



Fitness-to-drive reports: Will Ontario doctors soon breathe easier?

The statutory duty to report “unfit” drivers and the resulting potential liability for failing to report them has long been a sore point among physicians. Now Ontario appears ready to respond by relaxing the law. It has little choice, because it is facing complaints from 3 groups:

- Doctors, who are uncertain about the extent of their responsibilities;
- Patients, who believe they have been unfairly singled out by the duty-to-report legislation; and
- Provincial officials, who recognize the unworkable nature of the current requirements.

Recent case law such as *Wasserman v. Spillane* (see *CMAJ* 1994; 150:988-90) and *Toms v. Foster* (see *CMAJ* 1994; 151:667) emphasized the mandatory nature of the reporting requirement in Ontario and most other provinces and territories. The cases upholding the legislation have made it clear that patient confidentiality does not take precedence over the statutory requirement to report conditions that physicians think *may* make it dangerous for a patient to drive.

The *Wasserman* case involved a man with a long history of epileptic seizures who was involved in a traffic accident. The ruling against 2 physicians who had treated him endorsed a finding of civil liability because of their failure to report the man’s condition. The judgement in the *Toms* case, in which a man with cervical spondylosis struck and injured a motorcycle driver, stated that “the duty of doctors to report is a duty owed to members of the public and not just to the patient.” The court rejected the physicians’ argument that

it was not the practice to report all incidents and responded that if the “burden is too onerous, it should be amended by the legislature.”

Recent reports indicate that the Ontario government is now willing to consider amending the Highway Traffic Act’s mandatory reporting requirement so that a distinction will be made between medical conditions that *must* be reported and conditions that, at physicians’ discretion, *may* be reported. This would provide physicians with a list of reportable conditions, such as seizures and unpredictable loss of consciousness, which must always be reported to the Ministry of Transportation. They would also receive guidelines to assist in determining whether to report patients who have other types of conditions, including temporary or long-term ones, on a discretionary basis.

For now, however, Ontario’s doctors are still obliged to report all cases where a patient may be unfit to drive. Legislation in all parts of Canada imposes the duty to report by placing the onus on physicians to determine which medical conditions are “dangerous” when a patient is operating a motor vehicle. Existing guidelines that are available through medical licensing authorities and the CMA’s *Physicians’ Guide to Driver Examination* will help physicians comply with this statutory requirement.

(In the *Wasserman* case, the 2 physicians involved were initially found 40% liable for the accident. In an appeal heard last month, the Court of Appeal decided that the physicians were only 5% liable, in part because *Wasserman* had failed to take his medication and had falsified his licence application renewal.)

— Karen Capen

Release of Nigerian MD pleases CMA, other groups

A Nigerian physician whose arrest outraged doctors around the world has finally been released from custody. Amnesty International (AI), which had adopted Dr. Beko Ransome-Kuti as a prisoner of conscience, says he was released June 16 along with 9 other prisoners. The CMA and World Medical Association were among the groups that had been pressing for his release; General Council passed a resolution protesting against his detention at the CMA’s 1996 annual meeting. Ransome-Kuti, the former head of the Nigerian Medical Association, was arrested July 27, 1995, because of his roles as a human rights and pro-democracy activist. AI said his health had deteriorated recently because of the harsh prison conditions, and he had required emergency hospital treatment in January.

Sales of patented drugs increase, prices remain steady

In 1997 patented drugs accounted for more than half of all drug sales in Canada for the first time, the Patented Medicine Prices Review Board reports. Sales of the patented products totalled \$3.7 billion, an increase of 20% over the previous year, the board stated in late June. Overall, total sales of drugs by manufacturers stood at \$7 billion in 1997, a 7% increase over 1996. The board, which regulates the maximum prices manufacturers of patented drugs can charge, says patented drug prices remained “virtually unchanged” during 1997.