

**CHRISTENSEN LAW GROUP, LLC**  
**HEALTHCARE CLIENT INFORMATION SERIES – 1**

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**PHYSICIAN LIABILITY ISSUES –**  
**PATIENT CRASHES: DRIVING WHILE IMPAIRED**

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**ISSUE PRESENTED**

Can a physician be held legally responsible if a patient who has been prescribed controlled substances by the physician drives while impaired and causes a car accident that results in harm to the patient or other persons?

**SHORT ANSWER**

The issue has not be clearly addressed in Oklahoma, but medical malpractice cases and applicable Oklahoma laws leave the door open for patients and injured parties to bring lawsuits against physicians in circumstances where patients drive while impaired and who are not properly warned by physicians not to drive or when a physician does not take measures to prevent a patient from driving that he/she knows is impaired. There are examples from other states of physicians being sued, and being held legally and financially responsible, when a patient drives while impaired and causes a car accident, especially if the physician failed to warn the patient about possible impairment while taking prescribed drugs or if the physician permits the patient to leave the office and drive when he/she should have known that the patient is impaired.

<b>MEDICAL MALPRACTICE LIABILITY</b>	
<b>Common Law Standard of Liability</b>	Medical malpractice law in the United States is derived from English common law, and was developed by rulings in various state courts.. The injured patient must show that the

	<p>physician acted negligently in rendering care, and that such negligence resulted in injury. To do so, four legal elements must be proven: (1) a professional duty owed to the patient; (2) breach of such duty; (3) injury caused by the breach; and (4) resulting damages.</p> <p>Oklahoma court cases have held that there are circumstances in which a person can owe a duty of care to a third party. <i>See, Wofford v. Eastern State Hosp.</i>, 795 P.2d 516 (Ok. 1990) <i>citing, Tarasoff v. Regents of Univ. of California</i>, 17 Cal.3d 425, 131 Cal.Rptr. 14, 551 P.2d 334 (1976).</p> <p>In <i>Iglehart v. Bd. Of County Com’rs of Rogers Cty.</i>, 60 P.3d 497 (Ok 2002), the Oklahoma Supreme Court stated: “The <b>threshold question</b> for negligence suits is whether a defendant owes a plaintiff a duty of care.<sup>17</sup> We recognize the traditional common-law rule that whenever one person is by circumstances placed in such a position with regard to another, that, if he (she) did not use ordinary care and skill in his (her) own conduct, he would cause danger of injury to the person or property of the other, a duty arises to use ordinary care and skill to avoid such danger. Among a number of factors used to determine the existence of a duty of care, <b>the most important consideration is foreseeability.</b><sup>19</sup> Generally a “defendant owes a duty of care to all persons who are foreseeably endangered by his conduct with respect to all risks which make the conduct unreasonably dangerous.” <b>Foreseeability establishes a “zone of risk,”</b> which is to say that it forms a basis for assessing whether the conduct “creates a generalized and foreseeable risk of harming others.””</p>
<b>APPLICABLE OKLAHOMA LAWS</b>	
<p><b>Driving While Intoxicated</b>  <b>47 O.S. § 11-902</b></p>	<p>A. It is unlawful and punishable as provided in this section for any person to drive, operate, or be in actual physical control of a motor vehicle. . . who.. .</p>

	<p>3. Has <b>any amount of Schedule I chemical</b> or controlled substance, as defined in Section 2-204 of Title 63 of the Oklahoma Statutes, or one of its metabolites or analogs in the person's blood, saliva, urine or any other bodily fluid at the time of a test of such person's blood, saliva, urine or any other bodily fluid administered within two (2) hours after the arrest of such person;</p> <p>4. Is under the influence of any intoxicating substance other than alcohol which may render such person incapable of safely driving or operating a motor vehicle. . .</p> <p>B. The fact that any person charged with a violation of this section is or <b>has been lawfully entitled to use alcohol or a controlled dangerous substance</b> or any other intoxicating substance <b>shall not constitute a defense against any charge of violating this section.</b> (Emphasis added.)</p>
<p><b>Operation of Motor Vehicle While Impaired</b> 47 O.S. § 761</p>	<p>Any person who operates a motor vehicle while his ability to operate such motor vehicle is impaired by the consumption of alcohol, <b>or any other substance, other than alcohol, which is capable of being ingested, inhaled, injected or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions</b> shall be subject to a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), or imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment. (Emphasis added.)</p>
<p><b>Implied Consent to Breath, Blood, or Other Test for Determining Concentration of Alcohol or Other Intoxicating Substance,</b> 47 O.S. § 751</p>	<p>A.1. Any person who operates a motor vehicle upon the public roads. . . shall be deemed to have given consent to a test or tests of such person's . . . blood, saliva or urine for determining the presence or concentration of any other intoxicating substance [other than alcohol] therein as defined in this section, if arrested for any offense arising out of acts alleged to have been committed while the</p>

	<p>person was operating or in actual physical control of a motor vehicle upon the public roads. . . or if the person is involved in a traffic accident that resulted in the immediate death or serious injury of any person and is removed from the scene of the accident to a hospital or other health care facility . . . before an officer can effectuate an arrest.”</p>
<p><b>Authority of Department to Deny Application for or Cancel License for Certain Ailments</b>  <b>47 O.S. § 6-207</b></p>	<p>. . . Every physician or surgeon, including doctors of medicine and osteopathy, examining, attending or treating an individual for any illness or injury that would impair the ability of the individual in any manner as to affect the performance of the person to operate a motor vehicle, may make a written report of the diagnosis to the State Department of Public Safety. The Department may, in its discretion, suspend or cancel the license of such person for such period of time as in its judgment is justified.</p> <p>In addition thereto, any person or physician or any medical personnel participating in good faith and without negligence or malicious intent in making of a report pursuant to this act shall have the immunity from civil liability that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.</p>

