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Abstract

The legal ramifications of driving while dilated continue to provide a source of concern and controversy for the optometric profession. Although no legal action has been brought regarding this issue at this time, it is a likely possibility for the future. If an optometrist wishes to protect against this possibility they should warn the patient of likely visual impairment during dilation and that this may affect their ability to drive. This warning should be documented in the record.

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THE LEGAL RAMIFICATIONS FOR OPTOMETRIST'S

by

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ABSTRACT

The legal ramifications of driving while dilated continue to provide a source of concern and controversy for the optometric profession. Although no legal action has been brought regarding this issue at this time, it is a likely possibility for the future. If an optometrist wishes to protect against this possibility they should warn the patient of likely visual impairment during dilation and that this may affect their ability to drive. This warning should be documented in the record.

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The issue of the legal ramifications of dilating a patient continue to provide a basis of concern, discussion, and sometimes controversy for the current practice of optometry. One aspect of these discussions has been to ask the question,"what are the legal consequences and implications for the optometrist regarding the patient who is involved in a accident while driving with dilated eyes"? Even at this time no litigation has been initiated against optometrists by patients who were involved in automobile accidents while their eyes were dilated, there is a definate possibility that it could happen in the future. All optometrists should be aware of this and take prudent steps to protect themselves.

This involves warning the patient of the visual impairment produced by mydriatic drugs, informing the patient that this may influence the way they drive, and documenting this warning in the patient record.
As the optometrist is held to the same standard of care as the opthalmologist in a court of law dilation in the optometric practice is already commonplace.16

In this paper the reasons for dilation will be discussed, as well as the ideas of implied and informed consent and the standard of care. The idea of driving while dilated will be explored as well as possible defenses to litigation in this area. Also covered will be the amount of visual impairment while driving, and the doctors duty to warn the patient of these aspects of dilation and then documenting these facts as protection against legal action.

Most lawsuits brought against optometrists involve the failure to diagnose sight threatening pathological conditions.

These usually involve glaucoma, retinal tumors, or retinal detachments. In many of these cases a dilated fundus exam would have discovered the pathology.8,9 Not too many years ago the standard of care equated a dilated fundus exam with obvious symtomatology. Otherwise this prodecure was not done. Since the optometric profession is rapidly moving towards the medical standard of care this attitude is changing. Today the standard of care is set by the testimony of a physician, thus it is a medical standard that is applied, even though the defendant is a optometrist.24 Since the awards in malpractice suits are often substantial it must be noted that a complete modern optometric exam now includes a dilated fundus exam. This is the expected standard of care today that the optometrist must provide. An optometrist might ask, should I dilate every patient? The answer is, if the patient files a lawsuit and the case goes to court, the court will delve into the history, signs or symtoms, whether the examination called for dilation. If it is determined that dilation was prudent and practicioner did not perform it the practicioner will be considered negligent. Some reasons for mandatory dilation will be found in Table 1.

The idea of the standard of care is a way of comparing the performance of one member of a health care profession to other members in the same profession. It is a way that a patient can know if the care he or she received is comparable to the kind of care they would have received if they had gone to another member of the same health care profession and how it compares to all members of the same profession.

Table 1: Indications for Mandatory Dilation

Sudden loss of visual acuity.
Sudden loss of visual field
Pre-chiasmal visual field defect(ie scotoma)
Flashes and floaters of acute onset
Acute diplopia
Cataract
Aphakia or pseudoaphakia (except iris fixed IOL's)
Myopia over 6 diopters
Patients with diabetes mellitus
Patients with a previous retinal detachment
Previous diagnosis of lattice degeneration, retinal holes or tears, or retinoschisis
Marcus Gunn pupillary response
Headaches of unexplained origin
History of metastatic cancer
Trauma to the eye or orbit or history of trauma to the eye or orbit
Lumps behing the iris
Use of drugs with ocular side effects

Adapted from Classe, JG. Pupillary dilation: an eye opening problem. Journal of the American Optometric Association 1992;63:736

It is also a way that a doctor can know if they are providing and maintaining a level of care that is expected in the particular field that they are in. The definition of standard of care is changing all the time. This is because the standard of care for optometry has been measured against the medical standard of care for opthalmology for years and it has now been brought to a point that is on a par with opthalmology.

