



Driving and Epilepsy: When to Report and What to Do About the Consequences

Patients and physicians alike would benefit from guidance on this ambiguous topic. Here's help in understanding the issue and minimizing its impact.

Many people consider driving a motor vehicle to be a basic entitlement rather than a privilege. Especially in the United States, people view their car as a necessity in order to get to their place of employment, and to accomplish many activities of daily living such as shopping for groceries, and transporting their children to school and sports activities. Unfortunately, convenient public transportation is not readily accessible in many regions of the US, particularly in the suburbs and in rural areas. Individuals with uncontrolled seizures who live in these areas face significant restrictions, especially if their license is revoked. Such revocations are based on the assumption that if a person is at risk of seizures, the state should favor public safety and common sense over an individual's right to operate a motor vehicle. Is that a fair assessment? Who decides? What's your role in the process?

Each State Makes Its Own Laws

The blanket discrimination against people with epilepsy has improved over the past few decades. For instance, before 1949, nearly all people with epilepsy in the USA were prohibited from driving cars whatsoever. Fortunately, this is not the situation today: people who have seizures that are well-controlled are allowed to return to driving. However, in the both US and the European Union, there are no clear-cut, uniform rules on the issue of driving and people with epilepsy.

In the US, each state institutes its own laws regarding driving restrictions and

medical conditions, such as epilepsy, that may result in episodes where a person loses awareness, has alteration of consciousness, or experiences transiently impaired motor function. Each of the 50 states defines the amount of time required to be seizure-free (or event free, depending on the underlying illness) before resumption of driving can occur. The duration of the seizure-free interval varies, but usually ranges from three to 12 months.

In 2003, there was a study in Arizona which carefully evaluated the rate of seizure-related accidents. In this state, the law was changed to require a three-month seizure-free interval instead of the 12-month seizure-free interval that had previously been in use. When comparing the rates of accidents before and after the law changed, Drazowski et al. found no change, suggesting that three months was a reasonable "waiting" period.¹

In addition to these laws, some states require licensed physicians to report persons who experience events that may impair their ability to operate a motor vehicle safely: six states are "reporting" states (California, Delaware, Nevada, New Jersey, Oregon and Pennsylvania). In response to litigation, a few states have defined physician liability for driving recommendation. Many states distinguish between non-commercial and commercial drivers, holding commercial drivers to a higher standard of fitness to drive. In fact, there are separate federal laws that may apply to a commercial driver's license: in these instances, the physician will need to be familiar with both state and federal requirements regarding driving and seizures.

The Physician's Role

One of the physician's main tasks in treating a person with seizure is accurate diagnosis. Other conditions which cause sudden loss of consciousness (or alteration of awareness) include syncope, hypoglycemia, transient ischemic attack, migraine headache, panic attacks and non-epileptic seizures. The diagnosis is typically made on the basis of a thorough history of events by the patient and an observer, physical examination, and a combination of medical tests. Often, tests like MRI, EEG, ECG and cardiology-directed testing is required to narrow this differential. If non-epileptic psychogenic episodes are suspected, consultation with a psychiatrist is also needed.

The type of seizure is important in determining the patient's ability to drive: some types of seizures do not cause alteration or loss of awareness. If a person experiences only this type of seizure, there may be no restriction to driving.² For example, if a person experiences simple partial seizures (*i.e.*, an "aura" only), he or she may be able to drive as long as the event does not alter or impair motor functioning. Some people only experience nocturnal seizures; if so, the motor vehicle authorities will often permit them to continue driving. If a person has prolonged aura, he or she may be permitted to drive, as the individual will be expected to receive sufficient warning to pull over to the side of the road. In most instances, a medical review board evaluates the treating physician's notes, and determines the driver's "fitness."

Another issue that may be raised is the question of whether a person diag-



nosed with non-epileptic psychogenic seizures (NES, also called “pseudo-seizures”) should be allowed to drive. One study showed that people with non-epileptic seizures had no increased accident/crash rate over the normal population. However, this study has limited value because the sample size was very small. In addition, there was no epilepsy control group, and the research model did not address the tricky question of dual diagnosis. In our practice, we routinely report NES that cause alteration or loss of awareness to the Department of Motor Vehicles. When the non-epileptic seizures are controlled, as with epileptic seizures, we recommend resumption of driving.

Antiepileptic medications may compromise a person’s ability to drive. The physician should counsel the patient about side effects like sedation and dizziness. When a person has been seizure-free, and a decision is made to discontinue medication, the patient should refrain from driving until the physician feels confident that the person will remain seizure-free off medication.

Unfortunately, there are no guidelines regarding the amount of time a person should wait off medication before they

should resume driving. In a survey of expert opinion,³ a group of epileptologists recommended waiting one to 12 months, with an average of four months, before resuming driving. This creates an interesting dilemma for some people. Driving is viewed as a necessity to many people, so a person who is asked to stop driving—even for short periods of time—may choose not to alter or stop their medication. In other words, even if a newer medication (or stopping medication) would be more beneficial for overall health, the patient may not want to stop driving for any amount of time.

