State Laws Vary on Seizure-Impaired Driving

BY SUSAN LONDON

SEATTLE — States vary widely as to whether they legally require physicians to report patients whose driving may be impaired because of seizures, and whether they provide reporting physicians any legal protection, a new study shows.

Physicians across specialties often encounter patients with seizure disorders, and they may be unsure of their legal obligation to report such patients to the state's department of motor vehicles, said Dr. Michael C. Harlow, a forensic psychiatrist at the University of South Dakota, Sioux Falls.

For the study, Dr. Harlow and his colleagues searched legal and medical databases to identify statutory and case law in all 50 states and the District of Columbia regarding physician reporting of driving-impaired seizure patients.

All states allow physicians to report patients who are impaired to drive because of seizures, but only six of them—California, Delaware, Nevada, New Jersey, Oregon, and Pennsylvania—mandate it, Dr. Harlow said at the annual meeting of the American Academy of Psychiatry and the Law.

About half of states do not provide relevant legal protections to reporting physicians, a fact that may discourage some physicians from reporting, Dr. Harlow noted.

Only 22 states legally protect physicians from disciplinary action for breaking physician-patient confidentiality in order to report a driving-impaired seizure patient.

And only 26 states provide reporting physicians with liability immunity from third parties if the reported patient has a motor vehicle accident that results in injuries or death.

"What is interesting is that some of the states that have mandatory reporting don't provide full legal protection to the physician doing the reporting," Dr. Harlow commented. "So that puts the physician in a quandary."

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For example, although New Jersey requires physicians to report driving-impaired seizure patients, it does not offer protection for the physician for breach of confidentiality under that circumstance.

There also are a variety of definitions as to what activates a reporting statute, Dr. Harlow observed. Some of the six states specify seizures, whereas others use a broader definition of a medical condition that can cause loss of consciousness, such as diabetes or cardiovascular disease.

There also is marked variation in the penalties for failure to report in these states, Dr. Harlow noted. Three of them have no penalties, two have civil penalties, and one—Nevada—classifies failure to report as a misdemeanor offense, meaning physicians could face criminal charges.

Whether physicians follow these state statutes is another question. Data from California suggest that many physicians do not report patients with seizures despite the state's stringent statute, Dr. Harlow said.

And in legal cases testing the issue, California courts have thus far drawn distinctions based on the nature of the physician's relationship with the patient, he noted.

"If you are a physician treating a patient for a broken arm and realize that they have a neurologic condition, but you are not their neurologist and you don't report them, and they go off and [have an accident], you are not liable," he explained. However, if "you are the treating neurologist, then you would have a problem potentially under the law."

Dr. Harlow reported that he had no conflicts of interest in association with the study. ■