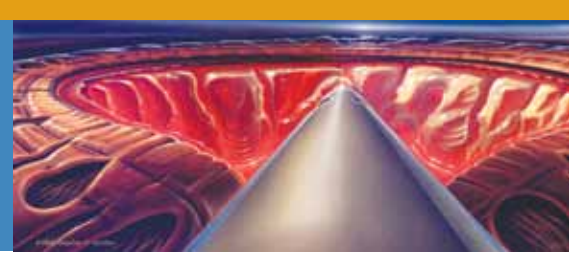


# Risk Management Hotline



## Duty to Warn Patients Not to Drive

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**T**he establishment of the physician-patient relationship imposes certain duties upon ophthalmologists. Some—privacy, confidentiality, continuity of care, and reasonable prudence—are well known and much discussed. Other duties, such as reporting and warning obligations, may give physicians pause, especially if they require a breach of confidentiality or disregard for the patient's express wishes. This **Hotline** addresses the duty to warn a patient and report to the state if driving ability is impaired.

**Q** Am I liable for any harm done by my patient while driving?

**A** Ophthalmologists have been sued by patients and third parties who were involved in motor vehicle accidents. Expert witnesses who evaluate these cases for breaches in the standard of care address two issues. First, did the patient have a condition that should have led a reasonably prudent ophthalmologist to warn the patient not to drive? Second, if the patient had such a condition, did the ophthalmologist warn the patient and document the discussion? In our experience, suits have been dropped if the medical record indicates there was no such condition or, if there was, that the ophthalmologist did warn the patient. Conversely, physicians have been held liable for harm to the patient and injured third parties if no such warning was given.

**Q** Based upon my examination, I don't feel it is safe for my patient to drive. Am I obligated to inform and warn the patient not to drive?

**A** Yes. If the patient has a condition that may prevent safe driving, warn the patient and document the discussion. Reasons to conclude a patient shouldn't drive include conditions characterized by lapses of consciousness (seizures and epilepsy), dementia, and those that result in certain amounts of uncorrectable decreased visual acuity and reduced visual fields, as well as side effects of medications (tranquilizers and pain medications) and substance abuse.<sup>1</sup> Some patients may be able to drive only under certain conditions, such as daylight. Others may need to abstain for only a short period; this is usually the case after dilating drops have been inserted for diagnostic and therapeutic procedures. In addition to reminding patients to wear sunglasses, warn them that dilating drops may adversely affect their ability to drive.

**Q** My patient says dilating drops do not impact his driving and refuses to have someone else drive him to my office. May I still administer the drops?

**A** Yes. Many ophthalmic conditions can only be diagnosed and monitored if the pupil is dilated. As long as you have warned the patient, you may administer the drops.

**Q** I have warned my patient about driving, but she refuses to heed my advice. What else can I do?

**A** Patients who can no longer drive may fear a loss of independence and worry about imposing upon friends and relatives. It is thus understandable when patients are reluctant to heed a physician's advice. Repeat the discussion at each visit in the hope of breaking through the patient's denial. Consider contacting the patient's primary care physician for help in convincing the patient. You may also discuss your concerns with the patient's family and friends. The HIPAA web site clarifies that you may speak to family and friends if you have been given permission, if they accompany the

patient to visits or are involved in the patient's care or payment, or if your professional judgment indicates that such a discussion would be in the best interest of the patient.<sup>2</sup>

**Q** Am I required to report a patient's inability to drive to my state department of motor vehicles (DMV)?

**A** The American Medical Association advises physicians that "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."<sup>3</sup> Some states require physicians to report, others allow but do not mandate reports, while a few consider a report a breach of confidentiality. There could be liability and penalties if a physician does not act in accordance with state laws on reporting and confidentiality. The safest course is to verify the law. Many states clarify driver's license laws on the DMV web site or provide a link to email the DMV. If you cannot get an answer from the DMV, contact your state medical board, state medical association, or state ophthalmology organization. If you are required to notify the state, do so only after discussing your evaluation and informing the patient that you will be notifying the state. If you are allowed but not mandated to report, consider that in the event of an accident, a jury may find you did not do all you could have to prevent harm to the patient and others if you do not contact the DMV.

1. For more information on determining a patient's driving capacity, see the AAO's Clinical Statement, "Vision Requirements for Driving," at [www.aao.org](http://www.aao.org). The American Medical Association's web site contains "Physician's Guide to Assessing and Counseling Older Drivers" and "Impaired Drivers and Their Physicians" at [www.ama-assn.org](http://www.ama-assn.org).

2. See the FAQ section of the US Department of Health and Human Services web site. Discussing a patient with family and friends is addressed at <http://www.hhs.gov/ocr/privacy/hipaa/faq/notice/488.html>.

3. "Impaired Drivers and Their Physicians" at [www.ama-assn.org](http://www.ama-assn.org).