**EXAMPLES OF CASES FILED AGAINST PHYSICIANS**

California

The mother of an 18-year old man who was killed in a head-on collision in Los Osos, CA filed a lawsuit in 2015 against the driver, his parents and a doctor who reportedly administered an anti-addiction drug minutes before the crash. The driver, Alexander Gonzales, was driving in the wrong lane when he hit and killed Jackson Garland. Gonzales was charged with DUI and gross vehicular manslaughter. The lawsuit stated that Gonzales received a Vivitrol injection about 17 minutes before the crash from Dr. Kenneth Starr, who operates Starr Addiction Medicine Group. The allegation is that Starr knew or should have known Gonzales was under the influence of drugs and should have stopped him from driving.

## Massachusetts

The Massachusetts Supreme Judicial Court ruled, in 2007, that a physician could be sued by the mother of a 10-year old boy who was hit and killed by a man taking several prescription drugs. The man passed out at the wheel and drove off the road and struck the boy. The mother's lawyers alleged that the physician failed to warn his patient about the side effects of the medications and the potential danger of driving while taking them.

The patient was 75 years old and had emphysema, high blood pressure and metastatic lung cancer. He had prescriptions from his doctor for oxycodone, Zaroxolyn, prednisone, Flomax, potassium, Paxil, oxazepam, and furosemide – drugs whose side effects include drowsiness, dizziness and fainting. *Coombes v. Florio*, 450 Mass. 182, 877 N.E.2d 567 (2007).

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Following the ruling discussed above, another lawsuit was filed in Boston against doctors as a result of a 77 year old woman crashing her car through a hospital entrance and killing bystanders. The 77 year old woman pleaded guilty to criminal charges.

At the time of the crash, the woman told police she was undergoing chemotherapy. The lawyer representing the family of one of the people killed in the wreck says that the woman complained to doctors repeatedly about being light-headed and dizzy from the medication. The lawyer asserted that doctors should have instructed the woman not to drive.

## Minnesota

A Minnesota physician was added to a lawsuit involving a patient who triggered a fatal car crash in 2012 after injecting a take-home dose of methadone from his clinic. His clinic was already named as a defendant in the lawsuit, which argued that clinic staff should have known that the patient was abusing the drug because of needle marks on her arm and prevent her from driving 100 miles home.

## **WHAT PHYSICIANS SHOULD DO TO ADDRESS IMPAIRED DRIVING**

Physicians should explain to patients, and document the counseling, the potential side-effects of taking medications and warn them not to drive if they experiencing any side-effects. If the physician becomes aware that the patient is experiencing side-effects and refuses to discontinue driving, then the physician should consider reporting the patient to the Department of Public Safety.

In 2000, the American Medical Association's Council on Ethical and Judicial Affairs ("CEJA") released an opinion that is copied below addressing what physicians should do to assess and address impaired patient driving.

### **Opinion 2.24 - Impaired Drivers and Their Physicians**

The purpose of this report is to articulate physicians' responsibility to recognize impairments in patients' driving ability that pose a strong threat to public safety and which ultimately may need

to be reported to the Department of Motor Vehicles. It does not address the reporting of medical information for the purpose of punishment or criminal prosecution.

(1) Physicians should assess patients' physical or mental impairments that might adversely affect driving abilities. Each case must be evaluated individually since not all impairments may give rise to an obligation on the part of the physician. Nor may all physicians be in a position to evaluate the extent or the effect of an impairment (eg, physicians who treat patients on a short-term basis). In making evaluations, physicians should consider the following factors:

(a) The physician must be able to identify and document physical or mental impairments that clearly relate to the ability to drive.

(b) The driver must pose a clear risk to public safety.

(2) Before reporting, there are a number of initial steps physicians should take. A tactful but candid discussion with the patient and family about the risks of driving is of primary importance. Depending on the patient's medical condition, the physician may suggest to the patient that he or she seek further treatment, such as substance abuse treatment or occupational therapy. Physicians also may encourage the patient and the family to decide on a restricted driving schedule. Efforts made by physicians to inform patients and their families, advise them of their options, and negotiate a workable plan may render reporting unnecessary.

(3) Physicians should use their best judgment when determining when to report impairments that could limit a patient's ability to drive safely. In situations where clear evidence of substantial driving impairment implies a strong threat to patient and public safety, and where the physician's advice to discontinue driving privileges is ignored, it is desirable and ethical to notify the Department of Motor Vehicles.

(4) The physician's role is to report medical conditions that would impair safe driving as dictated by his or her state's mandatory reporting laws and standards of medical practice. The determination of the inability to drive safely should be made by the state's Department of Motor Vehicles.

(5) Physicians should disclose and explain to their patients this responsibility to report.

(6) Physicians should protect patient confidentiality by ensuring that only the minimal amount of information is reported and that reasonable security measures are used in handling that information.

(7) Physicians should work with their state medical societies to create statutes that uphold the best interests of patients and community and that safeguard physicians from liability when reporting in good faith (I, III, IV, VII).