

The patient with epilepsy and medicolegal aspects: a view for the neurologist

O paciente com epilepsia e aspectos legais em saúde: uma visão para o Neurologista

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ABSTRACT

Patients with epilepsy face innumerable obstacles in daily life, related to work, permission to drive and interpersonal relationships, which require medical guidance. This paper reports a literature review based on scientific articles and civil and traffic system, as a way to resolve doubts about medical obligations in the patient's permission to drive and work. An employment agreement requires the contractor to guarantee safety conditions as well as requiring the patient, at the pre-employment medical examination, to let the physician know previous medical conditions, including epilepsy. More than 90% of patients with epilepsy omit this information during the application assessment, thus being subject to imputation of ideological falsehood crime as disposed on article 299 of Brazilian Penal Code. Medical confidentiality breaches may only occur in specific situations. In Brazil, the authorization and driver's license renewal is governed by the Brazilian Traffic Code (Federal Law n° 9503/1997). For patient evaluations, two groups are considered: those on antiepileptic medication and those on medication withdrawal. A favorable report from the attending physician is also required, in both categories. Seizures that occur exclusively during sleep, and focal aware events or prolonged aura are not differentiated from other seizure types disposed in the traffic law. It is the responsibility of the attending physician to analyze each patient individually to resolve conflicts between public safety and the individual patient's independence. A frank and honest doctor-patient relationship is essential for the patient to understand the public and individual consequences of epileptic seizures and to feel comfortable seeking medical help.

Keywords: Epilepsy; ethics, medical; patient rights; health law.

RESUMO









O paciente com epilepsia enfrenta inúmeros impasses na vida diária, relacionados à autorização para dirigir e relações interpessoais, os quais requerem orientação médica. Este artigo apresenta revisão bibliográfica baseada em artigos científicos e nas legislações cível e de trânsito brasileiras, como forma de solucionar dúvidas que envolvam obrigações médicas na permissão do paciente para dirigir e trabalhar. A admissão do trabalhador exige que o contratante garanta condições de segurança, além da necessidade do paciente, no exame de admissão, informar ao médico as condições médicas prévias, inclusive a epilepsia. Mais de 90% dos pacientes com epilepsia omitem essas informações na avaliação de aptidão, podendo conseqüentemente, estarem sujeitos à imputação de crime de falsidade ideológica (artigo 299 do Código Penal brasileiro). A violação do sigilo médico pode ocorrer apenas em situações específicas. No Brasil, a autorização e a renovação da carteira de habilitação são regidas pelo Código de Trânsito (Lei Federal n° 9503/1997). Para avaliação dos pacientes, dois grupos são considerados: aqueles em uso de medicação anti-epiléptica e aqueles em retirada de medicação. É também necessária a opinião favorável do médico assistente, em ambas as categorias. As convulsões que ocorrem exclusivamente durante o sono, eventos focais perceptivos ou com aura prolongada não são diferenciadas de outros tipos de crises no Código de Trânsito Brasileiro. É responsabilidade do médico assistente analisar cada caso para resolver conflitos entre segurança pública e independência do paciente. Um relacionamento médico-paciente franco e honesto é essencial para que o paciente entenda as conseqüências individuais e coletivas das crises epiléticas e se sinta à vontade para procurar ajuda médica.

Palavras-chave: Epilepsia; ética médica; direitos do paciente; direito sanitário.

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Conflict of interest: There is no conflict of interest to declare.

Received 11 June 2018; Received in final form 31 October 2018; Accepted 04 August 2019.

Epilepsy is defined by the International League Against Epilepsy as a cerebral disorder characterized by a persistent predisposition to the occurrence of seizures¹. The World Health Organization shows that epilepsy affects 8.93 of every 1,000 individuals² in the world. The estimated Brazilian prevalence is similar to the world average, with 9.2 patients per 1,000 citizens³. Many epilepsy patients have special needs, such as physiological impairments that are manifested in their daily life, and a social phobia related to the possibility of the occurrence of seizures in public. This condition often generates emotional and affective isolation, creating a susceptibility to depression and other psychiatric disturbances⁴. Medical care for these patients is vital and knowledge about epilepsy pathophysiology and psychosocial aspects is fundamental. In addition, it is the physician's duty to guide not only the patients, but their friends and families as well, through aspects that encompass the illness in a holistic way.

