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Scope of the Physician's Duty to Reduce Risks Posed by Epileptic Drivers

H. Richard Beresford, MD, JD

In a recent editorial, Dr Masland [3] emphasized the tension that may exist between the physician's specific duty to protect the privacy of epileptic patients and a more general duty to protect society from the potential dangers they represent as drivers. I share his disquiet about the effectiveness of laws which require physicians to report all epileptics to drivers' licensing agencies. In principle, I believe that the physician can best protect the interests of the patient and society by providing optimal treatment and offering considered advice about driving, all in a climate of confidentiality. Once the physician is cast as informer, the epileptic patient may be reluctant to disclose when seizures are occurring and the physician may lose the capacity to influence the patient's conduct. This would only undermine the goal of promoting traffic safety.

Whether or not a state's laws require a physician to report an epileptic, however, the physician has special legal responsibilities if he or she knows that the patient has uncontrolled epilepsy and is continuing to drive. Where mandatory physician reporting is the rule, the physician risks a

penal sanction by not reporting the patient. Where state law requires reporting by epileptics themselves, the legal risk is less evident but is nevertheless real. For example, a third person who is injured as a result of an epileptic's experiencing a seizure while driving may recover against the epileptic's physician by showing that the physician negligently failed to warn the patient of the dangers of driving or negligently failed to advise the patient not to drive [1].

Even if the physician can prove that he or she duly warned the patient, the recent *Tarasoff* case [5] suggests that the physician's legal duties also include advising law enforcement agencies of the patient's potentially dangerous conduct. Otherwise, those injured as a result of the patient's epilepsy may recover against the physician. Critics of *Tarasoff* maintain that its encouragement of breaches of privacy will only impair physician-patient relationships while adding little protection for society [4]. Nevertheless, when a physician clearly identifies that a patient poses a substantial risk to others which the physician cannot reduce by his or her best professional efforts, it seems reasonable to require the physician to notify those with lawful authority to restrict the patient's driving. This requirement is compatible with section 9 of the Principles of Medical Ethics, which bars disclosure of confidential medical information "unless it becomes necessary in order to protect the welfare of the individual or of the community" [2].

References

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5. *Tarasoff vs Regents*, 17 Cal 2d 425 (Sup Ct California, 1976)

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