

## Vision Requirements for Driving

### Purpose of risk management recommendations

OMIC regularly analyzes its claims experience to determine loss prevention measures that our insured ophthalmologists can take to reduce the likelihood of professional liability lawsuits. OMIC policyholders are not required to implement risk management recommendations. Rather, physicians should use their professional judgment in determining the applicability of a given recommendation to their particular patients and practice situation. These loss prevention documents may refer to clinical care guidelines such as the American Academy of Ophthalmology's *Preferred Practice Patterns*, peer-reviewed articles, or to federal or state laws and regulations. However, our risk management recommendations do not constitute the standard of care nor do they provide legal advice. Consult an attorney if legal advice is desired or needed. Information contained here is not intended to be a modification of the terms and conditions of the OMIC professional and limited office premises liability insurance policy. Please refer to the OMIC policy for these terms and conditions.

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*This article was written by former Vice President of Risk Management Paul Weber, and appeared in the Fall 2000 issue of the OMIC Digest as "When Patients Shouldn't Drive." It uses a question and answer format to address frequent concerns.*

Ophthalmologists frequently inquire about their liability if they report a patient whose visual impairment creates a driving hazard. A related issue is whether an ophthalmologist can be held liable to a third party who is injured in an accident caused by a visually impaired patient. Understanding the reporting laws in your state and calling OMIC's Risk Management Department are important first steps to reducing the potential liability of this complex legal and ethical situation.

### **Do I have a duty to report a patient to the motor vehicles department (agency may vary from state to state) if that patient's vision is severely impaired?**

Many states require physicians to report patients who have epilepsy or disorders characterized by lapses of consciousness. However, in most states it does not appear that physicians have an affirmative duty to report patients who fall below a certain visual acuity or have limited field of vision. There are exceptions, such as Pennsylvania, where the law states that if a patient has a "visual acuity of less than 20/70 combined vision with best correction," the physician must report that patient to the Pennsylvania Department of Transportation for further evaluation. Contact your state medical society since most associations will have information regarding diseases and conditions that must be reported to state agencies.

### **If I am not required by state law to report a patient whose visual impairment affects driving ability, but I do so anyway because I believe it is my ethical obligation to protect the public, what are my risks?**

Some ophthalmologists believe that voluntary reporting of patients violates the confidential doctor-

patient relationship and adversely impacts their role as patient advocate. Others worry that patients won't be honest with their healthcare provider if they fear being reported. On the other side are those ophthalmologists who believe that reporting a visually impaired driver could help prevent a death or serious injury. Many states, such as Florida, California, and Illinois, keep such reports confidential and provide immunity from civil or criminal prosecution to those who provide such information. Prior to voluntarily reporting a patient to a state agency, OMIC insureds are advised to contact the Risk Management Department.

### **Should I discuss my concerns with the patient or patient's family before I report the matter to local authorities?**

You should tell patients first when it is your professional opinion that their vision is so severely impaired that they should not be driving. From a practical standpoint, this may be enough to convince a patient to stop driving. From a legal standpoint, any discussion regarding a visual impairment should be thoroughly documented in the patient's chart. This documentation will help defend against claims by the patient or others that the patient did not understand the nature or extent of the visual disability.

Discussing the matter with family members is more delicate. Generally, a patient's medical information cannot be shared with family members without the signed authorization of the patient. However, if a family member is present during the examination, you may simply ask the patient's permission to discuss the matter in front of the family member(s) and then document that such permission was orally obtained. Although it is a clear breach of confidentiality to discuss such matters with family members without the patient's permission, you may feel ethically compelled to do so if there is someone who might be able to persuade the patient to stop driving.

### **Am I liable to a third party if a visually impaired patient causes an accident?**

Generally, no liability will attach to the ophthalmologist in such circumstances. Most courts opine that allowing third parties to sue physicians would disregard the legal principle of "foreseeable risk of harm" and extend liability limitlessly to treating physicians vis-à-vis third party victims.

An exception to this general rule arises when an ophthalmologist "causes or aggravates" the impairing visual condition. In one OMIC case, a third party claimed he was injured by a patient whose driving was impaired after the ophthalmologist dilated the patient's eyes. No payment was made to the third party; however, the case serves as a reminder of the need to inform patients about visual impairment following certain treatments or examinations. Another exception to the rule was made in a California case in which a physician allegedly failed to warn a patient that his uncontrolled diabetes made it dangerous to drive. The court stated that liability could be imposed if the injured third party could prove that the physician's failure to provide this warning was a "substantial factor" in causing the claimant's injuries. This ruling reinforces the importance of documenting that a patient has been informed of impairments that could affect driving.

## Resources

- The American Medical Association and the National Highway Traffic Safety Administration produced a detailed manual called Physician's Guide to Assessing and Counseling Older Drivers. The third edition is available at [https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/812228\\_cliniciansguidetoolderdrivers.pdf](https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/812228_cliniciansguidetoolderdrivers.pdf); accessed 10/26/20.
- State laws governing vision requirements and driving restrictions: [https://eyewiki.org/Driving\\_Restrictions\\_per\\_State](https://eyewiki.org/Driving_Restrictions_per_State); accessed 10/26/20.

### **Need confidential risk management assistance?**

OMIC-insured ophthalmologists, optometrists, and practices are invited to contact OMIC's Risk Management Department at (800) 562-6642, option 4, or at [riskmanagement@omic.com](mailto:riskmanagement@omic.com).