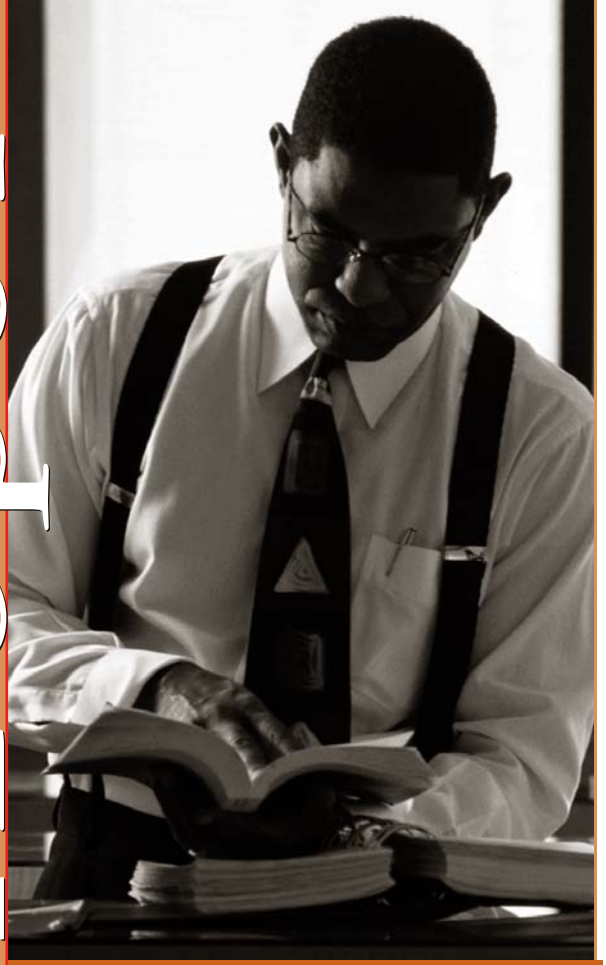
EPILEPSY



Legal Rights
Legal Issues

EPILEPSY FOUNDATION®

Not another moment lost to seizures™

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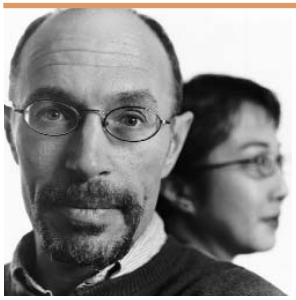
LEGAL RIGHTS LEGAL ISSUES

Over the past few decades, great strides have been made in diagnosing and treating epilepsy, a neurological disorder characterized by recurring seizures. Despite these advances, epilepsy continues to evoke negative stereotypes, fear and discrimination.



Persons diagnosed as having epilepsy may suddenly find that they are treated differently and sometimes unfairly:

- Qualified workers may be denied job opportunities due to stereotyped views about risks for seizures in the workplace
- Colleges may refuse to make reasonable academic adjustments, such as scheduling changes, needed to ensure successful participation
- People experiencing a common type of seizure may be erroneously viewed as aggressive or intoxicated, and be unfairly arrested and/or injured by first responders
- Schools and day care programs may refuse to administer emergency seizure medication

When facing these problems, it helps to know your legal rights. This pamphlet describes some of the legal issues that may arise for a person who has epilepsy. If you have been diagnosed as having epilepsy yourself and are wondering what your rights are, or if someone in your family has epilepsy, you may find the following information helpful.

In addition, the Epilepsy Foundation can provide you with legal guidance or a referral to an attorney for help with a legal case involving discrimination based on epilepsy. These resources are outlined in the last section of this pamphlet.

employment

One of the biggest problems affecting persons with epilepsy is employment discrimination. Thanks to the Americans with Disabilities Act (ADA), most employers (the law applies to those with 15 or more employees) are no longer allowed to ask job applicants whether they have certain disabilities or how severe they are. However, after an employer makes a job offer, the employer may ask questions about an applicant's health and may require a medical examination, as long as it treats all applicants the same.

The ADA also prohibits most employers from discriminating on the basis of disability if the applicant or employee is able to do the job's essential functions. The employer must provide a reasonable accommodation that will enable an otherwise qualified person with a disability to do the job. Accommodations for people with epilepsy are generally easy to implement and inexpensive. Such accommodations may include making adjustments to work schedules to avoid sleep disruption (which may trigger seizures), and permitting leave to seek treatment or adjust medication.

