

Your Direct Link to Better Risk Management Practices

Ask the Expert

In each publication of Risk Review, an outside guest or a member of our team of expert risk management and loss prevention consultants will answer a question from a reader. If you are concerned about a risk management or safety issue at your practice or facility, let us know and we may answer it in a future issue

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Question: In New Jersey, what are the reporting obligations for treating patients with seizure disorders who wish to obtain a driver's license?

Answer: In New Jersey, the relevant laws are codified at NJ Statutes Annotated ("N.J.S.A."), Title 39. Motor Vehicles and Traffic Regulation; the implementing regulations are contained in the NJ Administrative Code ("N.J.A.C."), Title 13. Law and Public Safety, Ch. 19. Driver Management Bureau. The NJ Motor Vehicle Commission ("MVC") is the agency that manages the process of granting, renewing or restricting driver's licenses.

New Jersey law requires **all physicians** who are treating any person 16 years or older for **recurrent convulsive seizures** or recurrent periods of **unconsciousness** or impairment or **loss of motor coordination** due to conditions such as, but not limited to, epilepsy, **to notify the MVC when such conditions persist or recur despite medical treatments** (N.J.S.A. 39:3-10.4). The report must be made **within 24 hours** after the physician makes his/her determination. Some states even penalize physicians for failure to report with a monetary fine (NJ law does not).

Some have criticized mandatory reporting because it can interfere with the physician-patient relationship. Patients who feel they must drive might not be truthful with their physician about their condition to avoid mandatory reporting and potential loss of their license. This can result in a dangerous outcome: the person is not receiving the best medical treatment and is driving.

In the few states with mandatory reporting, compliance among physicians

varies widely. But it is worth noting that **physicians can be held liable for negligence, for failure to report** a person with seizures, if that person is later involved in a motor vehicle accident.

On the other hand, physicians who opine that a person with epilepsy can drive safely and recommend licensure may also have liability exposure if that person later causes an accident. To avoid liability in this situation, physicians should render opinions that are reasonable, made in good faith and are consistent with good medical care.

Requirements and restrictions

In the U.S., people wishing to apply for a driver's license must meet criteria established by their state of residence. Most states require that an applicant be older than a specified minimum age (16 or 17 years), pass a written test (rules of the road), vision test and driving skills test. Also, the person cannot have a medical condition that would interfere with his/her ability to drive safely.

The laws that specify the medical conditions that may disqualify a person from obtaining a driver's license vary from state to state. The intent of such laws is to protect public safety and grant the privilege of driving to people who are least likely to have an accident.

In NJ, a person 16 years of age or older who has experienced recurrent convulsive seizures, recurrent periods of impaired consciousness or impairment of motor coordination due to conditions such as epilepsy, **must report the existence of such conditions to the MVC** to obtain a **learner's permit or initial driver's license or to apply for renewal** (N.J.S.A. 39:3-10.5). In addition, NJ requires that the **person be seizure-free for a period of one year** (with or without medication) and that he/she is physically qualified to operate a car (N.J.S.A. 39: 3, Art. 2; Registration and Licensing; N.J.A.C. 13:19-5.1).

The MVC's Medical Review Unit ("MRU") has developed a process for reviewing each applicant's case. Under NJ law, **the physician treating**



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the person with epilepsy must submit a report (with diagnosis, treatment and prognosis) stating the physician's opinion that the person can drive safely and recommending initial licensure or renewal thereof (N.J.A.C. 13:19-5.3). The MRU will use the physician's recommendation as one of several factors in making a decision. Other factors include observations by family members and driving history.

The law does give the MRU authority to consider **exceptions** that would allow someone to drive after a **seizure-free period shorter than one year** (NJAC 13:19-5.7). In complex cases, the applicant's medical information can be sent to a special medical advisory board, called the Neurological Disorder Committee. This board can also hear appeals concerning decisions to deny or revoke drivers' licenses (N.J.A.C. 13:19-5.4).

As a pre-requisite to obtaining, retaining or having a driver's license restored, **persons with seizure disorders are required to submit periodic medical reports** (every six months for two years from date of approval of license) (N.J.A.C. 13:19-5.9, "interval" reports). These reports will document that seizure control has not deteriorated and that the person is taking, or no longer needs to take, medications. In general, subsequent reports are required yearly, but the law gives the MVC chief administrator discretion to waive or change the reporting intervals.

In NJ, persons with epilepsy or other impairments can obtain **restricted licenses**. These licenses limit the situations in which the person with the medical impairments may drive, for example: only during daylight, only on roads with speed limits 50 mph or lower, to and from work within a certain distance from home, or only during an emergency. The MVC may issue a restricted license only after a medical assessment or driver re-exam.

Contacting the MVC's Medical Review Unit

Questions may be directed to the Medical Review Unit by phone (609) 292-7500 ext. 5032 or fax (609) 292-7504. MVC will follow up with physicians that fax in a report. MVC on the web: <http://www.njmvc.gov>

The MVC's Medical Review Unit has a form that physicians can use for reporting patient medical status, but the MRU will also accept a letter. In it, the physician should set forth the diagnosis, treatment and prognosis, identifying data (name, address, date of birth, driver's license number) and results of EEG exam, if needed. ❖

**Questions and/or
suggestions are welcome.
Call the Healthcare Risk
Services Department at
1-866-RX4-RISK**