This has come about because of the way the standard of care definition is constructed. The courts needed a way to judge whether or not a patient or doctor had been unfairly treated in a particular situation. In other forms of contracts performance could be measured by whether or not the various terms and elements of the contract were fulfilled by each party. All elements of the contract such as cost, time of completion, quality of work, materials etc., could be written in definate form. Therefore if one of the elements was not fulfilled it could be shown that the contract had been breeched. In the field of optometry the only way the elements of care could be established is the testimony of 'expert' witnesses. If someone could be found who supposedly knew all there was to know about the field, an expert, the parameters of care could be based on his/her opinion. This established the 'standard of care'. Since most of the expert witnesses called were opthalmologists, the standard of care for optometry began to quickly approach that of opthalmology. Thus optometrists today are in the position of being held to the same standards as opthalmologists even though optometrists are technically not medical doctors.

In addition to expert testimony forming the standard of care it is also shaped by the courts and decisions brought down thereof. The 1974 case of Helling vs. Carey is one example. In this case the Washington Supreme Court ruled in favor of Mrs. Heling who had sued her opthalmologist for failing to diagnose glaucoma. Even though at that time the standard of care stated that glaucoma screening was unnecessary before forty the court ruled that this standard was not high enough. Mrs Heling won her case and the standard of care at that time was forced to change.19

Another example is the case of Keir vs. United States. This involves the case of a 4½ year old girl examined by a military optometrist. The girl was found to have accommodative esotropia. Her glasses were achieving good alignment and visual acuity was 20/30 each eye. Examination with a direct scope was unremarkable. She was placed on a three month recall schedule. She returned four months later and the examination proved unremarkable. Due to other circumstances she was unable to return until six months later for a routine exam. At this time the optometrist found that the pupil of the esotropic eye was white. He immediately referred the child to an opthalmologist. His exam showed the child to have a retinoblastoma, 12-15 disc diameters in size and located at the equator. They were able to spare the eye, killing the tumor with radiation. However the radiation caused a cataract and a retinal detachment, reducing acuity in the eye to 20/300. A lawsuit was filed claiming the optometrist was negligent for failing to detect the tumor. A trial ensued and the jury decided in favor of the optometrist. However, the case was appealed to rhe Sixth Circuit Court. In a reversal of the decision the court held that the optometrist was negligent in failing to perform a dilated fundus exam with a binocular indirect ophthalmoscope. This decision was based on the testimony of numerous ophthalmologists who said a dilated fundus exam should have been done on a child with such symptoms. If the court rules eventually that the optometrist was negligent in this case then it would seem to imply that the standard of care will have again changed. It will have changed this time to include a dilated fundus exam for any patient

of any age regardless of signs or symptoms or the lack thereof. The optometrists will have to comply or open themselves up for malpractice suits.

The standard of care rule is also called the 'professional care rule'. This is by far the oldest and most widespread philosophy used to judge whether or not an optometrist has acted in a prudent fashion. However there is a new trend developing which may eventually replace the professional community rule. This is known as the 'reasonable patient' rule. When the reasonable patient rule is used to establish the standard of care expert testimony is no longer considered. What is material is whether the doctor provided a reasonable patient with sufficient information about the procedure of dilation to make an informed decision about it. This rule is more liberal than the professional community rule and is being used in many states. Every optometrist should check as to the standard his or her state uses so as to be able to adapt their own particular technique to accommodate it.

While it seems quite apparent that todays practicing optometrist will be using the procedure of dilation liberally as a diagnostic tool to ensure the health of the patient and to meet the standard of care, the optometrist must be aware that by performing this procedure futher legal precautions are necessary. This involves the concept of informed consent.

The patient must have the procedure explained in detail in lay terms. If the patient suffers adverse effects from the procedure, or an unfortunate incident or accident that can be shown likly to be a consequence of the procedure, and the patient can show he/she was not warned of this the optometrist is liable for damages.