Considering that epilepsy is a common condition with great morbidity, and the attending neurologist may have doubts about the ethical and legal management of these patients, as there is scarce material on Brazilian patients, the present study offers a way to fill this gap in the national literature. The purpose of this paper was to conduct a literature review based on scientific articles and civil and traffic law codes, as a way to resolve doubts involving medical obligations in the patient's permission to drive and work.

MEDICAL RESPONSIBILITY

Extensive care for the epileptic patient is a subject for worldwide discussion. The main contention is that these patients have the same rights as any employee and must be treated without prejudice. There are three foundations in the doctor-patient relationship with these patients: ethical, legal, and care obligations. According to article 59 of the Brazilian Code of Medical Ethics, it is the physician's duty to inform the patient of their diagnosis, prognosis, risks and benefits of treatment^{5,6}. It is important to reinforce that the provision of a medical statement regarding the patient's illness is an integral part of the consultation, and cannot be denied the patient under any justification; however, it must be taken into account that the provision of a medical statement does not imply having to stop working, but rather, it is a medical decision regarding the benefit to the patient⁷.

The mere fact that the patient has epilepsy does not necessarily mean that they are unable to work, with it being incumbent upon the physician to have adequate knowledge regarding the disease etiology, type and frequency of seizures, adherence to treatment and associated symptoms. The job environment requires the contractor to guarantee safety conditions as well as requiring the employee, at the admission medical examination, to let the physician know about previous medical conditions, including epilepsy⁵.

Regarding other daily skills, such as driving, the Brazilian Medical Association warns that a questionnaire should be applied, under penalty of responsibility, requiring information on medications in use, physical disability, episodes of dizziness, fainting and seizures, psychiatric treatments, metabolic, cardiovascular or neurological diseases, recent operations, drug use and alcoholism. More than 90% of patients with epilepsy omit this information during the aptitude assessment, thus being subject to imputation of ideological falsehood crime as disposed (Brazilian Penal Code article 299)⁸.

EMPLOYMENT

Social segregation appears to be a reality in the lives of patients with epileptic seizures⁹. In this context, it is not unusual to find people with epilepsy unemployed because of this neurological condition. A previous study in the United States of America has shown that a large proportion of epileptic individuals (about 80%) are unemployed, by their own judgment that their physical capacities are reduced, a fact that is reflected in their socioeconomic conditions⁹. Such assertions are reinforced by a Polish study that found increased difficulties in work relationships after an epileptic episode¹⁰.

Under current Brazilian legislation, epilepsy patients, unless they have specific syndromes, do not fit into the concept of permanent disability, although there may be jurisprudence in specific cases¹¹. Other regulations, in respect to employee compensation, follow the same dictates of patients with other morbidities: the government benefit, paid to carriers of specific diseases, must be requested directly from the INSS (Brazilian National Institute of Social Security) in an absence of more than 15 days (according to articles 59 to 64 of Federal Law no. 8123/1991), with total or partial disability being diagnosed by an INSS specialist physician. Also, it is important to remember that workers who do not fulfill the INSS grace period will not have the benefit granted¹². Regarding retirement due to disability, when a patient is found to be totally disabled, articles 42 and 62 of Federal Law no. 8213/1991 must be followed¹². In this context, it is up to the physician to guide the patient on his rights. The decision to grant a pension in relation to illness or an invalid is the responsibility of an INSS specialist physician, and the attending neurologist is only responsible for providing the diagnosis and follow-up.

PROFESSIONAL CONFIDENTIALITY AND ITS IMPLICATIONS

Professional confidentiality has been one of the pillars of the doctor-patient relationship since the origin of medicine. It is extremely important to medical practice as, without guarantees of privacy, patients will no longer disclose

essential information¹³. The principle of confidentiality dates back to the Hippocratic Oath, more than two thousand years ago and, through social and historical changes, it has ceased to be a moral imperative to become a legal duty for the medical professional. Currently, privacy and confidentiality are guaranteed by the penal code, civil code and code of medical ethics, and their violations are characterized as a civil, ethical and criminal infraction⁷.

