

## Driving, Epilepsy and Physicians' Issues

Please also read "Driving and You"

### Physician Immunity Laws

While the confidential nature of the physician-patient relationship is of the utmost importance, there are circumstances in which the physician's obligation to his patient may be suspended. For example, physicians always retain the right to report patients they believe pose an imminent danger to the public.

Some state statutes specifically mention that physicians may voluntarily report persons whose condition would affect their ability to drive safely. Some specifically provide that physicians who report in good faith and exercise due care are immune from liability for their actions. Even when this is not explicitly provided for by law, courts generally find that physicians who exercise reasonable care in making these reports are immune from liability for their actions.

A number of state laws specifically give physicians immunity for their opinions and recommendations to the state DMV. Some provide "good faith" immunity and others provide immunity from suit.

### Physician Liability Issues

Few reported cases exist on the issue of physician liability to third parties for certifying a patient to drive. Those cases which have been brought suggest that the risk of liability is minimal.

Physicians should not be liable for their recommendations to the state DMV as long as their recommendations were arrived at in a reasonable manner, consistent with the prevailing standard of care. Some courts have refused to allow these cases to go forward for public policy reasons.

Some state laws provide protection by prohibiting the use of the physician's report in court proceedings other than those for the purpose of determining whether the patient should be licensed. Certain other state laws specifically grant "good faith" immunity to physicians.

Physicians should provide the warnings and advice that are required under prevailing standards of care. Patients who should not be driving or who should be driving only under certain circumstances should be so advised in writing. The physician should prepare a standard letter (or a form providing for specific variations) and, as a regular course of procedure, send it as a follow-up to the patient and "log" its dispatch. Patients should be warned of possible side effects of medications in connection with driving, the possible effect of discontinuing or reducing dosage of a drug, and any other warnings or advice that would normally be given. If the state has an explicit self-reporting requirement the physician should, as a precaution, call it to the patient's attention.

As long as the physician is using reasonable medical judgment and uses proper documentation, a third-party suit should not result in liability. In some jurisdictions, such a case will be immediately dismissed. If a physician has specific concerns, however, (such as a patient who is driving against medical advice) the physician may want to consult with an attorney.

### Physician Reporting

Six states -- California, Delaware, Nevada, New Jersey, Oregon, and Pennsylvania -- currently have express mandatory physician reporting requirements. While the exact terms of these provisions vary, they generally state that any physician who diagnoses or treats a person with epilepsy must report that person's name, age, and address to a central state agency, usually the Department of Motor Vehicles or Department of Public Safety.



# Resources

The variations in the requirements generally involve the circumstances under which persons must be reported, such as all persons with epilepsy, or only those whose condition interferes with their ability to drive, whether the intended use of the information is specified, and the penalty, if any, for failing to report. Monetary fines are the most common penalty for failure to report; however, Pennsylvania's law also states that a physician could be found negligent for failing to report a driver who was later in an accident.