Karam Hadid

Kristi Morris

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Impaired Driving Reporting

Physicians often care for patients who were responsible for or are the victim of a drunk driving accident. Physician and team management of cases like these are complex and have both ethical and legal implications.Imagine a situation where a 25 year old young man is dropped off by a friend at the Emergency Department (ED) 30 minutes after a motor vehicle crash. The young man states that his car is extensively damaged, but that he was capable of getting out of the car and walking around the scene. The young man then states that there was police investigating the scene; The patient does not explicitly state whether the police questioned him or how they came to the conclusion of letting him go. The patient also states that there was no loss of consciousness, and given the little physical wounds besides bumps and bruises, there is no indication to perform a CT-scan. The physician however is capable of smelling the odor of ethanol on the patient's breath. The physician then orders a blood ethanol test, and the patient complies with the order of the test. The patient's blood ethanol level came out to be 0.17 mg/dl- this is well over the legal driving limit and the patient is thus legally impaired. Given the physicians history of practice, it is not uncommon for patients to leave the scene of the accident to avoid detection by the investigating police. Furthermore, since the patient is above the legal limit of blood-ethanol intoxication, someone must assume responsibility for the patient in order to pick them up. The physician is now faced with the dilemma between legal and ethical action. Should the physician break their obligation to protect a patient's privacy (implicitly or explicitly

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stated) in order to report them to the police? Should this action still be taken regardless of the state reporting laws? It is my belief that ALL states should mandate physicians to break the seal of physician-patient confidentiality in order to report 'Under the Influence' patients to the police/motor vehicle authorities (MVA), as this is the moral, ethical, and legal action to take.

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Automobile crashes are the third leading cause of death and injury in the United states, with roughly 40k-50k killed in roughly two million accidents per year. Furthermore, according to the National Highway Traffic Safety Administration (NHTSA), at the end of 2020 (a year renownedly known for reduced driving), 26.8% of drivers that were killed or seriously injured in a crash had alcohol in their bloodstream. Alcohol, along with speeding, were the single two biggest factors dramatically increasing the chance of an accident; Inattentiveness, fatigue, and sleepiness were among the other factors. It's important to note that almost all of these factors can arise from recognized medical conditions such as addiction, but there is a distinction to be made between someone being reported for a medical reason such as vision loss vs alcohol abuse and negligence: Intoxicated driving is poor choice-making, medical-impaired driving is due to necessity. According to the Maryland center for addiction and recovery, "more than 80% of DUI offenders have a significant problem in their relationship with alcohol and fall into the category of alcohol abuse or alcohol dependence". States thus have developed widely varying regulations and stipulations surrounding reporting laws. A few states have established policies for the identification of drivers who are deemed legally impaired via medical-physical or mental-challenges. Oregon for example is a state that has some of these regulations; Its law mandates physicians to report any and all conditions that are impacting sensory, motor, or cognitive function to the authorities. In the state of Oregon, physicians are protected from patients who sue for a break of confidentiality. Physicians however are also protected from any liability that might

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come with an unreported patients such as a patient causing injury to himself, others, or property. Montana's laws state that “a physician who diagnoses a physical or mental condition that, in the physician’s judgment, will significantly impair a person’s ability to safely operate a motor vehicle may *voluntarily* report” (Motana State Board of Examiners).While some states may mandate or permit a physician the ability to report a patient for reckless or medically-impaired driving, and thus leaving the physician with little discretion, some states fail to address the physician's role in reporting. Physicians have the capability of anticipating and/or diagnosing physical and mental conditions that may cause impaired driving. Physicians thus carry the burden and challenge of innervation, but they also have the desire to promote patient autonomy. This is exacerbated by the little guidance from state regulation, and thus puts a tremendous amount of stress on physicians and leaves them legally liable. Although driving is considered a privilege for many, studies show that current social structures suggest that driving is an essential function of our society and day-to-day. To make matters worse, our federal and local state laws make little effort to support those who can no longer drive, thereby foregoing an essential pillar of independence. Suppose there is an elderly patient recently diagnosed with acute hearing loss. Driving may be a huge source of freedom and empowerment for the patient. In an attempt to preserve the patient's well being, the physician may not remove the patient's right to drive (despite associated risks) as it can have a huge psychological impact. In addition, it may prevent the elderly patient from accessing the medical or social services they otherwise need and are committed to.

