

DOCTORS

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PROCEED WITH CAUTION:

HOW TO NAVIGATE PATIENT
REFERRALS TO THE DEPARTMENT
OF MOTOR VEHICLES

find out...

- What federal and state laws say about disclosing patient information to the department of motor vehicles.
- What the American Medical Association recommends in order to appropriately counsel the patient on a potential referral.
- The "best practices" when communicating and documenting these interactions with patients.

A LETTER FROM THE CHAIR OF THE BOARD

Dear Colleague:

Referring patients to a local department of motor vehicles because of medical issues that make them an unsafe driver is the topic of this newsletter. The article looks at the issue from both a federal and state as well as practice perspective. We hope that the information contained in these pages will assist you when making these difficult decisions.



George S. Malouf, Jr., M.D., FACS
Chair of the Board
MEDICAL MUTUAL Liability Insurance Society of Maryland
Professionals Advocate Insurance Company



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DOCTORS RX

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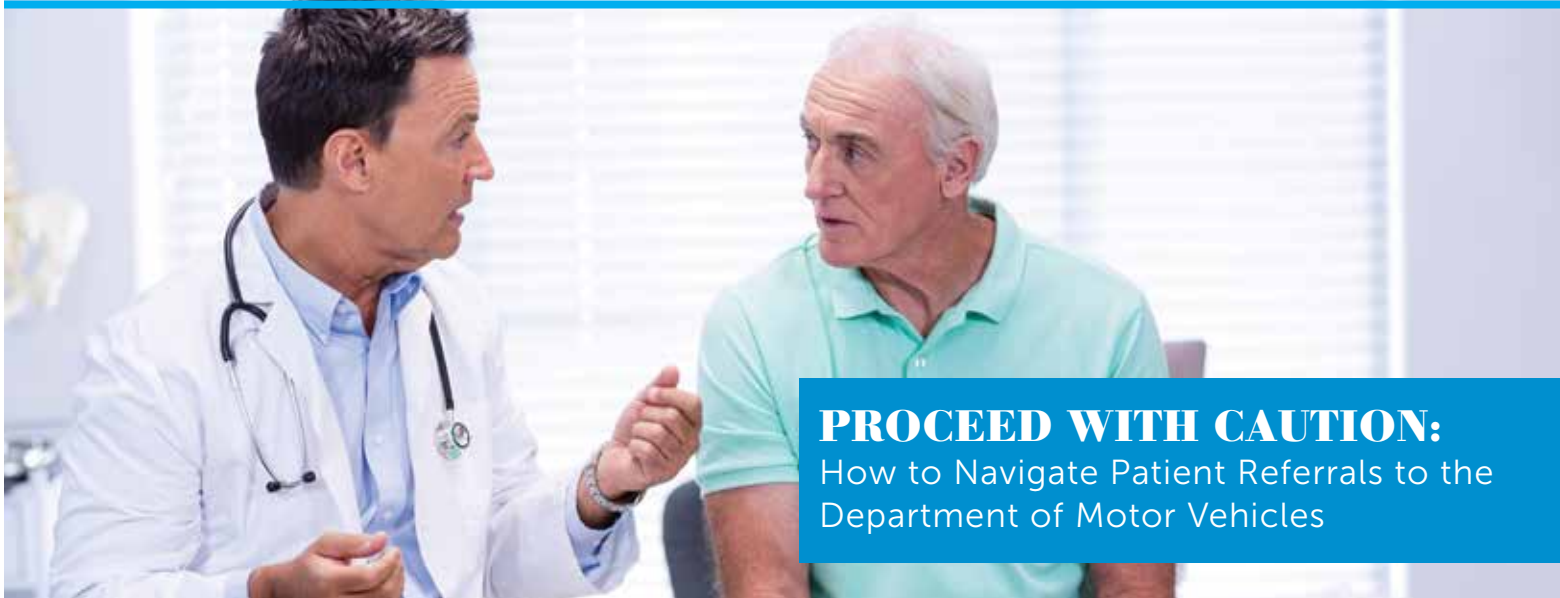
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PROCEED WITH CAUTION: How to Navigate Patient Referrals to the Department of Motor Vehicles

