Special Article

Determining medical fitness to drive: physicians' responsibilities in Canada

Henry G. Coopersmith, BCL, MD, CM, CCFP
Nicol A. Korner-Bitensky, MSc
Nancy E. Mayo, PhD

Current legislation indicates that physicians in Canada have a legal responsibility to know which medical conditions may impede driving ability, to detect these conditions in their patients and to discuss with their patients the implications of these conditions. The requirements to report unfit drivers vary among the provinces, and the interpretations of the law vary among the courts; therefore, physicians' risks of liability are unclear. Physicians may be sued by their patients if they fail to counsel the patients on the dangers of driving associated with certain medications or medical conditions. Physicians may also face legal action by victims of motor vehicle accidents caused by their patients if the court decides that the physicians could have foreseen the danger of their patients' continuing to drive. Physicians' legal responsibilities to report patients with certain medical conditions override their ethical responsibilities to keep patients' medical histories confidential.

Les lois actuelles au Canada semblent faire au médecin une obligation de savoir quels états pathologiques peuvent compromettre la faculté de conduire un véhicule automobile, de les reconnaître chez son client et de lui en expliquer les conséquences. Comme les provinces ne s'accordent pas sur l'obligation du médecin de déclarer le conducteur inapte à qui de droit et que la jurisprudence varie d'une cour à l'autre, il est difficile de définir le risque de poursuite en responsabilité qu'encourt le médecin en cette matière. Il pourrait être poursuivi soit par un client qu'il aurait négligé d'avertir du danger de conduire que présente telle maladie ou tel médicament, soit par les victimes d'un accident causé par un client chez qui, de l'avis de la cour, le médecin aurait pu prévoir le danger de continuer à conduire. Le devoir imposé au médecin de déclarer les malades présentant certains états pathologiques l'emporte sur l'obligation déontologique du secret professionnel.

Dr. Coopersmith is director of professional services at the Jewish Rehabilitation Hospital, Laval, PQ, a lawyer and assistant professor in the Department of Medicine at McGill University, Montreal. Ms. Korner-Bitensky is a research associate and Dr. Mayo an epidemiologist in the Research Department at the Jewish Rehabilitation Hospital.

Reprint requests to: Dr. Henry G. Coopersmith, Director of professional services, Jewish Rehabilitation Hospital, 3205 Place Alton Goldbloom, Laval, PQ H7V 1R2

Driving has become an important part of our lives, and yet many people are probably incompetent to drive. Alcohol is implicated in over 50% of all fatal motor vehicle accidents,[1,2] and other health-related factors such as cardiac and neurologic problems, drug abuse, mental disabilities, visual impairments and advanced age have been associated with motor vehicle accidents.[3-5]

Most provincial governing bodies in Canada expect physicians to consider the impact of certain medical conditions on driving ability and to notify the proper authorities when these conditions are present. It is essential that physicians know their medical, ethical and legal responsibilities in reporting conditions that may impede a person's ability to operate a motor vehicle.

← For prescribing information see page 462

The physician's role in the licensing and relicensing process

The application for a driver's licence specifies medical conditions and medications that may affect driving ability, and applicants are legally responsible for indicating whether they have any of the conditions or are taking one of the medications. Nevertheless, many people do not disclose their health status; for example, Quaglieri[6] found that 70% to 86% of patients with epilepsy did not mention this disorder to the appropriate licensing board.

In some instances — for example, when a person requires a special class of licence or when a medical problem is discovered — the licence is renewed only after a medical report has been submitted. Also, in some provinces medical examinations or driving evaluations or both are required for people of a designated aged; for instance, in Ontario a driver must have a yearly medical examination after the age of 80 years;[7] in British Columbia a medical examination is required every 2 years after the age of 70 years and annually after the age of 80 years.[8]

Québec 75 ans

When the medical examination reveals that a person is free from the conditions that may impair driving ability and is not taking specific medications the physician's role in assessing fitness to drive is perfunctory. When medical reasons do exist physicians' reports to the licensing board will be used to determine competence to drive.

Physicians who are unsure whether a person's medical condition will interfere with the ability to drive safely may seek advice from other physicians and specialists. Most provinces have recommendations, formulated by committees of physicians and optometrists, on visual standards and the state of health required to drive a vehicle. Physicians may also consult the guidelines of the Canadian Medical Association (CMA),[5] which describe some of the health factors to be considered when assessing driving ability. Some provinces also supply written guidelines for driving assessment.[9,10]

There will be times when a routine medical examination reveals a condition that may impair driving ability. The physician may not report the condition because of an ethical or legal desire to protect patient confidentiality, a reluctance to jeopardize the patient–physician relationship, an unwillingness to be part of a policing process or a concern that the patient will hold back vital medical information to avoid losing his or her licence. The physician may also be concerned that the decision to report a medical condition will be met with denial or hostility and that the patient will then decide to seek care from another physician.