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According to Dr. Joel Hunter, an expert on ethics and medical ethics, “confidentiality concerns patients imparting information to health professionals who promise, implicitly or explicitly, not to disclose that information to others.” Patients need to be able to trust that their

physician and team will protect information that is shared in confidence. In other words, patients are entitled to decide what and to whom personal information is disclosed to. Patient-physician trust is at the very core of healthcare as trust is shown to positively impact patient satisfaction, greater patient understanding of health problems and treatment, better adherence to treatment plans, etc. (Johnson, T. (2019, March 11). *The importance of physician-patient relationships, communication and trust in Health Care*.) In some cases, disclosure of confidential medical information can lead to disruption and conflict in ones personal relationships, subject them to public shame and ridicule, or even lead to discrimination and loss of opportunity from insurance companies and employers alike. At the root of the confidentiality ethics debate is whether confidentiality is absolute or Prima Facie. Absolute in this case would mean that it applies to all and every case; by extension, it means every breach of confidentiality no matter how small or large amounts to "impermissible deception" (Vaughn, Bioethics). Prima Facie in this case would mean that exceptions can be made when other duties overlap; The principle that is largely intertwined with this case is that of preventing serious harm to the patient and others. According to Opinion 3.2.1 by the American Medical association (AMA) code of Ethics, "Physicians may disclose personal health information without the specific consent of the patient… when the patient will seriously harm him/herself; the patient will inflict serious physical harm on an identifiable individual or individuals" (AMA Code of Ethics). The diction used is problematic because it states that the patient will have to inflict harm on an identifiable individual or individuals. In the case of intoxicated driving, rarely is there a specific intention to cause harm, let alone to a specific individual. Adversely, physicians are also obligated by law to report cases of communicable diseases, or gunshot and knife wounds. "These general exceptions identify the limits of confidentiality and provide a basis for deriving additional duties on the part of

physicians to protect the public" (Herbert Rakatansk MD, NHTSA). We can expand the duty based on the premise that with communicable diseases, there is often no intentionally targeted individual; This same scenario applies to intoxicated driving in that there is no specific target. If reporting of communicable diseases-in which there is no intended target- is mandatory, then the reporting of intoxicated drivers should be held to the same standard and regulation.

In a 1976 California Supreme Court case of *Tarasoff v. Regents of the University of California*. A student who confided in the school psychotherapists told them of his thoughts to kill another student. The school informed the police, but did not inform the other student or their family. The police deemed the student rational and thus let him go. When the student came back from vacation, he murdered the student just as he has stated to the psychotherapists. The parents sued the school for failing to let them know, and they ultimately won the case. The court understood that while there is an element of confidentiality between the school psychotherapists and the student, there was a lack of and failure in the communication between the school and the parents and the potential victim themselves. The court majority opinion went on to say "that the public policy favoring protection of the confidential character of patient- psychotherapist communications must yield to the extent to which disclosure is essential to avert danger to others. The protective privilege ends where the public peril begins" (Vaugn, Bioethics). In other words, the confidential relationship between two parties is valid until the moment the patient/individual is in potential danger or may cause serious harm to themselves or others. In the case of the drunk driving young man, the patient has already been involved in a car accident as a direct result of their blood ethanol levels- meaning they are not capable of driving safely. While treating the patient for their injuries should be the team's primary focus, it's important to understand how discharging the patient without addressing the fact that they were drunk driving

may potentially cause harm for the patient and others in the future. The physician, as such, possesses a prima facie duty, or an exception and valid reason, to report the patient's intoxication to the police. With the lack of information provided to the physician, the patient could have potentially hit someone or someone's property and fled the scene with a friend's help.

