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## 1. Background

The State of Nevada mandates reporting of patients with episodes of loss of consciousness or altered consciousness by physicians seeing and treating them. After notification, the Department of Motor Vehicles suspends the licenses of these patients, typically for a period of three months. After the patient remains free of the episodes for three months, the patient's driver's license is then reinstated by the DMV, with yearly examinations and reports required subsequently for the next three years.

## 2. Problems with the current system

Although the state benefits from timely reporting of patient's medical conditions, there are problems with the current system. Potential patients who do have conditions affecting consciousness avoid treatment when they are aware of the law. Knowing that their driver's license will be suspended, they are disinclined to report an episode. Patients may avoid diagnosis, which could produce serious harm to the patient (for example, a patient with a brain tumor and a first seizure may not be diagnosed in time to treat the tumor).

Other patients with known disorders (for example, epilepsy) are less likely to be truthful about their condition. Patients have told their physicians that they would not disclose to them information about continued seizure activity if it means that their license will be suspended. If a patient has continued, uncontrolled seizure activity, he is more likely to place others at risk (for example, driving with uncontrolled seizures and causing an accident).

There is also distrust by the patient, knowing that the physician will act as the "policeman" and "turn in" the patient for any recurrence of the consciousness problem. The frequent paperwork is also burdensome for the physician.

Although neurologists are keenly aware of the law, many emergency department and family physicians are not, resulting in many events going unreported anyway.

## 3. Epilepsy Foundation of America On Mandatory Physician Reporting:

Since 1974, the Epilepsy Foundation of America has firmly opposed mandatory reporting laws. The Foundation's position statement is as follows:

- o WHEREAS epilepsy is not a communicable disease and poses no threat to the public health; and
- o WHEREAS the physician-patient relationship has long been legally recognized as one of privileged information; and
- o WHEREAS any statute which requires a physician to report a patient with epilepsy to an agency of the government, (e.g., state Department of Motor Vehicles), violates and destroys the physician-patient relationship;

ASSEMBLY TRANSPORTATION

DATE: 4/1/03 ROOM: 3143 EXHIBIT I. 1/5

SUBMITTED BY: Assemblyman Freedy

- o THEREFORE BE IT RESOLVED THAT the Epilepsy Foundation of America takes the position that epilepsy should not be classified as a reportable disorder.

The Epilepsy Foundation of America favors a system of self-reporting in which the individual takes primary responsibility for the condition and the limitations it poses. Mandatory reporting laws result in violations of the confidential nature of the physician-patient relationship, and the possible erosion of this relationship. Proper diagnosis and treatment of epilepsy depend greatly upon the development of an honest, trusting relationship between an individual and his physician. Accurate information concerning seizure activity is of critical importance. If a patient knows or fears that his doctor is obligated to report him to the state, he may withhold crucial information with potentially fatal consequences.

Due to the varied nature of epilepsy, the Epilepsy Foundation (EF) opposes across-the-board seizure-free requirements, and endorses individualized evaluations of ability to drive. Across-the-board requirements are arbitrary since they treat all persons with epilepsy alike, without regard for the specific features of the individual's condition. Individualized determinations of ability should be based upon the following factors: type(s) and frequency of seizures, presence of an aura (warning), customary time of seizure occurrence (e.g., nocturnal, upon waking), willingness to take prescribed medication(s), and any side effects of medication.

Throughout history, persons with epilepsy have been the subject of misunderstanding and prejudice about the nature of the condition. This misunderstanding has included the following assumptions: that all persons lose consciousness when they have a seizure, that once a person has a seizure he or she is always at a high risk of having another seizure, and that persons with epilepsy are more unreliable than persons with other medical conditions. This misunderstanding has continued to the present day despite major advances in medical treatment which have allowed the majority of persons with epilepsy to obtain control of their seizures. Unfortunately, this attitude is still reflected in many of our laws, including those which single out persons with epilepsy as needing special policing through mandatory reporting to the state.

The vast majority of states have had a system of self-reporting in place for a long time. To the best of our knowledge, this has not resulted in any documented increase in accident rates for persons with seizure disorders. In addition, there is evidence to suggest that mandatory reporting laws are also extremely impractical to enforce and thus are ineffective. Many physicians are concerned about reporting their patients, even when required to by law, because they feel reporting has such a detrimental effect on the treatment relationship and, ultimately, on their ability to control their patients' seizures.

While the Foundation opposes mandatory physician reporting laws, it does support state laws which give physicians "good faith" immunity for participating in the driver licensing process, and for voluntarily reporting those patients who pose an imminent threat to public safety because such patients are driving against medical advice. Such laws already exist in a number of states.

Some states impose criminal or civil penalties upon persons who are found to have failed to disclose their epilepsy to the state Department of Motor Vehicles. In addition, individuals who are found to drive knowing that they are having active seizures may face criminal negligence or reckless driving charges if they have a seizure-related accident.

