

## WHEN HEALTH PROFESSIONALS CAN BREACH PATIENT CONFIDENTIALITY – UNSAFE DRIVERS

Confidentiality is the cornerstone of a doctor and patient relationship. Without confidentiality and its ensuing trust, patients may be reluctant to provide health information a doctor requires to make a proper diagnosis.

Doctor/patient confidentiality pre-dates statute or common law provisions. The concept is fairly simple:-

- Patients have a right to feel they can speak freely to their doctor; and
- Doctors have an obligation to keep private their patients' medical secrets.

There are, however, legislated “*public interest*” exceptions to the duty of confidentiality, where doctors are duty bound to disclose confidential communications between doctor and patient to a third party.

A recent legislative duty is the reporting of health conditions that might affect a person's ability to drive safely.

### When is Someone Unfit to Drive a Motor Vehicle?

Under the *National Transport Commission Act 2003 (Commonwealth)*, the National Transport Commission has the power to develop, monitor and maintain uniform or nationally consistent regulatory and operational reforms relating to road transport (Section 3).

In September 2003, the National Transport Commission and Austroads released a new national driver medical standards, called *Assessing Fitness to Drive 2003*. *Assessing Fitness to Drive 2003 Standards* were implemented in Queensland on 8 September 2003 onwards. The Standards outline medical conditions which should be reported to the Driver Licensing Authority. The purpose of the Standards is to promote uniformly safe road transportation in Australia.

The Standards have been formally approved by the Queensland Driver Licensing Authority and endorsed by the Royal Australian College of General Practitioners, Royal Australasian College of Physicians and the AMA.

*Assessing Fitness to Drive 2003 Standards* purpose is to increase road safety by assisting health professionals to:-

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- Identify patients who impose a risk to public safety;
- Inform patients of their obligations to report conditions which may affect their ability to drive to the Driver Licensing Authority; and
- Recognise, if there are concerns regarding public safety and a patient does not warn the Driver Licensing Authority themselves, there is a duty to advise the Driver Licensing Authority regarding the patient's fitness to drive.

The Standards have been distributed in hard copy to all Australian general practitioners, as well as to medical specialists and to other health professionals. The guidelines can be accessed from the Queensland Driving Licence Authority or online from Austroads website ([www.austroads.com.au](http://www.austroads.com.au)).

### Types of Health Conditions Which Might Affect a Patient's Ability to Drive

The Assessing Fitness to Drive 2003 Standards outline common examples of medical conditions which may impair driving ability. They are as follows:-

- Blackouts or fainting;
- Vision problems;
- Epilepsy;
- Heart Disease;
- Sleep Disorders;
- Diabetes;
- Psychiatric Disorders;
- Age-related decline.

### Responsibilities of Health Professionals – Legal and Ethical Roles

Doctors have a significant legal and ethical responsibility regarding the reporting of health conditions that might affect a person's ability to drive safely. Although there is no requirement of mandatory reporting by Queensland health professionals, they have a duty of care to protect public safety in the situation where the health care professional is aware of the patient continuing to drive. The health professional should disclose patient information that may affect a patient's driving ability under the *Transport Operations (Road Use Management) Act 1995 (Queensland)*, which should be read with the Assessing Fitness to Drive 2003 Standards adopted in Queensland in September 2003.

Section 142 of the Act provides that a health professional's disclosure of a person's medical fitness to hold, or to continue to hold, a Queensland driver licence, is not a breach of confidence.

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A health professional is defined to include doctors, occupational therapists registered under the *Occupational Therapists Act 1979* or a corresponding law to that Act, optometrists registered under the *Optometrists Act 1974* or a corresponding law to that Act and physiotherapists registered under the *Physiotherapists Act 1964* or a corresponding law to that Act.

The Act provides that a health professional is not liable, civilly or under an administrative process, for giving information (which includes documents) in good faith to the Chief Executive of Queensland Transport, about a person's medical fitness to hold, or to continue to hold, a Queensland Driver Licence.

The Act also provides protection to health professionals in a civil proceeding for defamation by providing the health professional with a defence of absolute privilege for publishing the information. Also, if the health professional would otherwise be required to maintain confidentiality about the information under an Act, Oath, Rule of Law or Practice, the health professional does not contravene the Act, Oath, Rule of Law or Practice by disclosing the information and is not liable to disciplinary action for disclosing the information.

### What Should a Health Professional Do in Practise?

The relationship between a doctor and patient is confidential, so a doctor would normally discuss the patient's possible disqualification from driving with the patient. The doctor should provide the patient with advice about their ability to drive safely. The doctor should attempt to persuade the patient to self-notify the Driver Licensing Authority. If the unsafe patient can not be persuaded to notify the Authority and the doctor is aware the patient continues to drive, the doctor has a duty of care to notify the Queensland Licensing Authority of the patient's condition as a risk to public safety. Under Section 142 of the Act, indemnity is provided for the doctor to notify the Queensland Driver Licensing Authority. The doctor should provide the information in a letter or report to the Driver Licensing Authority (medical condition notification forms are available at the website <http://www.austroads.com.au> ).

Doctors who are unsure about confidentiality and notification should consult the Queensland Driver Licensing Authority and the Assessing Fitness to Drive 2003 Standards. The Standards provide a clear medical criteria for driver capability, based on expert medical opinion, as well as a reporting guideline to assist notification of patients to the Queensland Licensing Authority. The Standards also include contact addresses and information regarding medical experts practicing in the fields of medicine which relate to conditions a patient may suffer from.

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## What Happens When a Health Professional Reports the Patient?

Section 37A of the *Transport Operations (Road Use Management – Driver Licensing) Regulation 1999* provides that:-

- (i) This section applies if the Chief Executive (of Queensland Transport) received information from a health professional mentioned in Section 142 of the Act that indicates:-
  - (a) the applicant for, or holder of, a Queensland driver licence has a mental or physical incapacity; and
  - (a) the incapacity is likely to adversely affect of the person's ability to drive safely.

An example – the Chief Executive may receive information from a person's doctor that the person has a physical incapacity that affects the person's balance, which the doctor considers may affect the person's ability to safely ride a motorbike.

- (i) The Chief Executive may give the person a written notice requiring the person to take a practical driving test in a class of vehicles that is authorised to be driven under the licence.
- (i) The notice must state:-
  - (a) The reasons why the person is required to take a practical driving test;
  - (a) The class of vehicle for which the test is to be undertaken;
  - (a) The date and time for the test, ie. at least 7 days after the date of the notice;
  - (a) The place where the test is to be taken.
- (i) No fee is payable for the test.

## Summary

Doctor and patient confidentiality can be legally breached under Section 142 of the Act. Section 142 provides indemnity for a health professional to notify the Queensland Licensing Authority if an unsafe

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driver continues to drive.

The key factors are:-

- A health professional is not liable for breach of patient/doctor confidentiality in providing medical information to Queensland Transport; and
- Under Section 142(1) the information must be provided in good faith; and
- The Act creates an obligation upon the health professional to protect public safety, if the health professional is aware the patient continues to drive.

Medical information may be disclosed to protect public safety. The doctor should inform the patient that they will disclose medical information to the Queensland Licensing Authority, wherever it is practicable to do so. Ultimately, the doctor has a duty of care where there is a definite risk to public safety, as such, is provided indemnity under Section 142 for breaching doctor and patient confidentiality.

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