

Section 3

Reporting – when and why*

Alert box

Physicians have a statutory duty to report patients whom they believe to be unfit to drive to the relevant provincial or territorial motor vehicle licensing authority. This duty may be mandatory or discretionary, depending on the province or territory involved. This duty to report is owed to the public and supersedes the physician's private duty with regard to confidentiality

3.1 Overview

All provinces and territories impose a statutory duty on physicians relating to the reporting of patients deemed unfit to drive. This duty may be mandatory or discretionary, depending on the jurisdiction (see Table 1).† The duty to report prevails over a physician's duty of confidentiality. Section 35 of the CMA *Code of Ethics* affirms the notion that physician-patient confidentiality may be breached when required or permitted by law:

Disclose your patients' personal health information to third parties only with their consent, or as provided for by law, such as when the maintenance of confidentiality would result in a significant risk of substantial harm to others or, in the case of incompetent patients, to the patients themselves. In such cases, take all reasonable steps to inform the patients that the usual requirements for confidentiality will be breached.

Despite being legally authorized to breach confidentiality in these circumstances, physicians often find it difficult to report patients who are deemed unfit to drive. Physicians are often concerned about their own liability and, particularly when the patient is a commercial driver, are concerned about the impact of a suspension or restriction of licence on the patient.

*This section is meant for educational purposes as a guide to physicians on reporting of patients assessed to be unfit to drive. It is not meant to replace legal counsel. Unless specified, this section refers to fitness to drive motor vehicles.

†Pilots, air traffic controllers and certain designated railway workers are governed by federal legislation that requires the reporting of certain individuals in these transportation industries who have a medical condition rendering them unfit to perform their duties. These reporting obligations are discussed in separate sections of this guide.

Physicians also may have difficulty determining the circumstances in which a report should be made. Reference to this guide, to the specific wording of the relevant legislation and to the Canadian Medical Protective Association (CMPA) is helpful in these circumstances.

It is important to emphasize that only motor vehicle licensing authorities can suspend or restrict a person's licence. While a physician's report is a very important element in determining the motor vehicle licensing authority's subsequent action, it is not the physician's responsibility to determine whether the patient's driving privileges should be altered.

Physicians should also be aware that in all jurisdictions, the relevant legislation protects the physician from any legal action brought against the physician for making a report (see Table 1). Some provinces and territories specify that the physician must have acted in good faith in order to benefit from this protection.

Physicians should be aware that there have been cases where injured parties in a motor vehicle crash have brought actions against physicians, alleging that the crash was caused in part by the medical disability of their patient, who should not have been allowed to continue driving. Physicians have been found liable for failing to report, notably in those provinces and territories with mandatory requirements.

It is, therefore, important for physicians to fulfill their statutory duties and report patients whom they believe have a medical condition that might reasonably make it dangerous for them to drive. Physicians are encouraged to be familiar with this guide when assessing a patient's fitness to drive and when deciding whether to report a particular patient.

3.2 Reporting

Physicians who have determined that a patient is unfit to drive should inform the patient that a report will be made to the motor vehicle licensing authority and they should document this discussion in the patient's medical chart. In general, physicians should err on the side of reporting any potentially medically unfit driver. This is especially important in jurisdictions where there is a mandatory reporting obligation. Contact your provincial or territorial motor vehicle licensing authority for details on the process for reporting in your jurisdiction, or for advice on interpreting jurisdictional standards (see Appendix E).

3.3 Patient's right of access to physician's report

The right of patients to access reports about fitness to drive made to the motor vehicle licensing authority and any notes made in the medical chart about such a report is subject to varying legislation in the provinces and territories. Physicians should contact the CMPA for further information specific to their jurisdiction.

Table 1: Regulations governing reporting of medically unfit drivers and protection for physicians

Jurisdiction	Reporting	MD protection for reporting	Admissibility of reports as evidence in legal proceedings
Alberta	Not directly addressed, but interpreted as discretionary	Protected	Reports confidential
British Columbia	Mandatory for MD if the unfit driver has been warned of the danger and still continues to drive	Protected unless physician acts falsely or maliciously	Not addressed Subject to the provisions of access to information legislation
Manitoba	Mandatory	Protected	Privileged Not admissible as evidence except to prove compliance with reporting obligations
New Brunswick	Mandatory	Protected as long as physician acts in good faith	Not addressed
Newfoundland and Labrador	Mandatory	Protected	Privileged Not admissible in evidence in trial except to prove compliance with reporting obligations
Northwest Territories	Mandatory	Protected unless physician acts maliciously or without reasonable grounds	Not admissible in evidence or open to public inspection except to prove compliance with the reporting provision and in a prosecution of a contravention of section 330 (making false statements or submitting false documents). The person who is the subject of the report is entitled to a copy of the report upon payment of a prescribed fee.
Nova Scotia	Discretionary	Protected	Not addressed Subject to access to information legislation
Nunavut	Mandatory	Protected unless physician acts maliciously or without reasonable grounds	Not admissible in evidence or open to public inspection except to prove compliance with the reporting provision and in a prosecution of a contravention of section 330 (making false statements or submitting false documents). The person who is the subject of the report is entitled to a copy of the report upon payment of a prescribed fee.
Ontario	Mandatory	Protected	Privileged Not admissible in evidence except to prove compliance with reporting obligations
Prince Edward Island	Mandatory	Protected	Privileged Not admissible in evidence except to prove compliance with reporting obligations
Quebec	Discretionary	Protected	Not admissible in evidence except in cases of judicial review of certain decisions of the motor vehicle licensing authority
Saskatchewan	Mandatory	Protected as long as physician acts in good faith	Privileged Not admissible in evidence except to show that the report was made in good faith in accordance with reporting obligation
Yukon	Mandatory	Protected	Not addressed