Consider this: It's early one Monday morning, and you arrive at the office to prepare for the day. While looking at the patient schedule, you find two interesting cases: 1) an 83-year-old man who suffers from an arrhythmia that can cause sudden lapses of consciousness. You remember that he still takes his wife to dialysis twice a week. 2) Another patient is a 23-year-old female who suffers from epilepsy, whom you've counseled on the importance of taking her medication numerous times but has been non-compliant in the past and has experienced lapses of consciousness due to seizures. Her family also depends on her to take her younger sister to work.

You realize that it might reach the point where you must ask a difficult question to each of these patients – “Are you able to safely operate a vehicle?” While preparing for these visits, you recall the guidelines from the American Medical Association for patient referrals to the local motor vehicle department and ask yourself – do these patients pose a risk to public safety? Is it time to evaluate their ability to drive? Should I get their respective families involved in counseling the patient? Should I be concerned about the patient's protected health information if I make a referral?

Later that day, the 83-year-old patient arrives. You perform a history and evaluation of the patient. His arrhythmia is only partially controlled and the medications you have prescribed have had little effect. An increased dosage will likely help – which is prescribed;

however, these sudden lapses of consciousness remain concerning.

The last patient of the day is the 23-year-old female, who, while suffering from epilepsy, is in relatively good health. However, she confesses that she has not taken her anti-seizure medication and recently took a part-time job with a ride-sharing service. You counsel her on the importance of taking her medications so that she doesn't suffer from seizures. However, this new development, that she will be behind the wheel for hours on end transporting others, creates additional concerns.

In the above cases, you reach the same conclusion after each evaluation. It may be best, clinically, to make a referral to the local motor vehicle administration. So, what do you do next? How will this referral affect the patients and their independence? What kind of conversation should you have? On what does the patient need to be counseled?

For some, the ability to operate a motor vehicle is an essential function of everyday life. Patients who are forced to forgo driving may face financial and social challenges - from losing their ability to work and perhaps provide for themselves and others, to increased difficulty maintaining social contacts and participating in activities outside of the home.¹ If the above scenarios present in your practice, it could create a contentious relationship with your patients.



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HIPAA

HIPAA defers to the professional judgement of the Physician making the determination about the nature and severity of the threat posed by the patient.

In the following pages, we will examine both federal and state laws (Maryland and Virginia) and how those laws can impact a Physician's decision to refer a driver who may present a risk to himself and others. We also will discuss useful guidance from the American Medical Association (AMA) for Physicians to consider prior to and when making a referral to a local department of motor vehicles. Finally, we will discuss how common risk management "best practices" can help you navigate this winding road.

WHAT DOES THE LAW SAY?

Health Insurance Portability and Accountability Act (HIPAA)

While evaluating and counseling these patients above for their driving ability, the last thing that may be on your mind is a potential Office for Civil Rights (OCR) complaint (in which fines could be levied) as a result of an alleged Health Insurance Portability and Accountability Act (HIPAA) violation. However, HIPAA itself accommodates Physicians to make the necessary referrals without fear of retribution.

HIPAA is a federal law that is wide ranging in its scope. For the purposes of this newsletter, we will look at sections of HIPAA pertaining to disclosures of medical records for which an authorization or opportunity to agree or object is not required. Under HIPAA, there are two standard disclosures that would apply in the above scenarios:

- **Uses and Disclosures required by law:** "a covered entity (you and your practice) may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law."
- **Uses and Disclosures to avert a serious threat to health or safety:** a covered entity may, if *in good faith*, use or disclose protected health information if:
 - It is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and
 - It is to a person or persons reasonably able to prevent or lessen the threat, including the target of a threat.²

HIPAA defers to the professional judgement of the Physician making the determination about the nature and severity of the threat posed by the patient.

