's blackout that made him reportable, not his age. He could have been 20 years old instead of 70—Dr. Jacobson's actions should have been the same. State law required Dr. Jacobson to report any patient with a lapse of consciousness or possible seizure disorder to the state's department of motor vehicles.

The question of whether to report a patient is one faced by physicians of various specialties and subspecialties. In fact, most physicians who see adult patients will be faced with making the difficult call about whether a patient should be allowed to continue to drive as a result of the patient's circumstances.

What Can We Learn?

- ☒ **Know your state's reporting requirements** for unfit or impaired drivers. Is reporting mandatory or voluntary for healthcare providers?

Many physicians tend to avoid the difficult situation of taking away a patient's car keys.

Is the patient's consent necessary to release his or her medical information to the state? Is there immunity for the reporting physician from allegations of breaching patient confidentiality? (*Physician's Guide to Assessing and Counseling Older Drivers* contains a listing of licensing and reporting laws. See Resources section.)

- ☒ **Regularly assess patients' visual, auditory, cognitive and motor abilities for impairments** that could adversely affect their driving ability or put them or others at increased risk of harm. This should be incorporated into physician visits with the older patient. Each patient's circumstances should be considered separately, weighing the particular risks, benefits and alternatives to a patient's continued driving.
- ☒ **Involve patients in your assessment** by asking a series of questions about their driving skills. *Are you still driving? How often? What type of driving are you doing (e.g., highway, in town)? Are you still comfortable with and confident in your ability to drive? Have you had any accidents? Close calls? Do you get lost easily? Do you ever forget where you're going? How much longer do you feel you can drive safely?* The answers to these questions can be very valuable in your assessment of the patient. They can help you determine if further action is warranted.



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- ☒ **Put your patient's welfare and best interests first.** However, do not let patients bully you into noncompliance with mandatory reporting requirements if you believe them to be unsafe drivers who are a risk to themselves and/or to others. If reporting is mandatory, it should not be a matter for negotiation or compromise. If reporting is voluntary, be guided by your patient's welfare and best interests and the safety of the public. If you conclude that the patient is no longer medically fit to operate a vehicle or that ability is in any way compromised or impaired, you must make some difficult choices.
- ☒ **Refer patients for a second opinion and/or driving assessment** when patients disagree with your opinion about their ability to drive safely. (See Resources for information to recommend to your patients and their families.)
- ☒ **Remember, it is not easy to assess a patient's fitness to drive.** There is no magic formula or algorithm for physicians to apply. However, there are useful resources and tools that can help make the process easier and less subjective. Consider the Canadian Medical Association's SAFE DRIVE mnemonic.³

¹ Department of Motor Vehicles

² Carr DB; Schwartzberg JG; Manning L; Sempek J; Physician's Guide to Assessing and Counseling Older Drivers, 2nd edition, Washington, D.C. NHTSA. 2010. See Chapter 8 for a state-by-state listing of reporting and licensing regulations.

³ Canadian Medical Association. Determining Medical Fitness to Operate Motor Vehicles. CMA driver's guide. 7th ed. Ottawa (ON).

Resources

For Physicians

Physician's Guide to Assessing and Counseling Older Drivers, 2nd edition. Carr DB, Schwartzberg JG, Manning L & Sempek J, 2010. This guide was developed by the American Medical Association in cooperation with the National Highway Traffic Safety Administration.

Determining medical fitness to operate motor vehicles. Canadian Medical Association driver's guide. 7th ed. Ottawa (ON): The Association; 2006 *Reporting by Physicians of Impaired Drivers and Potentially Impaired Drivers.* *J Gen Intern Med* 2000 September; 15(9): 667–672. Berger JT, Rosner R, Kark P, Bennett, AJ and the Committee on Bioethical Issues of the Medical Society of the State of New York.

Mandatory reporting by physicians of patients potentially unfit to drive. *Open Med* 2008;2(1): 4–13. Redelmeier DA, Venkatesh V, Stanbrook MB.

Family physicians' attitudes and practices regarding assessments of medical fitness to drive in older persons. *J Gen Intern Med* 2007;22 (4):531–543. Jang RW, Man-Son-Hing M, Molnar FJ, Hogan DB, Marshall SC, Auger J.

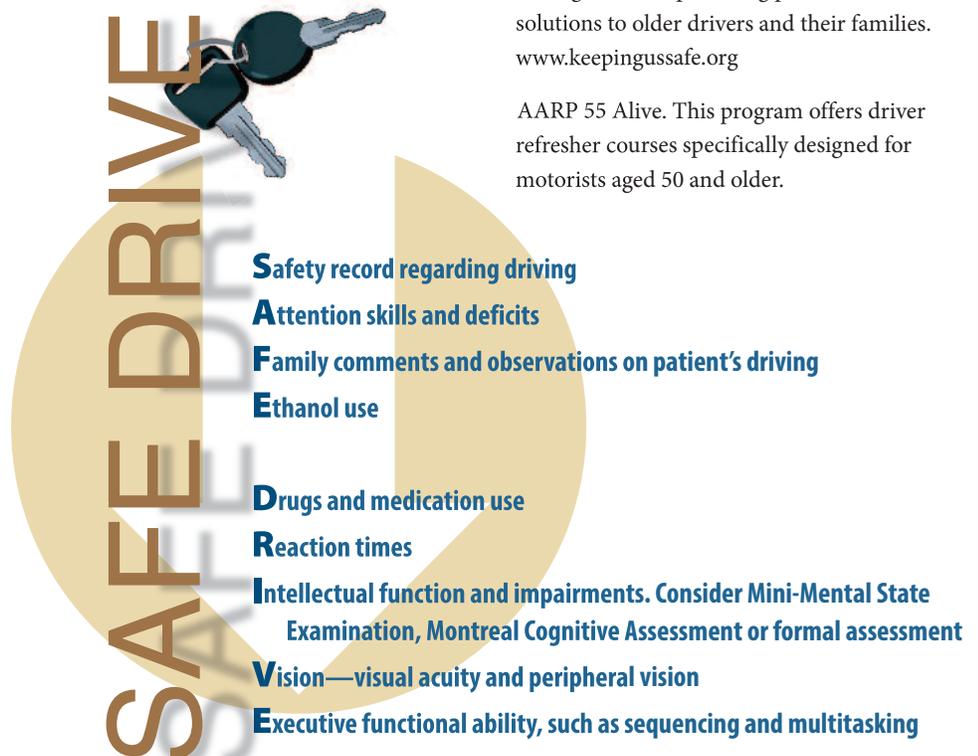
Impaired Drivers: The Physician's Dilemma. 2003. The Medical Society of New York

For Patients and Their Families

We Need to Talk...Family Conversations with Older Drivers. The Hartford Insurance Company. <http://hartfordauto.thehartford.com/UI/Downloads/FamConHtd.pdf>

Beyond Driving with Dignity; The workbook for the families of older drivers. Keeping Us Safe—An organization providing practical, real-life solutions to older drivers and their families. www.keepingussafe.org

AARP 55 Alive. This program offers driver refresher courses specifically designed for motorists aged 50 and older.



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