A breach of medical confidentiality, however, can and should occur in specific situations. Based on Beauchamp and Childress's *Principles of Biomedical Ethics*, the patient-physician confidentiality may be disrupted when non-disclosure can greatly harm the patient or another person, with an impact on health or well-being, and when it results in a benefit to the patient. Legally, there are three situations in which this may occur: legal duty, fair cause and express authorization by the patient¹³.

Therefore, as much as the patient, revealing his secrets in consultation, relies on the professional to keep his condition private, certain situations demand that the doctor be in touch with the ethical and legal issues that may require this commitment to be broken. In certain situations, disclosure of the patient's medical condition is considered "fair cause", as in the case of patients who are applying for a job as a public transport driver or work required in high places and/or working with high voltage. Article 76 of the Medical Ethics Code stipulates that a physician is forbidden to "disclose information obtained during the medical examination of employees, even at the request of the company's managers or institutions", but highlights that this is valid "unless the doctor's silence puts employees' or the community's health at risk"⁷. It is up to the doctor who performed the admission examination to identify, for example, potential danger posed by a professional driver with a neurological disease, such as epilepsy.

In Brazil, epilepsy is not a notifiable disease in epidemiological terms, except for the situations already explained. In Canada, however, where the diagnosis of epilepsy should be reported to the Transport Ministry—and doctors receive cash incentives for that—a study has shown that, after notifying the authorities to instruct patients not to drive, the patients began to seek less medical care, due to breach of trust in the medical relationship. Therefore, the notification requirement makes patients afraid to report the occurrence of seizures, fearing that their driving license will be revoked¹⁴.

Although there is no obligation to notify, immediately upon epilepsy diagnosis, it is common sense that the doctor needs to advise the patient not to drive. In Brazil, the opinion of the attending physician is fundamental for granting a driving license (CNH) to these patients. According to the National Traffic Council, if a patient, during a physical and mental aptitude test, declares themselves to having had epilepsy, the patient must submit a report from the attending physician about his/her previous medical condition. The attending physician, who is not obliged to be a neurologist—but must

have consulted with the patient for at least one year—will be asked to complete a questionnaire containing detailed information on the seizure characteristics and treatment, providing a favorable or unfavorable opinion for the CNH's consideration¹⁵. The questionnaire must be signed by the patient in order to comply with the Medical Ethics Code, which prohibits a physician from creating or publishing a medical report that reveals the diagnosis, prognosis or therapy without the patient or legal guardian's express authorization⁷.

Thus, maintaining a good doctor-patient relationship and an honest dialogue is fundamental for a patient's trust in professionals, even in cases where it is the moral and legal obligation of the physician to break medical confidentiality. Clarifying the implications of seizures in situations that compromise the public is of the utmost importance, so that patient does not stop seeking medical assistance.

PERMISSION TO DRIVE

Patients with epilepsy suffer from fear and uncertainty of seizure recurrence and this interferes with their lifestyle, work, recreation, and schooling¹⁵. When asked about what the greatest interference point is in their quality of life, patients refer to their concern when driving even more frequently than personal independence and medication dependence¹⁶. A cohort study conducted in Denmark reiterated a higher prevalence of car accidents in epilepsy patients compared with the general population¹⁷, and this was corroborated by another European study, which emphasized that factors related to the disease, such as antiepileptic drug side effects and structural brain abnormalities, also contribute to this increase in frequency¹⁸.

Discrepancies are found, however, in relation to Brazilian traffic. Although evidence shows a higher incidence of accidents involving people with epilepsy, accidents related to epileptic seizures are less reported, and have a lower causal relationship than alcoholism, sleep apnea and cellphone use. A previous study showed that the strongest predictor of a car accident was the length of time without seizures—the relative risk being reduced in patients with a seizure-free time interval greater than 12 months¹⁹. More than half the patients who were involved in car accidents were driving illegally, that is, with a shorter crisis-free interval than legislated. The medical literature also reports the fact that up to a quarter of car accidents in patients with epilepsy are related to them missing their antiepileptic drug doses on days prior²⁰. Other studies show that only about 30% of epilepsy patients, advised by their physicians to inform competent authorities that they had the comorbidity, actually do it²¹. Also, in a multicenter study, about one-third of patients, who were refractory epilepsy candidates for surgical treatment, reported having driven in the last year²².