### 3. Reporting requirement not universal

Other states, such as Texas, have no reporting requirement. The law states, however, that the patient is not to drive for six months following a seizure. Physicians are required to instruct the patient not to drive for this period of six months, and to document this in the medical record. The patient is then responsible to follow the physician's recommendations and not drive. This results in greater candor regarding the patient's condition and response to therapy.

### 4. Suggested course of action

Due to the problems with the current law, the reporting requirement should be abolished. The law may be changed to require that the patient be instructed by the physician not to drive for a period of three months or rational time period taking into account the above mentioned variables and individual risk factors for recurrent seizure disorders, after which time driving privileges may be reinstated. The physician is to document that the patient was instructed not to drive, and the responsibility of complying with this instruction is that of the patient. At the end of the no-driving period, driving may be resumed.

Knowing that there will be no mandatory reporting requirement, new patients will be more likely to seek medical attention for their disorders, greater trust will be developed.

### VII. Provision permitting voluntary reporting of patients by the physician

*Sample statutory language to be added to section requiring confidentiality of patient health care records*

§ \_\_\_\_\_ Confidentiality of patient health care records

#### (3) Reports made without informed consent.

(a) Notwithstanding sub. (1) (requiring confidentiality), a physician who treats a patient whose physical or mental condition in the physician's judgment affects the patient's ability to exercise reasonable and ordinary control over a motor vehicle may report the patient's name and other information relevant to the condition to the Department of Transportation without the informed consent of the patient. No cause of action may be brought against any physician for not making a report pursuant to this section.

Comment: Any provisions mandating physician reporting of patients should be repealed.

### VIII. Provision giving physicians immunity for voluntary reporting of patients

*Sample statutory language to be added to statutes dealing with medical practices*

§ \_\_\_\_\_ Civil immunity

#### (1) Civil liability; certain medical reports.

(a) No person licensed or certified under this chapter shall be liable for any civil damages for the following:

(1) Reporting in good faith to the Department of Transportation under § \_\_\_\_\_ (section permitting reporting) a patient's name and other information relevant to a physical or mental condition of the patient which in the physician's judgment impairs the patient's ability to exercise reasonable and ordinary control over a motor vehicle.

(2) Not reporting to the Department of Transportation under § \_\_\_\_\_ (section permitting reporting) a patient's name or other information.

### IX. Provision giving physicians immunity for their reports, recommendations and opinions

*Sample statutory language*

§ \_\_\_\_\_ Medical advice—use by Department—physician immunity.

(1) To determine whether any licensed driver or any applicant for a driver's license is physically or mentally able to operate a motor vehicle safely on the highways of this state, the Department is authorized to seek and receive

written medical opinion from any physician or optometrist licensed in this state. Such written medical opinion may also be used by the Department in regard to the renewal, suspension, revocation, or cancellation of drivers' licenses pursuant to this article.

(2) In addition to the written medical opinion sought and received pursuant to subsection (1) of this section, the Department may consider a written medical opinion received from the personal physician or optometrist of an individual driver or applicant.

(3) No civil or criminal action shall be brought against any physician or optometrist licensed to practice in this state for providing a written medical or optometric opinion pursuant to subsection (1) or (2) of this section, or for the contents of any medical reports or opinions provided pursuant to subsections (1) or (2) of this section, if such physician or optometrist acts in good faith and without malice.

(4) A written medical opinion received by the Department that relates to an individual applicant or driver is for the confidential use of the Department in making decisions regarding the individual's qualifications as a driver, and the written medical opinion shall not be divulged to any person, except to the applicant or driver, or used as evidence in any trial or proceeding except in matters concerning the individual's qualifications to receive or retain a driver's license.

(5) Written medical opinion received by the Department pursuant to this section, in addition to other sources of information, may be used by the Department in the adoption of administrative rules concerning medical criteria for driver licensing.

**Proposed amendments to AB406:**

**Section 1. Subsection 2**

**2. If it is determined that a person has violated the provisions of subsection 1, *the physician may report the name, age and address of the person to the Department of Motor Vehicles in writing. These reports are for the information of the Department of Motor Vehicles and must be kept confidential and used solely to determine the eligibility of any person to operate a vehicle on the streets and highways of this state.* [~~the Department shall suspend or revoke the driver's license of the person. The person may apply for reinstatement of his driver's license if he presents medical evidence satisfactory to the Department that his condition does not severely impair his ability to operate safely a motor vehicle~~].**

**Section 4. Subsection 4**

**4. A statement signed by a patient pursuant to subsection 2 or a statement signed by a physician pursuant to subsection 3 shall be deemed a health care record, as defined in NRS 629.021. [~~Upon request of the Department of Motor Vehicles, t~~] *The physician [shall] may provide a copy of the statement to the Department if it is determined that a person has violated the provisions of subsection 1.***