Dear Colleague:

We would like to alert you to what we believe are hidden liability issues in your practice that you need to be acutely aware of. The news is full of incidents where older drivers have been involved in serious accidents, many of which could have been avoided. The following is one example. Last year a car driven by an older driver went through a crowd of people at a California farmer’s market usually closed to traffic. The accident took the lives of ten people and injured scores of others. Prior to this incident, the American Medical Association (AMA) had approved recommendations aimed at helping you gain a greater awareness of factors that may impair the driving skills of your older patients.

This issue of the newsletter will look not only at the older patient, but will help you assess and counsel those patients who, for a variety of reasons, may be at an increased risk to themselves and others when they get behind the wheel.

This newsletter also provides important information for surgeons regarding the new Protocol required by JCAHO for the prevention of wrong-site surgery.

D. Ted Lewers, M.D.
Chair of the Board
Medical Mutual Liability Insurance Society of Maryland

Spotting the Impaired Driver: A Roadmap for Physicians

The daughter of one of your patients comes to you and tells you that her mother has had a number of “spells” recently. She is afraid that one of these spells may occur when her mother is driving and asks that you speak to mom about this. The daughter believes that her mother would handle it better if this discussion came from you. What do you do?

You prescribe anti-depressant medication to a patient who is experiencing work-related stress anxiety. You warn the patient not to drive while taking the drugs in question. He drives anyway and is involved in a motor vehicle accident and is injured. Are you at fault?

Depending on your patient base, questions similar to the one described above may arise with increasing frequency. Many physicians are at a loss as to how to respond because they are unclear as to their responsibilities to the patient and are doubly unsure as to what their legal responsibilities might be. They are concerned that by reporting a patient to the state motor vehicle administration, they run the risk of alienating the patient, being accused of breaching patient confidentiality or losing patients from their practice altogether. On the other hand, physicians may be generally aware that the state where they practice may have laws requiring them to report patients that the physician deems to be unsafe behind the wheel and failure to report may put them at increased risk from a legal standpoint.

Part of the dilemma that physicians face is the question of determining who is at increased risk. Driving a motor vehicle is an activity that requires a number of important cognitive skills such as memory, judgment and attention. This does not mean that physicians make the decisions as to who should lose their license, but rather should look at...
their patient base and determine if medical conditions, medications or other functional impairments are negatively impacting a patient’s driving abilities.

In order to answer these questions, we must first look to what the physicians’ responsibilities are to their patients. The relationship between a doctor and a patient is at the very heart of medicine. Most physicians would say that their primary responsibility is to care for the physical and mental health of their patients. An integral part of this is caring for the patient’s safety. When the physician is dealing with a patient who drives, it becomes an added responsibility to inform the patient about medical conditions and medications that could alter their ability to drive safely.

Even the best of drivers can become unsafe when their abilities are reduced by certain medical conditions. The effects of different medical conditions on driving ability are many and varied. Some conditions, such as Alzheimer’s disease, Parkinson’s, dementia, stroke, musculoskeletal disorders, psychiatric disorders, sleep apnea and drug and alcohol abuse are easy to relate to reductions in driving ability. However, less obvious conditions such as heart disease, diabetes, pulmonary dysfunction, renal disease, kidney failure or or sclerosis may also contribute significantly to the reduction of a patient’s abilities of judgment, memory or attention. The detection, diagnosis and treatment of illnesses in these categories may help in reducing the risk of an automobile accident and maintaining the driving skills of your patients. Sometimes, a particular disease may be so severe and irreversible that a recommendation to stop driving is obvious. Often, however, an increased risk for an accident may not be so clear. In these patients, referral to other professionals or organizations may be useful in the evaluation and rehabilitation process.

As the second example illustrates, some cases of physician liability that involve driving are related to medications. Physicians should warn a patient if a particular medication may affect them adversely while involving driving are related to medications. Physicians should warn a patient about medical conditions and medications that could alter their ability to drive safely.