Physicians' reports are only one part of the decision-making process. A person may be asked to undergo a more comprehensive medical evaluation or a formal test of driving skills. Only then will the licensing board take appropriate action, be it to suspend the current licence, to refuse renewal of the licence or to modify the conditions under which the current licence is held. However, if the physician's report clearly states that the patient is unfit to operate a motor vehicle the licensing board will immediately deny the right to drive.

Although physicians may be uncomfortable about reporting a patient or may not feel that an evaluation of driving ability is part of a medical examination both the CMA's guidelines[5] and provincial legislation state that physicians have definite responsibilities in determining medical fitness to drive.

Provincial guidelines on fitness to drive

Many provinces specify the physician's responsibility to identify and report a person who may be unfit to drive. For example, the Quebec Highway Safety Code[11] states that "any physician *may* [our emphasis] report to La régie de l'assurance automobile du Québec the name, address and state of health of any patient fourteen years of age or older whom he considers medically unfit to drive a road vehicle, taking into account the medical and optometric standards established by regulation".

Such reporting regulations differ from province to province. In Ontario, British Columbia, Manitoba and Prince Edward Island physicians *shall* report people deemed unfit to operate a motor vehicle,[7,8,12,13] whereas in Quebec, Nova Scotia, Saskatchewan and Alberta physicians *may* report such people.[11,14-16] Although there is no specific legislation on this issue in New Brunswick and Newfoundland, both the New Brunswick Motor Vehicle Act[17] and the Newfoundland Highway Safety Code[18] state that a person may be required to undergo a medical examination to determine physical and mental competence to drive a vehicle.

Further complicating the understanding of the physician's responsibilities are the frequent changes and revisions in the regulations. For example, the 1985 regulations for Quebec stated that physicians *must* report a patient who is considered medically unfit to drive,[19] whereas the 1987 legislation states that physicians *may* report such a patient.[11]

The legal interpretations of the terms "must", "shall" and "may" are very different. "Must" and "shall" are considered interchangeable, and their use in this context indicates "positive obligation" on the part of physicians to report patients who are considered unfit to drive. Unlike most laws, which determine what people must not do, those indicating positive obligation require that physicians provide information about patients. The term is found in health statutes such as the Youth Protection Act, which requires the reporting of any suspected case of child abuse, and the Public Health Act, which requires the reporting of patients with communica-

ble diseases. Physicians acting on positive obligation are protected by Canadian law — that is, no action may be brought against them for reporting their patients.[7,8,11-16] Thus, physicians who are reluctant to report unfit drivers do not have a legal defence. Rather, they may have a legal obligation to protect the community from potentially hazardous drivers.

In contrast, the use of "may" suggests that there is less legal obligation to report such patients. Thus, physicians' responsibilities to their patients and the community appear to depend on the province in which they are practising.

Legal responsibility of physicians

Clearly there are several legal questions that must be explored. When can an accident victim take action against the person who has caused the accident and inflicted bodily harm? Are physicians liable for failing to inform patients of the dangers of certain drugs or medical conditions? Are physicians liable for failing to advise the appropriate licensing board about patients who are unfit to drive?

Patient liability has been reviewed extensively. Generally it appears that when a person is involved in a motor vehicle accident that is precipitated by an unforeseen medical event the patient is not liable. For example, in the case of *Slattery v. Haley* the defendant had had a stroke while driving and had killed someone;[20,21] the defendant was found not guilty.

In cases involving people who have a history of a condition that makes them potentially unfit drivers the courts have been more divided in their decisions. In the case of *Boomer v. Penn* a person known to have diabetes was found guilty of failing to take proper measures — such as keeping chocolate or sugar on hand — to offset the effects of a possible insulin reaction while driving.[20,21] The judge concluded that "a motorist, who suffers from a disability of which he is aware, is under a very heavy duty to take the necessary precautions to avoid the possibility of his disability causing him to fall into a condition which would make it impossible for him to discharge the duty of care imposed upon him".[21]

In the case of *Gordon v. Wallace*[21] Mr. Wallace had suffered a fatal cardiac arrest while driving and had subsequently injured Mrs. Gordon in a car accident. Despite Wallace's history of stroke, angina, coronary thrombosis, congestive heart failure and high blood pressure, his family physician had not cautioned him against driving. At the trial the physician stated that he had not informed Wallace of the likelihood of sudden cardiac arrest because with this information Wallace might have become a "cardiac invalid"; further, the physician had been hoping to take a "normal-lifestyle" approach to the treatment of Wallace's condition. Not only was Wallace found guilty of negligence, but also the physician was reprimanded for placing the welfare of his patient above that of society.