Optional reporting laws are also a disadvantage due to their implications on bias. Permissive laws give physicians the option to choose when to report, and it is impossible to not consider scenarios where these laws are abused and discriminatorily enforced. One physician who is an advocate for passing stricter regulations would be more likely to report than a physician who is debating violating medical ethics. Physicians might be more likely to report a person of color (POC) biker with tattoos than a white 22 year old male with eurocentric features coming home from a night out. Another implication is in the form of a member of staff being caught driving while intoxicated. A physician is much more likely to let their staff member go rather than a struggling alcoholic. In summary, preconceived notions are a major factor of whether a physician voluntarily reports an individual or not. We can see that on one side of the spectrum, the American Medical Association (AMA) establishing voluntary reporting laws places a responsibility on the physician to recognize and report patient impairments that pose a threat to public safety. The other side of the spectrum however can completely prohibit the physician from releasing any confidential information without an explicit cause as described above. If physicians, in their obligation to protect the public, see the need to report a patient, they may not necessarily be able to do so. In fact, they open themselves up to civil and criminal liability in certain states. The caveat to this spectrum is a scenario where a physician is not held liable for failing to disclose a dangerous patient, or a scenario by which bias is likely to be in effect. Because of this, we no longer need to cling to our past ideas of confidentiality, but

establish and embrace more logical aspects of medicine- one that lets us preserve our physician-patient relationship without sacrificing the health, safety, and wellbeing of others. This is why it is imperative to establish a universal/federal law that mandates reporting. This would not only protect the patient and the public, but it would eliminate bias-centered reporting, help alleviate stress on medical teams, physicians, and states, as well as protect them from potential legal liability. Prior to reporting, however, there are several steps a physician can undertake in order to ensure the best outcome for all. Physicians should intimately speak with the patient and their family about the potential risks of intoxicated driving. “In addition, depending on the patient's medical condition, a physician may suggest to the patient that he or she seek further treatment, such as substance abuse treatment or occupational therapy” (AMA council of ethics and judicial affairs). These steps can act as preventive measures to help reduce the chances a physician reports their patient. If federal law obligates physicians to report regardless of the situation, there are still steps that can be taken to render the least amount of damage to the patient-physician relationship. Some of these steps include informing the physician that it is their responsibility to report, notifying the patient and the family of disclosure (if appropriate), and disclosing the minimum amount of necessary information.

In conclusion, the complexity of impaired driver reporting demonstrates the dichotomy between the moral, ethical, and legal responsibilities EM physicians have when it comes to their patients and society. A federal and more clear and concise regulation code would make upholding each one of those factors easier. Ethically, the physician and team can uphold their obligation to protect and safeguard the general population from harm, as well as from the patient potentially harming themselves in the process. Morally, the physician and team no longer have to feel responsible for potentially deteriorating patient-physician relationships via breaking

confidentiality. Legally, physicians and their teams, as well as entire health care systems are protected from any legal troubles as all instances must be reported regardless of circumstance. While a report to a driver's licensing authority might be a loss of driving privileges for one party (and potentially have huge impact on their health indirectly), it would mean the patient and the public are both protected in the best possible way.

Resources:

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10. "Appendix F: American Medical Association Council on Ethical and Judicial Affairs Report on Impaired Drivers." *U.S. Department of Transportation - National Highway Traffic Safety Administration (NHTSA) - Model Driver Spreening and Evaluation*

Program: Final Technical Report - Guidelines for Motor Vehicle Administrators - Appendix F. American Medical Association Council on Ethical and Judicial Affairs Report on Impaired Drivers - DOT HS 809 581, May 2003, https://icsw.nhtsa.gov/people/injury/olddrive/modeldriver/3_app_f.htm.