Therefore, we recommend that you continue to trust your clinical judgement. Additionally, OCR - the federal agency that enforces federal civil rights laws - has explained that it will not "second guess" a health professional's good faith belief that a patient poses a serious and imminent threat to the health or safety of the patient or others.



HIPAA therefore allows for a health care provider to disclose the “minimum necessary” protected health information to anyone who is able to prevent or lessen the threat and to do so without the patient’s permission.³ Of note, the “minimum necessary standard” requires covered entities (the Physician and their employees) *only* disclose the minimum amount of protected health information to “satisfy a particular need or carry out a function.”⁴ This is important to keep in mind as you consider making a referral in order to help protect patient confidentiality and avoid a potential OCR complaint from a patient angry that his or her license might get taken away.

Maryland

Maryland Vehicle Law *does not* require referrals or reports but allows for the referral of patients to the Maryland Motor Vehicle Administration (“MVA”) without the patient’s consent or authorization *if* the Physician/health care provider diagnoses the patient with a disorder characterized by *lapses of consciousness or visual issues*. Additionally, Maryland law generally protects Physicians/health care providers from potential legal ramifications of a referral, while also protecting the patient’s confidentiality. While there are specific requirements for any Physician/health care provider referrals there are two common types of referrals most often made to the Maryland MVA:

- **Patient for whom there is great concern:** This referral should note the medical condition(s) and the reason why the condition precludes safe driving. In most cases, these recommendations for suspension are affirmed by MVA administrative action.
- **Possible concerns over fitness to drive:** This second type of referral notifies the MVA of possible concerns about fitness to drive and requests the MVA to conduct an evaluation of the driver.

While a referral to the MVA under Maryland law is not *mandatory*, the referral is HIPAA compliant pursuant to the public safety exception (mentioned previously). In other words, if the Physician/health care provider reasonably believes, *in good faith*, that the report is necessary to prevent or lessen *a serious and imminent threat to the health or safety of a person or the public*, the referral will meet the requirements of HIPAA. HIPAA regulations presume that healthcare providers have acted in good faith if their belief is based upon their actual knowledge of the patient or on a credible representation by a person with knowledge of the patient – which means, your clinical evaluation of the patient is vital.

The Maryland MVA adds that Physicians and other primary care providers are *strongly encouraged to refer* their patients to the MVA if there are concerns about medical fitness to drive.⁵ Additionally, while referrals from Physicians are not required, under



Did you know...

The Maryland MVA adds that Physicians and other primary care providers are strongly encouraged to refer their patients to the MVA if there are concerns about medical fitness to drive.⁵

The full impact of motor vehicle crashes

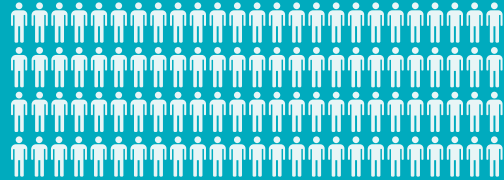
For every 1 person killed in a motor vehicle crash



8 people were hospitalized



100 people were treated and released from the ED



Source: CDC WISQARS (Web-based Injury Statistics Query and Reporting System), 2012



Reporting

Of note in Maryland, psychiatrists are not permitted to report a patient if the report would violate the patient-psychiatrist privilege and a psychiatrist can refuse to disclose the patient's information if requested by the MVA.⁷

Maryland law, *drivers are required* to report any diagnosis that could affect their ability to drive to the MVA.⁶

Of note in Maryland, psychiatrists are not permitted to report a patient if the report would violate the patient-psychiatrist privilege and a psychiatrist can refuse to disclose the patient's information if requested by the MVA.⁷

Virginia

Like Maryland, Virginia law also is discretionary with respect to patient referrals to the Virginia Department of Motor Vehicles ("DMV"). In addition, Virginia delineates which types of health care providers may submit a report to the DMV. This list includes: Doctor of Medicine, osteopathy, chiropractic, or podiatry, nurse practitioners, physician assistants, physical therapists, and clinical psychologists (psychiatrists are not included).