Doctors RX
Elizabeth A. Sosnowsky, J.D., Editor
Director of Risk Management Services
D. Ted Lewers, M.D., Chair of the Board
Medical Mutual Liability Insurance Society of Maryland
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Medical Mutual Liability Insurance Society of Maryland

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All faculty participating in continuing medical education programs sponsored by Medical Mutual are expected to disclose to the program participants any real or apparent conflict(s) of interest related to the content of their presentations.

Numbers you should know!

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Maryland Motor Vehicle Administration (MVA) requires that application for and renewal of a Maryland driver’s license include visual acuity and visual field testing in-person at a state mandated site. Additionally, a medical report is required of new drivers age 70 and older. Application for commercial drivers includes a color vision requirement.

Maryland law provides for the discretion ary reporting to the MVA of persons who have disorders characterized by lapses of consciousness.” The law goes on to state that a civil or criminal action may not be brought against any person who makes a report referral to the Medical Advisory Board (MAB) who does not violate any confidential or privileged relationship conferred by law. The Medical Advisory Board is comprised of 16 physicians specializing in various areas of medicine. They work in concert with the MVA to ensure that a driver is capable of safely operating a motor vehicle. The MAB will accept information from courts, other DMVs, police, family members, and other sources (i.e., complaints). The MAB can also provide guidance to physicians wondering whether they should report a patient. They can be reached at (410) 368-7513 for information and assistance. Generally speaking, approval to drive by the Board is required for any of the following conditions:

- Cerebral palsy
- Diabetes
- Epilepsy
- Multiple Sclerosis
- Muscular dystrophy
- Heart condition
- Stroke
- Alcoholism, or alcohol abuse
- Drug addiction
- Loss of limb or limbs
- Organic brain syndrome
- Manic depressive disorders (major affective disorder)
- Schizophrenic disorders
- Severe anxiety disorders
Virginia's Licensing Requirements

- Virginia's licensing requirements also require visual acuity and visual field testing. Restrictions on an individual's license to drive may be based on road test performance, medical conditions, violation of probation, or court convictions. The restrictions may include mandatory corrective lenses, hand controls, radius limitations, daylight driving only, mandatory ignition interlock device, and driving only to and from work/school.

- Virginia law also requires physicians to report medically impaired drivers. However, for physicians who do report these cases, laws have been enacted to prohibit release of the physician's name as the source of the report. Va. Code section 54.1-2966.1 states that if a physician reports a patient to the DMV, it shall not constitute a violation of the doctor-patient relationship unless the physician has acted in bad faith or with malicious intent.

- The DMV also relies upon information from courts, other DMVs, law enforcement officers, physicians, and other medical professionals, relatives, and concerned citizens to help identify drivers who may be impaired. At the present time, Virginia law provides confidentiality allowing the patient to continue to drive to suspending their driving privileges. All medical records obtained by the MAB are confidential and not open for public disclosure. These records may only be revealed by a court order.

- If a patient is referred, the MAB reviews the more complex cases, including those referred for administrative hearings, and provides recommendations for medical review action. Where does HIPAA fit in? The HIPAA Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) permits health care providers to disclose PHI to authorities authorized by law to collect or receive such information for preventing or controlling disease, injury, or disability.

- As mentioned previously, it is not always easy for a physician to make the determination as to whether a patient can continue to drive. Driver rehabilitation specialists (DRS) can be an additional resource to help with this assessment. A DRS can perform a more in-depth functional determination and evaluate a patient's performance in the actual task of driving. Based on how the patient performs, the DRS may recommend that the patient continue driving with or without restrictions, advise the use of adaptive devices and techniques, or recommend the patient discontinue driving altogether. If a determination is made that the patient should "retire" from driving, the DRS can assist the patient with alternative transportation suggestions.

- Driver rehabilitation programs are often associated with hospitals (occupational therapy departments, rehabilitation centers, driving schools and state licensing agencies). You can also contact the Association for Driver Rehabilitation Specialists at www.driver-ed.org for additional information on the driver rehabilitation specialists in your particular area.

- Other inferences in which there are lapses of consciousness, blackout, seizure or disorders that prevent a corrected minimum visual acuity of 20/70 in each eye and a field of vision of at least 110 degrees.