Failure to warn is considered negligence.24 This warning to obtain informed consent consists of several parts. The first, inherent and potential hazards of the procedure must be explained in terms the patient can understand. Second, alternative treatments must be disclosed. Third the patient must understand the anticipated conditions that might occur if the procedure is refused.24 Finally the patients consent or refusal must be documented in the record. The elements of informed consent described herein apply to all states.24 There are some conditions under which the court may rule that obtaining informed consent was not necessary. These are as follows.

First, the risk is so commonly known that the patient should have had knowledge of it. Second, the patient informs the doctor that he/she desires to undergo the procedure despite any risk. Third, consent by the patient is not possible. Fourth, the doctor felt that full disclosure of the information would affect the patient in an adverse way.20 Although no cases involving duty to warn and accidents that have occured while dilated and driving have been filed, there are other examples which show the duty to warn extends to impairment while driving. One such case is Kaiser vs. Suburban Transportation Systems. In this case a bus driver was taking the prescription drug pyribenezamide. Due to the side effects of this drug he fell asleep and had an accident. A lawsuit was filed by a passenger on the bus. The court ruled the bus drivers physician negligent for failing to warn the driver about the side effects of this drug.2 Another case is Gooden vs. Tips. The patient was taking the prescription drug Quaalude. Under the influence of

this drug the patient lost control of her car and struck another causing injuries to the occupants. A lawsuit was filed and the court ruled that the doctor was negligent for failing to tell the patient not to drive while taking the drug.1

Although no lawsuit has been brought into the courts involving an auto accident and visual impairment caused by a myotic or cycloplegic, there is no reason to think that the same line of reasoning would not be used by the courts if such a situation were brought before them. That is to say, if the optometrist failed to warn the patient of the expected visual impairment while under the influence of a myotic or cycloplegic and the patient got in a accident, the optometrist would be liable for the injuries to the patient and any injuries to third parties. The amount obviously could be substantial, not to mention the liability for property damage.

So how does the optometrist protect him/her self from such lawsuits? Also what could be used as a defense? It cannot be overemphasized that the best protection is to warn the patient of the possible effects of the procedure on driving an document this fact in the record. As for defenses there are a couple of options. Since there are no case precedents of driving while dilated whether or not these defenses would work in a court of law is pure speculation. One defense would be that there was no cause to warn the patient. As stated earlier this is a defense if the effects of the procedure are common knoweldge. If it can be assumed that the patient knew their vision would be impaired there would be no need to warn them. The visual impairment that affects the patient in pupillary dilation is also very noticable. Unlike many prescription drugs whose effects can arrive

almost unnoticed, visual impairment upon dilation occurs within thirty minutes in almost all cases. It could not be argued that the effect creeped up on the patient unnoticed. The patient could not say the effect intensified after they left the office because in most cases the effects of mydriatic drugs reach their maximum before the patient leaves. This defense is based on the doctor not having to warn a patient when the effects are obvious and may be common knoweldge. The patient however, could argue that the visual impairment did not seem as if it was bad enough to affect his driving until he was on the road. Also, although many people are aware that there is visual impairment when eyes are dilated, in my opinion it migh still be difficult to convince a jury that it is what might be called common knoweldge. It could also be argued that it was the doctors responsibility to warn the patient if there was any danger at all, because with his training he was in a better position to be aware of the effects and warn the patient.15

Another option would be that the patient, who operated his/her motor vehicle while knowingly visually impaired, assumed all risk at the most, and contributed his own negligence to the situation at the very least. This is known as contributory negligence.2 In most states a person is required to operate a motor vehicle with the utmost care. If a person operates a motor vehicle while knowingly visually impaired and is involved in an accident they are negligent to some degree. But to what degree?