If the referral to the DMV comports with the Virginia standard and it is "made in good faith" in accordance with the HIPAA presumption, the Physician will have immunity for making the referral.

THINGS TO CONSIDER BEFORE MAKING A REFERRAL

The AMA and Opinion on Referrals

In preparation for the scenarios noted above, it is best to review the American Medical Association's *Impaired Drivers and Their*

Physicians guidelines (promulgated by the AMA Council on Ethical and Judicial Affairs in December of 1999) to help you reach the conclusion on whether a referral is appropriate.

There are four essential elements of the AMA's guidelines—which "articulate [P]hysicians' responsibility to recognize impairments in patients' driving ability that pose a strong threat to public safety." The *four* essential elements are:

- Assess at-risk patients individually for medical conditions that might adversely affect driving ability, using *best professional judgement* and keeping in mind that *not all* physical or mental impairments create an obligation to intervene.
- Tactfully but candidly *discuss* driving risks with the patient and, when appropriate, the family when a medical condition may adversely affect the patient's ability to drive safely. Help the patient (and family) formulate a plan to reduce risks, including options for treatment or therapy if available, changes in driving behavior, or other adjustments.
- Recognize that safety standards for those who operate commercial transportation are subject to governmental medical standards and may differ from standards for private licenses.

Virginia, unlike Maryland, does not identify “disorders characterized by lapses of consciousness or visual issues.” Instead, the standard is whether the health care provider believes the patient has a mental or physical disability or infirmity that affects the patient’s ability to operate a motor vehicle safely.⁸



- Prior to reporting or referring, *explain* to the patient (and family, as appropriate) that the Physician may have an obligation to report a medically at-risk driver:
 1. When the Physician identifies a medical condition clearly related to the ability to drive
 2. When continuing to drive poses a “clear risk to public safety or the patient’s own well-being” and the patient ignores the Physician’s advice to discontinue driving.⁹

According to the AMA, it also is important to disclose to the patient that it is the *patient’s ethical* responsibility to report his or her own issues to the local department of motor vehicles. The AMA suggests emphasizing to the patient that while most accidents are caused by alcohol and excessive speed, disease and disability also play a role.¹⁰

The National Highway Transportation Safety Administration (NHTSA) also has sound suggestions to consider when counseling the patient. The NHTSA suggests before making a referral that you engage with the patient and their family in alternative driving cessation tactics – for example, taking the keys away – which doesn’t involve taking the patient’s driver’s license away. Also, the NHTSA suggests *counseling* the patient on alternatives, such as public transportation and/or ride sharing services (such as Uber or Lyft).¹¹

The common Risk Management “Best Practices” remain - these conversations and interactions with the patient must be thorough and well documented. Appropriate *communication* is important so that the patient understands the *risks* of continued driving (if you reach that conclusion clinically) – not only to themselves, but to the community. Additionally, the importance of *good documentation* cannot be stressed enough.

Due to the sensitive nature of this subject, you may find yourself at the center of a regulatory compliance issue. Having well documented evaluations, counseling, and discussing treatment options with the patient could prove vital in the defense of any potential legal action.

CONCLUSION

The decision to refer a patient to the local motor vehicle administration is your decision alone. Currently, there are no legal duties or responsibilities that require you to do so. The purpose of this newsletter is to reiterate the established AMA ethical responsibilities and provide you with the legal background that could help protect you if you decide to refer the patient.

Referring to the scenarios above, these evaluations and conversations may prove to be difficult. In both situations, the patients’ families rely on them for transportation. Unfortunately, you are stuck in the middle,



Reminder:

According to the AMA, it is also important to disclose to the patient that it is the patient’s ethical responsibility to report his or her own issues to the local department of motor vehicles.



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trying to balance their clinical health, public safety, HIPAA concerns, and concerns for their independence.