- If a patient is referred, the MAB reviews the more complex cases, including those referred for administrative hearings, and provides recommendations for medical review action. Where does HIPAA fit in? The HIPAA Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) permits health care providers to disclose protected health information (PHI) without individual authorization as required by law. It also permits physicians suffering from any physical or mental disability or disease that will prevent their exercising reasonable and ordinary control over a motor vehicle while driving it on highways. Virginia's MAB reviews the more complex cases, including those referred for administrative hearings, and provides recommendations for medical review action.

- The main difference in the licensing requirements of the District of Columbia is that they do not maintain a medical advisory board as part of their Department of Motor Vehicles. They do require visual acuity and visual field testing and there is a color vision requirement for new drivers only. As for licensure renewal, drivers with physical disabilities may require a road test at the time of their renewal. Additionally, senior citizens may be required to take the road test on an observational basis. Drivers reaching age 70 must submit a letter from their physician stating that they are medically fit to drive based on physical and mental capabilities.

- As in the other two states, D.C. does not require that physicians report medically impaired drivers but, if they choose to do so, they are allowed to remain anonymous. Where does HIPAA fit in? The HIPAA Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) permits health care providers to disclose protected health information (PHI) without individual authorization as required by law. It also permits physicians suffering from any physical or mental disability or disease that will prevent their exercising reasonable and ordinary control over a motor vehicle while driving it on highways. Virginia's MAB reviews the more complex cases, including those referred for administrative hearings, and provides recommendations for medical review action.

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Reduce your liability risk and your insurance premium!

Make sure you get the best possible opportunity to attend the program, date and location of your choice by registering now for one of our 2004 Risk Management educational seminars. Physicians in Maryland can choose from “Communication--Plus,” “Mock Deposition” and “Specialty Specifics.” Physicians in Virginia and Washington, D.C. can take “Medical Matters,” a seminar focused on actual closed medical malpractice cases. Participating Physicians earn CME Credits and a 5% premium discount on their 2005 MEDICAL MUTUAL or Professionals Advocate renewal policies. Visit our web site at www.weinsuredocs.com for complete seminar information or for convenient online registration.
1. Physicians should only worry about their older patients when looking at the issue of impaired driving ability.
   A. True   B. False

2. Approval by Maryland's Medical Advisory Board is required for patients who suffer from diabetes before they can get operate a motor vehicle.
   A. True   B. False

3. A patient's treating physician must make the final determination as to whether a patient can keep their license.
   A. True   B. False

4. The State of Virginia requires treating physicians to report all unsafe drivers to the state motor vehicle administration.
   A. True   B. False

5. Virginia law allows physicians to report patients to the DMV who don't pay their bills in a timely manner without fear of retribution from the patient.
   A. True   B. False

6. In discussing your recommendations to the patient regarding conditions that might affect their driving ability, always make sure you document the conversation/suggestions in the medical record.
   A. True   B. False

7. Driver rehabilitation specialists can assist physicians and family members in assessing a patient's driving abilities.
   A. True   B. False

8. Operating on the wrong patient has the highest percentage of reported incidents that the Joint Commission is trying to prevent.
   A. True   B. False

9. The new JCAHO Protocol on Wrong-Site Surgery will go into effect July 1, 2005.
   A. True   B. False

10. The JCAHO Protocol requires that the surgical team take a "time out" prior to the procedure to verify that they have the correct patient, procedure, site, etc.
    A. True   B. False


**CME Evaluation Form**

**Statement of Educational Purpose**

"Doctors RX" is a newsletter sent three times 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, and
3) assess how this information may influence their own practices.

**CME Objectives for Spotting the Impaired Driver**

Educational Objective: To gain an understanding of how to assess and counsel patients on medical fitness to drive.

To gain an awareness of specific state reporting laws regarding impaired drivers

To become familiar with JCAHO’s new Protocol on Wrong-Site Surgery

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**Part I. Educational Value:**

I learned something new that was important.  

I verified some important information.  

I plan to seek more information on this topic.  

This information is likely to have an impact on my practice.

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**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?

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**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: __________________________________________________________

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