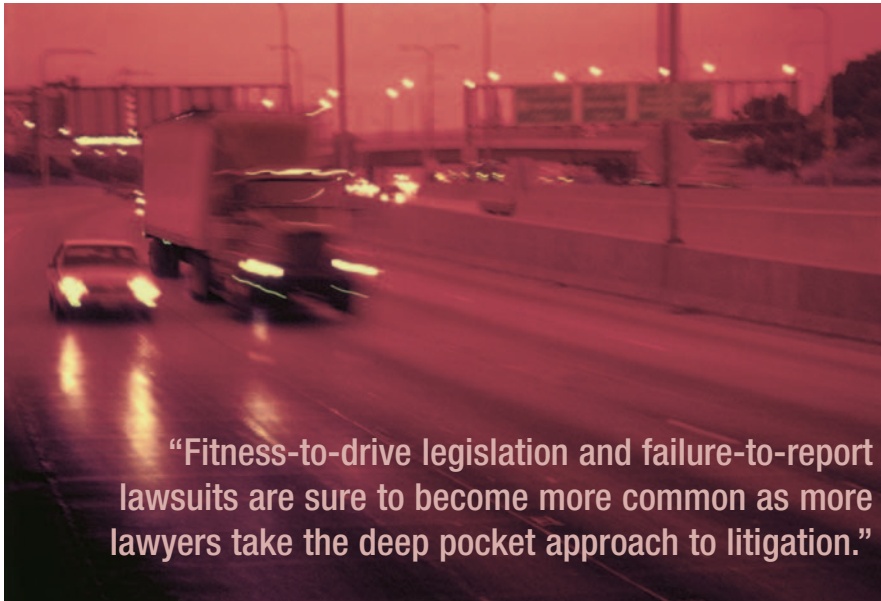
Doctors, the Law and Patient Care

The physician has a responsibility to be aware of the regulations in the jurisdiction in which (s)he practices. Lack of knowledge of a law is generally not an accepted excuse in negligence cases. One should check with the local Motor Vehicle Department for the reporting requirements, necessary documentation and verification that the information submitted on persons with epilepsy is precise. The required documentation may include the latest blood tests, the date of occurrence of the last seizure, and results of other medical testing such as EEG.

There is a major problem with the mandatory reporting of seizure activity: a patient might not be honest in reporting events, out of fear over the loss of his or her driver’s license. Such fears may weaken the physician-patient relationship, and the patient may not receive the most effective treatment for seizure control. In order to help the patient with transportation problems, the physician should counsel the patient to contact the state affiliate Epilepsy Foundation for transportation alternatives.

The physician has several additional roles to fulfill in these situations. First, stress the importance of the dangers of driving with uncontrollable seizure activity. Driving with incompletely controlled seizures represents a danger not only to the patient but to others on the road. Second, the physician must counsel persons with seizures about the potential adverse effects of antiepileptic medications. Side effects may impair a person’s ability to drive safely. Moreover, candid discussion about the occurrence of adverse events will assist the doctor in optimizing the patient’s treatment regimen. Third, the physician may need to assist the patient in arranging for transportation, especially for those who live far from medical care. For instance, medical transportation is available to patients in many areas; however, a note is usually required from the treating physician in order to obtain these services. Fourth, the patient needs to clearly understand that the Department of Motor Vehicles makes the decision about revocation or reinstatement of a driver’s license, not the treating physician. Finally, any discussion regarding these issues and any action taken should be clearly documented in the patient’s medical record.

Just as the medical literature is unclear on this topic, legal literature varies as well. In *Hospodar et al. v. Schick et al.*, the Pennsylvania Superior Court did not hold a physician liable after a patient lost consciousness behind the wheel and



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killed two people. The court relied on a previous case, *Witthoef v. Kiskaddon*, where an ophthalmologist was not held liable when a patient with poor vision struck and killed a woman on a bicycle. The court in the Pennsylvania case felt that Smith knew the patient best, and was therefore in the best position to assess his ability to drive. Generally, good-faith endorsement of a patient's driving safety is protected legally in the event of a subsequent accident with injury to the patient or others. Extent of immunity varies from state to state. Deliberate misreporting could result in liability to state sanction or civil suit by injured parties. The physician is not liable for false or misleading information provided by the patient.⁴

Failure to report patients, when required by law, has resulted in litigation against physicians. In *Spillane v. Wasserman*, an Ontario Superior Court judge held that physicians owed a duty of care to the community. The judge ordered the payment of third-party damages to individuals injured in a car accident caused by a patient with a long history of epileptic seizures. In this case, the patient was shown to have had a seizure

while driving immediately prior to the accident.

In another Ontario case, *Toms v. Foster*, both a family physician and a neurologist were found negligent for not reporting a patient with a medical condition that made it inadvisable to drive. In this case, the neurologist informed the general practitioner of possible risk; the GP told the patient not to drive. The physician stated that he believed the condition to be temporary, and trusted the patient not to drive while the risk continued. The jury decision and appeal make it clear that there is no discretion and that reporting is mandatory where specified by law. In other words, physicians who did not report, when required, should not try to interpret the law. Rather, they need to follow the state laws carefully.

In the US, there have been several cases in which physicians have been held accountable for injuries to others caused by the dangerous driving of patients with mental illnesses. In other words, the physician should be acutely aware of the state and federal laws in which he or she practices. As one Ontario lawyer observed, “Fitness-to-drive legislation

and failure-to-report lawsuits are sure to become more common as more lawyers take the deep pocket approach to litigation.”⁵

Conclusions

Most physicians became doctors in order to help others. Physicians are required to keep abreast with huge volumes of medical literature in order to provide optimal care. Though medical experts, most physicians are not legal experts. In this one instance, however, we are required to be well-versed in both. The laws on physician reporting and physician recommendations regarding driving vary from state to state: the physician needs to be cognizant of the laws in their geographic area.

Several legal cases have not found physicians liable for their patients' accidents. However, many of the dissenting opinions have recognized the physician's ability to foresee the risk of injuries with seizures and driving. In other words, there is no unilateral legal position on this issue. As a result, physicians need to carefully and thoroughly document the information provided to their seizure patients about driving. **PN**

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