Important things to remember:

1. Identify alternative driving options;
2. Counsel the patient, and patient's family
3. Thoroughly document these interactions with the patient.

In cases where you have determined that a referral is warranted, follow the appropriate law, review the recommendations of both the AMA and NHTSA, and follow your sound clinical judgement. When it comes time to make the referral, it also is important to provide only the minimum necessary amount of information to ensure confidentiality and safeguard the patient's protected health information under HIPAA. If you do all the above, and thoroughly document your evaluation and conversation with the patient—it will go a long way in defending your reasoning for making the referral to the local motor vehicle department.

As always, proceed with caution.

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- ⁶ Sec. 11.17.03.02-1. Disorders Reported by Applicant or Licensee, Chapter 11.17.03. Physical and Mental Condition, Subtitle 17. MOTOR VEHICLE ADMINISTRATION—DRIVER LICENSING AND IDENTIFICATION DOCUMENTS, Title 11. Department of Transportation, Code of Maryland Regulations. (n.d.). Retrieved October 21, 2019, from <http://mdrules.elaws.us/comar/11.17.03.02-1>
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- ⁸ Virginia Code Ann. § 32.1-127.1:03
- ⁹ AMA Council on Ethical and Judicial Affairs. (2010, December 01). AMA Code of Medical Ethics' Opinion on Reporting Impaired Drivers. Retrieved July 23, 2019, from <https://journalofethics.ama-assn.org/article/ama-code-medical-ethics-opinion-reporting-impaired-drivers/2010-12>
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- ¹¹ National Highway Traffic Safety Administration. (2015). Clinician's guide to assessing and counseling older drivers, 3rd edition. (Report No. DOT HS 812 228). Washington, DC: Author.

CME TEST QUESTIONS

1. In evaluating the nature and severity of a threat posed by a patient, HIPAA defers to the actual actions of the patient.
A. True B. False
2. Any Physician is permitted to report a patient to the local MVA in Maryland if they are concerned about a patient's medical fitness to operate a motor vehicle.
A. True B. False
3. HIPAA allows a health care provider to disclose everything about a patient to anyone who can prevent or lessen the threat and can do so without the patient's permission.
A. True B. False
4. The NHTSA has developed a set of guidelines that providers can implement when evaluating a patient's fitness to drive.
A. True B. False
5. The AMA guidelines recognizes that safety standards for those who operate commercial transportation are the same as for regular drivers.
A. True B. False
6. Virginia law delineates which types of health care providers may submit a report to the DMV.
A. True B. False
7. Both Maryland and Virginia allow for referral of patients to their local DMV without the patient's consent or authorization if the patient has been diagnosed with a disorder characterized by lapses of consciousness or visual issues.
A. True B. False
8. According to the AMA, it is important to disclose to the patient that it is the patient's ethical responsibility to report his or her own issues to the MVA.
A. True B. False
9. As a necessary final step, it is important for Physicians to document their conversations and treatment options with the patient in the medical record.
A. True B. False
10. Uses and disclosures of PHI under HIPAA must be made in good faith.
A. True B. False

Instructions – to receive credit, please follow these steps:

Read the articles contained in the newsletter and then answer the test questions.

1. Mail or fax your completed answers for grading:
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Attention: Risk Management Services Dept.
2. One of our goals is to assess the continuing educational needs of our readers so we may enhance the educational effectiveness of the *Doctors RX*. To achieve this goal, we need your help. You must complete the CME evaluation form to receive credit.
3. Completion Deadline: August 31, 2020
4. Upon completion of the test and evaluation form, a certificate of credit will be mailed to you.

CME Accreditation Statement

MEDICAL MUTUAL Liability Insurance Society of Maryland is accredited by the Accreditation Council for Continuing Medical Education (ACCME) to provide continuing medical education for Physicians.

CME Designation Statement

MEDICAL MUTUAL Liability Insurance Society of Maryland designates this enduring material for a maximum of one (1) *AMA PRA Category 1 Credit*.™ Physicians should claim only the credit commensurate with the extent of their participation in the activity.

