

Can you report patient whose license is a threat? Check local law, board rules

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Question: *I diagnosed a patient with a seizure disorder. I told her to report the diagnosis to the Department of Motor Vehicles (DMV) as it may invalidate her license; I'm pretty sure she won't do it. If I report her to the DMV myself, am I violating her confidentiality?*

Answer: Licensing is a state matter, and you should check your state laws. But also be sure to review the rules set by your state medical board, which is empowered by the state to set guidelines for physicians that may allow you to report the patient.

You're certainly aware of laws that allow limited release of patient information that's normally protected by HIPAA when a patient is a threat to himself or others ([PBN 7/25/19](#)). You may think of this in terms of willful patient violence, such as suicide or an attack.

But patients may also do harm by driving or operating heavy machinery while impaired. That's why licensure frequently comes with medical requirements, to which license holders have to attest and sometime be examined.

Jayne R. Matchinski, a health care lawyer and officer of Greensfelder, Hemker & Gale PC in Chicago, had a sleep-doctor client who assessed a truck driver as a condition of employment. The physician performed a sleep study, and the driver tested positive for obstructive sleep apnea — which, the physician felt, made the driver dangerous on the job unless treated. The truck driver was supposed to get and use a CPAP machine, but he elected instead not to proceed with treatment. After that, he stopped answering phone calls and didn't show up for any follow-up appointments.

The client asked if he had a duty to report the truck driver to the state Department of Transportation.

"In Illinois, there's a duty to report if it's a public health and safety issue," Matchinski says. "If a physician believes that the patient is going to harm the public health and safety, that [duty] supersedes the patient's right of confidentiality."

In New Jersey, doctors who perceive public danger in a patient's licensure may avail an exception to their normal confidentiality requirements, notes Svetlana Ros, a partner with Pashman Stein Walder Hayden P.C. in Hackensack, N.J., and chair of the firm's health care practice. This exception is stipulated by the regulations of the New Jersey State Board of Medical Examiners, which govern physician licenses in the state.

"The licensee, in the exercise of professional judgment, who has had a good faith belief that the patient because of a mental or physical condition may pose an imminent danger to himself or herself or to others, may release pertinent information to a law enforcement agency or other health care professional in order to minimize the threat of danger," the New Jersey regulations state.

If the seizure patient in question is seen in New Jersey, you have a clear-cut answer, according to Ros: If a patient of driving age presents with "recurrent convulsive seizures," the physician has to report this to the DMV, per a statute pertaining to licensing of drivers through the Motor Vehicle and Traffic Regulations.

Note: The information shared constitutes a limited disclosure; only report the endangering condition, not anything else, and only after checking law and regulation to make sure you're not endangering your own license as well.