

# DMV Reporting: Patient Autonomy v. Public Safety v. Potential Liability — What's a Doc to Do?

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*I was recently contacted by an individual requesting clarification regarding reporting requirements for physicians for patients with potentially impaired driving ability. The call came from a woman concerned that her father's neurologist was going to report him to the DMV. Concerned about her father maintaining his autonomy so that he and her mother would be able travel to such places without assistance as their grocery store and local bridge game, she wanted to know whether the threat of reporting the neurologist for a HIPAA violation was credible. Information also conveyed was that her father had passed his vision test several months prior with flying colors.*

The above scenario, while true, is also becoming a familiar hypothetical with the increasingly aging population and societal pressure to maintain one's own autonomy into old age. Inevitably, trusted medical professionals are progressively being placed in moral and ethical conflict on a more frequent basis to determine whether to report individuals for impaired driving ability.<sup>1</sup> Now, the many scenarios I am referencing herein are not those times when a patient appears for their vision test required for their license renewal. Should an individual fail to meet the requirements of their vision test for license renewal it is your obligation as the treating provider to indicate so. Bending to the desires of a patient to maintain autonomy is not only a violation of your ethical responsibility to your patient, it is also an action that may potentially give rise to an enormous societal impact by your patient subsequently driving and injuring him/herself or others in the process.

Less transparent are those steps that should be taken by a doctor who determines a patient may have impaired driving abilities during a visit unrelated to that purpose. Most states have planned for such occurrences by adopting either mandatory or permissive reporting laws that specify whether a doctor must or has the option to report a patient for impaired driving: a mandatory reporting law requires the doctor to report the patient for certain impairments to the DMV, and a

permissive law permits, but does not require a doctor to report a patient for certain impairments to the DMV. In a state with mandatory or permissive laws requiring or authorizing reporting the laws also provide immunity to the doctor who reports to the DMV in good faith.

New York is not a mandatory reporting state or a permissive reporting state. Therefore, New York doctors are not provided immunity from other statutes when reporting a patient to the DMV or any other authority or agency. This reality creates an interesting interplay between a doctor's moral and ethical drive to protect a patient and society juxtaposed with that doctor's obligations to maintain patient privacy. In NY, patient privacy is governed by the Health Insurance Portability and Accountability Act as well as the New York State Public Health Law, and those statutes work together to ensure that a patient's protected health information stays protected unless the patient authorizes disclosure, or disclosure is authorized due to an emergent situation or by statute. Here, there is no statute authorizing disclosure.

Before touching upon potential consequences of disclosing protected health information by reporting a patient for impaired driving ability without patient consent, let's review New York's reporting options. The New York State Department of Motor Vehicles website provides a helpful instrument titled "Tips for Medical

Professionals with Older Patients,”<sup>2</sup> and this document sets forth a guide to navigating reporting issues, as well as highlighting the conflict between the need to protect confidentiality and the duty to protect safety. Actions highlighted that a doctor may take should a patient pose an “immediate risk of having a motor vehicle crash or doing injury to others” is to call the police, and the police may refer the driver to the DMV—alleviating the necessity of your reporting. Another action you may take is to request a driving evaluation by a Certified Driver Rehabilitation Specialist, typically an occupational therapist, who can evaluate driving ability. Of course, you may report the patient directly to the DMV<sup>3</sup>; however, be advised that your identity is not protected under the Freedom of Information Law.

In the scenario set forth in the beginning of this article, had the doctor reported the patient to the DMV, the patient’s daughter made it abundantly clear (by the mere fact she had contacted a lawyer on the topic) that she would potentially be looking for recourse from any posed threat to her father’s autonomy, especially since he had just passed his vision test. Therefore, it is not a far stretch to see past the reporting to potential ramifications of that report, which would potentially be the patient or patient’s daughter on his behalf lodging a complaint with the proper authority.

The Office of Civil Rights (OCR) is the federal government’s arm charged with policing and enforcing patient privacy standards, and is where a complaint of this nature would be lodged. In response to a complaint, OCR must determine whether a colorable claim has been received and whether to pursue an investigation. If an investigation does result and it is determined that an unauthorized disclosure or other violation of HIPAA has occurred, OCR has the authority to impose Civil Money Penalties of \$100 per failure to comply, not to exceed \$25,000 per year for multiple violations<sup>4</sup>, and also may impose Criminal Penalties of \$50,000 and up to one-year imprisonment (fines and imprisonment may be increased for more severe violations)<sup>5</sup>

Of course, during the investigation process, the doctor would (presumably) be given ample opportunity to present his/her case as to why any such disclosure was substantiated. This is where a public policy argument would be lodged and hopefully accepted. Also, this is where your regular business practices will come into play. If you are a meticulous person who runs his/

her practice with set policies and standards for your staff and patients to follow, the likelihood of a charge of exposure above and beyond the initial complaint is limited. However, the Office of Civil Rights once it has you on its radar is likely to inquire and expect answers regarding your regular practice operations. **BE ADVISED** that being targeted by and engaging with OCR knowing that you do not have privacy policies or utilize them on a regular basis with your patients will automatically put you on the defensive, no matter the complaint against you. It is imperative that you take privacy seriously; which means having appropriate privacy policies in place, and also conforming to the fairly new requirement that you have a security policy in place (governing the use/storage, etc., of electronic data).

As you may have guessed at this point there is no simple answer when you should or should not report under New York’s current regulatory regime. Short of the state legislature creating a mandatory or permissive reporting requirement, potential liability under patient privacy laws remain. My prescription for preventative medicine for the doctor in this scenario is to recommend that you carefully document all patient visits and be sure to have proper privacy policies in place and implemented in your practice.

#### (Footnotes)

1. The AMA has determined this to be such a prevalent issue that it has promulgated a 246 page guide on the topic. [See www.ama-assn.org/resources/doc/public-health/older-drivers-guide.pdf](http://www.ama-assn.org/resources/doc/public-health/older-drivers-guide.pdf)
2. [See www.nycdmv.state.ny.us/olderDriver/medTips.htm](http://www.nycdmv.state.ny.us/olderDriver/medTips.htm)
3. [www.nycdmv.state.ny.us/forms/ds6.pdf](http://www.nycdmv.state.ny.us/forms/ds6.pdf)
4. [See 42 U.S.C. §1320d-5.](#)
5. [See 42 U.S.C. §1320d-6.](#)

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