An individual who is not protected by the ADA may be protected by another federal law, the Rehabilitation Act of 1973. This law applies to an employer that is (a) a federal agency, or (b) has contracts with the federal government for more than $10,000, or (c) receives federal funding. In addition, nearly all states have some type of law forbidding employment discrimination against qualified persons with disabilities. These laws vary widely. Some provide greater protection than the ADA.

An individual who feels that he was discriminated against on the basis of disability by a private employer or an employer which is an agency of state or local government may file a complaint with the federal Equal Employment Opportunity Commission (EEOC). These complaints may be filed with the nearest office of the EEOC, which enforces the employment provisions of the ADA. Such complaints may also be filed with the state agency (sometimes called human rights commissions) that enforces the state's anti-discrimination laws. There are time limits within which complaints must be filed, so it is best to contact an attorney (although an attorney is not needed to file a complaint) or the enforcing agency as soon as possible. The EEOC or the state agency will investigate the complaint and determine if there has been a violation of the ADA or state law, and will either attempt to resolve the matter or issue you a "right to sue" letter. It is necessary to receive this letter before you may file a lawsuit concerning the discrimination.

If your employer is a federal agency, you should contact that agency's equal employment opportunity officer to file a complaint under Section 501 of the Rehabilitation Act. Different procedures apply to complaints filed by federal agency employees; information on these procedures may be obtained from the agency's equal employment opportunity officer.

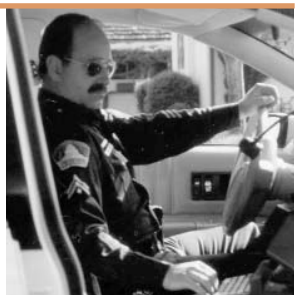
family law

Sometimes in a divorce proceeding, the fact that a parent has epilepsy is offered as a basis for denying that parent custody of his child. Case law states that epilepsy may not be the sole basis for denying custody to a parent, but may be considered as a legitimate factor in determining the child's best interests.

A parent with epilepsy who faces any type of family law dispute in which epilepsy is raised should work closely with his attorney and physician to show that the epilepsy does not affect his ability to be a good parent.

Criminal Justice

Sometimes people with epilepsy are arrested for trespass, shoplifting, assault or disorderly conduct, when in fact their behavior was involuntary and the result of a seizure or post-seizure confusion. Complex partial seizures in particular (which result in altered consciousness and behaviors that may appear aggressive) are sometimes misunderstood by police. To combat this problem, the Epilepsy Foundation has developed police training materials to educate police about recognizing and properly responding to seizures (for instance, providing first aid and avoiding dangerous practices such as physical restraint).



Wearing an emergency medical bracelet or other medical identification may help prevent this type of inappropriate arrest. If you are arrested for seizure-related behavior, discuss your medical condition with your lawyer and ask him to contact your doctor. In a case like this, if the prosecuting attorney's office is made aware of how your seizures affect you, the charges may be dropped. And if you are harmed as a result of improper treatment by police or emergency medical personnel responding to your seizure, you should consult with an attorney to determine whether a lawsuit should be pursued to protect your rights.

Driver Licensing

Every state places restrictions on driving by persons with certain medical conditions, including epilepsy. These restrictions vary considerably from state to state. Most states say you must be seizure-free for three to six months, while some require a one-year seizure-free period, and others use a shorter interval or no specific seizure-free interval. Your local Epilepsy Foundation affiliate or the state agency in charge of driver licensing, such as the Department of Motor Vehicles (DMV), should be able to tell you the current rules in your state. You can also visit the Epilepsy Foundation's online database of state driving laws, available at www.epilepsyfoundation.org.

When you apply for a license the first time, or when you renew it, you most likely will be asked direct questions about whether you have epilepsy, seizures, or a seizure disorder. It is important to answer these questions truthfully. Failure to do so can result in liability if you have an accident related to a seizure. Once the DMV (or similar agency) knows of your condition, you may have to send in medical updates to the DMV (or other responsible state agency) from time to time.

Each state has some type of hearing and review procedure if it decides to deny or revoke a license because of a medical condition.

A few states require physicians to report the names of their patients with epilepsy to a state agency, usually the state DMV. Some also require people to report any seizures they have in-between license renewals.

Persons with epilepsy or a history of epilepsy may not be able to get certain types of commercial licenses. Current rules on commercial licenses may be obtained from the U.S. Department of Transportation (DOT) or your

state DOT. The Epilepsy Foundation Web site offers summaries for most states.