The United Kingdom requires a period of 12 months without seizures in order to grant, or renew, the right to drive, except for sleep-related epileptic seizures, which have no restrictions even though they require the pattern to be maintained for three years²³. In Ontario, Canada, six months without seizures are required for a focal crisis and one year if the episodes are generalized²⁰. In Brazil, authorization and CNH license renewal is governed by the Brazilian Traffic Code law (Federal Law no. 9503/1997). For the evaluation, two groups are considered: those on anti-epileptic medication and those on medication withdrawal²⁴. According to legislation, in order to be considered competent to drive, a patient on antiepileptic medication should be seizure-free for one year or more, and be adherent to treatment. The mandatory requirements for patients on medication withdrawal are that they are seizure-free for at least two years, not diagnosed with juvenile myoclonic epilepsy, have a withdrawal plan for a minimum duration of six months, and be seizure-free for at least for six months after complete withdrawal. A favorable report by the attending physician is also required in both categories¹³.

On being accepted after expert examination, the patient should be aware that he/she will be subject to the following conditions: he/she may only drive vehicles in the B category (only cars), the examination expiration date may be reduced by medical criteria and the repetition of procedures in the renewal examinations may be required. For patients on medication withdrawal, the expiration date of the license may become the same that as the general population after first renewal¹³.

SEIZURES THAT OCCUR EXCLUSIVELY DURING SLEEP

According to current classification, it is understood as sleep seizures are those that occur predominantly (more than 90%) or exclusively during sleep¹, and may correspond to about 10% to 50% of epilepsy patients^{25,26}. This kind of seizure, frequently present in frontal lobe epilepsies, has a high rate of recurrence when not adequately treated, as well as having a differential diagnosis made difficult by its resemblance to parasomnias²⁷.

There is also the discussion about the need for treatment of exclusively-nocturnal seizures²⁸, as these often do not interfere with the patient's daily life. These, however, have a high probability of recurrence²⁹. In addition, there is a high risk of awake seizures with the sudden withdrawal of antiepileptic drugs, or poor treatment adherence³⁰.

If the pattern of nocturnal seizures is well established, this condition is not classified as a limiting factor to driving in some North American states³¹. In the United Kingdom, for patients who had sleep-only seizures for three years and at least two seizures in the past 10 years, driving is permitted²³.

There is no distinct reference to this seizure type for the Brazilian population, and it would be prudent to follow the same criteria as other kinds of seizures. With an annual risk of awake seizures estimated to be as high as 5.7%, a systematic review regarding pure sleep-related epilepsy showed that nocturnal seizures are not without risk³². However, literature data concerning exclusively nocturnal episodes are still too scarce for an adequate conclusion.

EXCLUSIVELY FOCAL AWARE EVENTS AND PROLONGED AURA

On the topic of exclusively focal aware events and prolonged aura, there is scarce medical literature to permit a different opinion in terms of permission for the patient to drive or operate dangerous equipment. Previous literature has demonstrated that motor activity without loss of consciousness during focal seizures has been responsible for some car accidents³³. Brazilian legislation does not consider exceptions in relation to this kind of episode. For Canadian patients, this kind of seizure, when it occurs exclusively, is taken into account in the permission to drive, authorizing patients with an unchanged situation for the last 12 months³⁴. It is also up to the physician to reinforce information about the consequences of forgetfulness regarding antiepileptic drug administration and the need to stop driving during the aura.

CONCLUSION

Given the above, there are several judicial implications regarding patients with epilepsy, and the doctor needs to know how to manage the implications and, first and foremost, to understand the medicolegal aspects. As the condition of these patients implies, as in all medical conditions, ethics dictate; therefore, the breach of secrecy is a restricted exception to be made, in instances where there is a threat to life for others, by the doctor who performed the employment admission examination and identified a potential danger due to the epilepsy.

In spite of involved risks in the epileptic patient's freedom to drive, it is necessary to remember that prohibition without adequate analysis results in important limitations to this individual's participation in society, making it difficult to travel to work, school and recreation activities, with a resulting impact on their quality of life. It is the responsibility of the attending physician to analyze each case individually to resolve conflicts between public safety and the patient's individual independence. Taking into account that Brazilian legislation does not distinguish between seizures types, although the law should be the basic guideline for decisions, personalized medical opinion should be part of the decision-making process.

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