If the patient was warned of visual impairment before dilation and the warning documented, then the patient decides to drive anyway, the patient assumes

all risk for injury and third party liability.23 This is known as assumption of risk. The patients contributory negligence is total and this becomes a complete defense for the doctor. In many states under these circumstances the patient would be unable to recover any damages.23

If the patient was not warned about visual impairment and proceeded to drive the patient would most likly be found to be partially negligent because he operated his/her motor vehicle while his/her vision was obviously impaired. In this case the patient and doctor would probably have to share the burden of negligence. The law varies from state to state as to what percentage of fault is attributed to the patient and doctor. In some states the patient cannot recover any damages if his share of fault is deemed to be over fifty per cent. Since statutes are constantly changing the optometrist should keep abreast of what particular conditions exist in his/her state. A great deal of the content of these cases is based on the degree of visual impairment found during dilation. The opinions on this vary greatly. Some people feel that the use of dark or mydriatic glasses during dilation is sufficient protection.15 Some are of the opinion that people with high uncorrected hyperopia should be detained in the office until the effects of the mydriatic drugs have worn off. This is probably a prudent measure. The instillation of dapiprazole or 'Rev Eyes' in the patients eyes during this period can facilitate the normalization of accommodation and acuity.23

The problem is that the amount of visual impairment experienced by different people seems to vary greatly.

One study showed that 100% of the people the study surveyed showed some degree of visual impairment while dilated. Almost all experienced photophobia in direct sunlight without the aid of dark glasses. A little over one tenth experienced photophobia even with the use of dark glasses. There did not seem to be one factor that all the subjects had in common that would predetermine how much visual impairment they would suffer. Therefore the recomendation was make that anyone who had never been dilated before make arrangements to be driven home by someone else.5 It is evident by this study that everyone who undergoes pupillary dilation experiences some form of visual impairment. Also it is impossible to quantify the set amount that any individual will experience. It will vary with everyone.

It seems clear that when a doctor dilates a patient by instilling mydriatic drugs in the eye, he/she has initiated a chain of events that will follow a set but somewhat variable course to a final conclusion when the effects wear off. So is a doctor legally required to warn the patient of the side effects and the hazards of operating a motor vehicle? Legally since a case involving this particular scenerio has not occured at this time the answer is unclear. But in the best interest of the patient and since the doctor is the person who initiates the process it seems obvious that it is the doctors responsibility to manage the patient while they are in this condition to the best of the doctors ability. This management also includes warning the patient of other dangers they may encounter while dilated, especially if they are elderly. For example they should be advised to use care while moving about the office, use the handrails when they use stairs,

make sure they are careful when they step off curbs or board a bus, etc.

In a court of law no warning was ever given unless it is documented in the record. So it is imparative that it be documented a warning was given. This will serve as proof if a lawsuit is ever filed. It can be as long or short as the doctor cares to make it but it must be there. It has been suggested that in the case of a patient with an extremely narrow angle a stronger warning might be necessary.24 This warning would be constituted by an informed consent form. This form would explain the risks and benefits of the dilation procedure in common, non-medical language. It could also contain a warning about the visual impairment that could be expected and a warning about driving and any other precautions deemed necessary. The informed consent form would likly be give to very few people. The requirements of such a form will vary from state and the optometrist should contact an attorney in his/her state for details. Several articles have been published that contain the general structure of such a form.24

Studies have shown that only 2-6 per cent of the population have angles anatomically narrow enough to close.24 So for 94-98 per cent of the population there is no relavent angle closure risk to dilation and an angle closure warning is not necessary.23 Informed consent is required however for the 2-6 per cent of the population with angles narrow enough to close. Even in this population the risk of closing an angle is extremely small. The risk of closure is greatest in individuals over thirty years of age. It has been estimated that in the 2-6 per cent over thirty group that

the chances of closing an angle are approximately 1 in 45,000.24 For the general population the risk is judged to be 1 in 183,000.24 So the odds of an optometrist performing an average number of exams per day, over an average career, of closing an angle are fairly small.

One thing is certain, dilated fundus exams will continue to be performed by optometrists at an ever increasing rate. The standard of care requires this as well as the goal of all optometrists to provide the best possible eye care. Patients should be encouraged to have a dilated fundus exam even if they have no symptoms just as they should get a routine physical even though they are feeling fine. If they decline it should be documented in the record as protection against any court action taken in the future. This should be sufficient protection providing the doctor has not missed any symptoms that would have indicated mandatory dilation.

If the patient is dilated they should be warned of visual impairment and that this might affect their driving. The warning should be documented. If they are uncertain about driving an appointment should be rescheduled when they can have someone drive them home. Even though a lawsuit has not be brought in this area precautions should be taken because the award in a successful suit could be substantial.

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