Education

The Individuals with Disabilities Education Act (IDEA) says that every child with a disability is entitled to a free, appropriate public education in the least restrictive setting. Children with epilepsy may be entitled to special education and related services if having epilepsy affects their educational performance. Related services a school may be required to provide to a child with epilepsy include health services such as giving routine and emergency anti-seizure medication. Every state has laws providing for some kind of educational services for children with disabilities.

Students with epilepsy may not need special education, but nevertheless, they may need certain assistance or accommodations to allow them to fully participate in school. Elementary and high schools, along with colleges and universities, are required to provide such accommodations under the ADA, which applies to public and private schools. However, this requirement does not apply to parochial schools, because the ADA does not cover religious organizations. Additionally, all schools (including parochial schools) that receive money from the federal government are required to make such accommodations under Section 504 of the Rehabilitation Act (which prohibits discrimination based on disability by all programs that receive federal funds). Examples of such accommodations include giving anti-seizure medication (in elementary or high school), and allowing extra time to complete tests or assignments in order to compensate for problems due to seizures or the side effects of anti-seizure medication.

To learn more about educational rights (including the right to file a complaint), see the Epilepsy Foundation's pamphlet on the subject.

Insurance

Obtaining affordable health insurance continues to be a major problem for many persons with epilepsy. Finding affordable life and auto insurance can also be difficult. An independent insurance broker should be able to advise you about the options available to you. If you cannot find insurance, ask your state's Insurance Commissioner whether your state has developed a health insurance program for people unable to obtain insurance.

The ADA and many state laws prohibit insurance companies from denying insurance on the basis of disability unless the decision is based on valid actuarial data (that is, evidence that providing insurance for medical costs associated with epilepsy is more costly for insurers than for other conditions). The effectiveness of these laws varies. People who want to find out whether an insurance company acted illegally in denying coverage may contact their state Insurance Commissioner or a local attorney.

Reform of this nation's health care system is a critical issue. People who cannot find affordable health insurance may want to tell their federal and state legislators about their experience.

Federal Disability Benefits

Just because a person has epilepsy does not mean that he is unable to work. However, when one's epilepsy and/or related conditions are so

severe that one is truly unable to work, financial benefits may be available. Under current federal rules, people who have more than one convulsive seizure per month should be able to get federal disability benefits if they either experience seizures during the day or suffer the after effects of nocturnal seizures during the day. As a general rule, a person who has nonconvulsive seizures would be entitled to benefits if he has more than one seizure a week, and the seizure causes an alteration of awareness or a significant interference with activity during the day. In addition, either type of seizure must be shown to have persisted for three months or longer after treatment begins and must be documented. In some cases, people whose seizures do not fit this pattern may also be able to show they are entitled to disability benefits if the seizures and/or the effects of anti-seizure medication or related conditions prevent them from working.

The two primary federal programs which provide financial aid are (1) the Social Security Disability Insurance (SSDI) program for people with disabilities (or their dependents or survivors) who have worked for a certain amount of time and paid Social Security taxes, and (2) the Supplemental Security Income (SSI) program for people who are found to be disabled and who meet special income requirements. People who meet the disability requirements may also be able to get Medicare or Medicaid coverage.

The Social Security Administration (see www.ssa.gov) or your local Social Security office can give you more information about these programs. If you apply for benefits and are turned down, you should get an attorney to help you appeal.

The Epilepsy Foundation's Role

The Epilepsy Foundation is the national voluntary agency solely dedicated to the welfare of the more than three million people with epilepsy in the U.S. and their families. The organization works to ensure that people with seizures are able to participate in all life experiences; and to prevent, control and cure epilepsy through services, education, advocacy and research. In addition to programs conducted at the national level, persons with epilepsy throughout the United States are served by local Epilepsy Foundation affiliates in nearly 100 communities.

Legal Assistance: To directly assist people with epilepsy experiencing discrimination based on that condition, the Foundation has established the Jeanne A. Carpenter Epilepsy Legal Defense Fund. The program provides legal guidance to individuals with epilepsy and their families, along with referrals to a nationwide network of lawyers who can provide advice and representation (including a free initial consultation). For more information on this program, or to request legal help for a case involving discrimination based on epilepsy, go to the Fund's Web site, www.epilepsylegal.org, or call 1-800-332-1000.

The Foundation has also prepared legal fact sheets which provide more detailed information on all of the topics discussed in this pamphlet; to obtain a copy of a fact sheet dealing with a particular issue, visit the Web site above or call the above number.

For general information about epilepsy and its treatment, contact the Foundation at the above number, visit www.epilepsyfoundation.org, or check with the Epilepsy Foundation affiliate in your community.

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