CME EVALUATION FORM

Statement of Educational Purpose

Doctors RX is a newsletter sent twice each year to the insured Physicians of MEDICAL MUTUAL/Professionals Advocate.® Its mission and educational purpose is to identify current health care-related risk management issues and provide Physicians with educational information that will enable them to reduce their malpractice liability risk.

Readers of the newsletter should be able to obtain the following educational objectives:

- 1) Gain information on topics of particular importance to them as Physicians
- 2) Assess the newsletter's value to them as practicing Physicians
- 3) Assess how this information may influence their own practices

CME Objectives for "Proceed with Caution: How to Navigate Patient Referrals to the Department of Motor Vehicles"

Educational Objectives: Upon completion of this enduring material, participants will be better able to:

- 1) Learn federal and state laws for reporting a driver who may present a risk to himself and others
- 2) Understand the AMA guidelines regarding a Physician's responsibility to recognize patient impairment
- 3) Identify suggestions from the NHTSA for counseling patients before making a referral

	Strongly Agree				Strongly Disagree
Part 1. Educational Value:	5	4	3	2	1
I learned something new that was important.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I verified some important information.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I plan to seek more information on this topic.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
This information is likely to have an impact on my practice.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Part 2. Commitment to Change: What change(s) (if any) do you plan to make in your practice as a result of reading this newsletter?

Part 3. Statement of Completion: I attest to having completed the CME activity.

Signature: _____ Date: _____

Part 4. Identifying Information: Please PRINT legibly or type the following:

Name: _____ Telephone Number: _____

Address: _____



RISK MANAGEMENT NEWS CENTER



PHYSICIAN BURNOUT RESOURCES

After the success of our new Physician Wellness risk management education programs, MEDICAL MUTUAL and Professionals Advocate are proud to now offer a Physician Wellness resource page on our web sites. It will provide a summation of the programs as well as articles, helpful links and printable PDFs that contain valuable and timely information on burnout for any practice.



ADVICE FROM A RISK MANAGEMENT SPECIALIST

Did you know that you can call our Risk Management department to ask about any liability concerns you have? Our Risk Management department includes experts with extensive medico/legal backgrounds, ready to give you guidance on liability questions. Contact us today at 410-785-0050 or toll free at 800-492-0193.



STAY INFORMED ON THE LATEST CYBERSECURITY ISSUES

MEDICAL MUTUAL and Professionals Advocate know that a security breach can be devastating to a medical practice. It's more important now than ever to be knowledgeable on how to keep your practice safe from reputational and financial harm. Visit our website for important alerts, resources and our 40 question survey that can help you determine possible weaknesses in your security protocols.



COMING SOON: NEW RISK MANAGEMENT EDUCATION PROGRAMS

Be on the lookout for an updated Risk Management brochure containing all the details you'll need to register for 2020 programs! Our Risk Management experts are in the process of developing timely new education programs so that you can stay informed and up to date on the risks facing your practice.



MEDICAL MUTUAL and Professionals Advocate offer a variety of online tools and resources that are specially designed to help Doctors identify and address preventable issues before they escalate into potentially serious legal action.

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We're pleased to announce we will be celebrating two major anniversaries next year! MEDICAL MUTUAL and Professionals Advocate are proud to defend our Doctors for many more years to come.



TWO NEW TEXTING PROGRAMS UNVEILED

In today's hectic health care world, we are making it easier than ever for Doctors to get needed information while on the go. We're proud to unveil two brand new programs created with your convenience in mind!

Text customer service SMS service – You can now easily use your mobile phone to send a message to our customer service team. Simply text our main telephone number, **410-785-0050**, with a brief text and one of our service professionals will respond to you promptly during our business hours.

Risk Management text alert service – Opt in to get an important text alert about your registered Risk Management education programs! Find out hassle-free if there are any last minute time changes, program relocations or cancellations.