In the case of *Ferguson v. Burton* Mr. Burton, who knew that he had epilepsy, had been involved in a two-vehicle accident, and the driver of the other car had been killed.[22] Burton was found guilty of negligence on the basis of evidence that he had not taken his medication as prescribed and that at the time of the accident he had been fatigued and stressed. The judge concluded that a man with Burton's history should have realized that he should not have driven on that day.

Even when physicians are not on trial they are often called as witnesses, and in several cases they have been considered negligent.[21,22] In some instances patients who have been sued have then sued their doctors for not having properly informed them about driving restrictions.

When physicians have been brought to trial the key issue has been "foreseeability"[23] — that is, their ability to reasonably predict an occurrence. The most frequently cited case on foreseeability is *Tarasoff v. Regents of the University of California*;[24] an excerpt of the documentation follows.

> A student attending the University of California confided to a psychologist his intention to kill his girlfriend. The therapist reported the information to the police, who detained the student and later released him when he appeared rational. Subsequent to his release, the student killed the girl. The girl's parents brought suit against the Regents of the University on the grounds that the University and its agents had failed to warn the victim and/or her parents and . . . to assure the confinement of the assailant. The Supreme Court of California held that in failing to advise the victim of the danger, the therapist breached his duty to the victim to exercise reasonable care to protect her, even though she was not the therapist's patient. The Court ruled that the most important consideration in establishing a duty is *foreseeability* and concluded that the physician owes a duty of care to persons who are readily identifiable as foreseeably endangered by his patient.

How does this case relate to physicians' reporting of patients they consider unfit to drive? In Iowa a person known to have epilepsy had had a seizure while driving and was involved in an accident.[2] The injured parties sued the patient's physician. The main issue in this case was whether the physician's failure to report the patient's illness was a proximate cause of the injuries suffered in the accident. In rendering his decision the judge stated that "it is as much part of the professional duty of a physician to give correct information as to the character of the disease from which his patient is suffering, where such knowledge is necessary to the safety of the patient, or others, as it is to make a correct diagnosis or to prescribe appropriate medicine".[2]

In the case of *Ferguson v. Burton*[22] a third-party claim was brought against Peoples, Burton's family physician. Burton and his employer claimed that Peoples had failed to take proper action, such

as advising the patient to undergo a full neurologic examination to determine whether it was safe to operate a motor vehicle, advising the patient not to drive for extended periods, informing both Burton and his employer of Burton's need for regular medical supervision and his risk of blackouts, prescribing adequate amounts of medication to control Burton's condition and reporting Burton's condition according to the provisions of the Highway Traffic Act.

The case against Peoples was dismissed because of Burton's failure to comply with Peoples' warnings not to drive while fatigued and stressed. The judge did, however, indicate that physicians have a duty to warn their patients against driving in certain instances and that Burton's condition should have been reported.

In the case of *Gooden v. Tips*[25] the physician had not informed the patient of the side effects of the medication he had prescribed and had not warned the patient not to drive. The court found that the vehicle accident caused by the patient should have been foreseen by the doctor when he prescribed the drugs. The doctor was therefore found liable.

It appears that, in general, patients who have no knowledge of their condition are not held liable. However, when they are aware of a medical condition that may impair their ability to drive they are often found guilty of negligence. Similarly physicians who fail to warn their patients of the dangers of driving when taking certain medications or when suffering from specific medical conditions may be sued by their patients. Physicians also face potential legal action by victims who are injured by their patients if the physicians have failed to report those patients.

Conclusions

Legislation stating that doctors must report patients with a medical condition that prevents them from driving safely implies that physicians have four duties: to be aware of such medical conditions, to detect these conditions in their patients, to discuss with their patients any limitations on driving activity imposed by the medical condition and to report the patient's condition to the appropriate licensing body. An omission of any of these duties, which is later shown to be a direct cause of an accident, makes physicians liable to their patients as well as to injuried third parties.

Physicians are trained in many areas of preventive medicine; unfortunately, the evaluation of medical fitness to drive is not usually included. Yet evidence suggests that when potentially dangerous drivers are identified and given recommendations on driving safety their accident rates decrease.[2]

Physicians should help patients and families understand the potential dangers of driving related to certain medical conditions. Furthermore, although the CMA guidelines and provincial highway safety acts and regulations provide some guidance to physicians, there is a clear need for the development of objective, rigorous and scientific measures of driving ability that permit the screening of patients whose driving abilities are difficult to ascertain, such as those with functional, cognitive or perceptual dysfunctions commonly associated with Alzheimer's disease, stroke and head injury. Such measures would help physicians judge the severity of impairment and would diminish the subjective component of determining medical fitness to drive. With the identification of deficits in driving skills, rehabilitation programs could be developed to retrain impaired drivers.

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