

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT**

MARK SNYDER,

Appellant

CASENO. 98-0490

vs.

STATE OF FLORIDA,

Appellee

\_\_\_\_\_ /

**UNOPPOSED MOTION FOR LEAVE TO FILE**  
**A BRIEF AS AMICUS CURIAE**  
**In Support of Appellant Mark Snyder**

On appeal from the Circuit Court of the Fifteenth  
Judicial Circuit In and For Palm Beach County, Florida  
[Criminal Division]

Pursuant to Rule **9.370** of the Florida Rules of Appellate Procedure the Epilepsy Foundation, by and through its attorney, Alexandra K. Finucane, hereby requests that this Court grant it permission to file a brief as *amicus curiae* in support of Appellant. Bureau Chief Assistant Attorney General Celia Terenzio has no objection to this motion.

The Epilepsy Foundation is interested in filing a brief in this case because it presents important issues of public policy affecting the interests of people with epilepsy, and indeed any other medical condition that may strike without warning. The Epilepsy Foundation is greatly concerned that the judgment below unfairly penalizes an individual who was legally licensed to drive, and who, through no fault of his own, appears to have experienced an uncontrollable medical event while driving. The ruling effectively tells people with epilepsy in Florida that, despite being legally licensed to drive, you will go to

prison should you experience an unexpected, involuntary medical event that causes harm to others. Such a ruling, **if** allowed to stand, would render meaningless the state's legitimate public policy that people with medically controlled epilepsy may be licensed to drive.

Accordingly, the Epilepsy Foundation respectfully requests that this motion for leave to participate as *amicus curiae* be granted.

Respectfully submitted,



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**EPILEPSY FOUNDATION**  
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## **INTEREST OF AMICI**

The Epilepsy Foundation is the sole, national charitable voluntary health organization dedicated to promoting optimal quality of life and independence for the 2.5 million people with epilepsy in this country. The Foundation carries out its mission in coordination with its **62** affiliates nationwide (including one in Palm Beach County, Florida) through research, education, advocacy and the provision of services. The Epilepsy Foundation and its affiliates maintain and disseminate up-to-date, accurate information about epilepsy to promote public understanding of the disorder. Epilepsy continues to be misunderstood and stigmatized despite vast improvements in medical treatment. As part of this mission, the Foundation monitors state driver licensing laws and regulations across the country, acts as a resource for those interested in the issues and policy surrounding driver licensing of people with epilepsy, and provides model legislation to promote greater consistency among state rules.

## **STATEMENT OF THE FACTS**

The Epilepsy Foundation relies upon the statement of facts as presented by Appellant in his brief as they are consistent with seizure-related behavior.

## **ARGUMENT**

### **POINT I**

**THERE IS UNCONTROVERTED MEDICAL EVIDENCE THAT THE APPELLANT WAS SUFFERING FROM A SEIZURE AT THE TIME OF THE ACCIDENT.** ‡

The medical evidence presented at trial is entirely consistent with seizure activity. While most people think of seizures as people falling to the ground, losing consciousness, and convulsing, there are actually twenty different types of seizures. Seizures are sudden,

unexpected, uncontrolled episodes of excessive electrical discharges of brain cells, with associated sensory, motor and/or behavioral changes. The effects of seizures, depending on seizure type, can range from minimal changes in sensation to loss of consciousness and convulsions. All produce temporary loss of conscious control.

Of the twenty different types of seizures, they generally can be classified into two categories: partial seizures (seizures whose onset is limited to a part of one cerebral hemisphere) and generalized seizures (seizures which seem to involve the brain diffusively from the outset. People with epilepsy may have more than one seizure type.

Partial seizures are the most common seizure type. This type of seizure activity is divided into those in which consciousness is maintained (simple partial seizures) but sensory and motor control is lost, and those in which consciousness also is impaired or lost (complex partial seizures).

A simple partial seizure implies that the person affected can still interact with the environment but the seizure will impose certain limitations on specific functions, such as speech or movement. A complex partial seizure is characterized by altered consciousness. In practical terms, this refers to impaired responsiveness or an inability to interact normally with the environment. In general, individuals with complex partial seizures cannot recall the details of the seizure episode. During such seizures, an individual frequently manifests automatisms: repetitive complex motor activity that is purposeless, undirected, and inappropriate. Partial seizures may evolve into generalized seizures (secondarily generalized seizures) as the excessive electrical discharge spreads through the brain.

Partial seizures, both complex and simple, are the most difficult type of seizure to recognize. People unfamiliar with this seizure type may **think** the individual is daydreaming, *drunk* or on drugs. Because of the difficulty in recognizing such seizures are occurring, the Epilepsy Foundation has produced videotapes which demonstrate such seizures as part of training programs for the police and the general public. Such videotapes are available for viewing, if the Court desires.

All evidence in the record, including medical experts and lay witness testimony, supports the position that Appellant suffered a seizure which impaired consciousness and control at the time of the collision. Appellant took no evasive action to avoid the accident; he didn't attempt to stop his vehicle; he was in a daze; he had no recollection of the collision; and he was generally confused. Confusion following a seizure of any type is common. In addition, after reaching the emergency room, Appellant suffered two more seizures, recorded by medical personnel.

## **POINT II**

### **THE STATE LEGISLATURE HAS MADE A POLICY DECISION TO ALLOW PEOPLE WITH MEDICALLY CONTROLLED EPILEPSY TO DRIVE.**

Motor vehicle licensing laws are designed to ensure the safety of all citizens. However, states have also recognized that driving is an important privilege to members of society and is a predominant means of fulfilling personal goals, such as accessing employment, shopping, obtaining medical care and that this privilege should not be unduly restricted or denied.

For many years, people with seizure disorders have been subjected to

misunderstanding and prejudices about the nature of their condition. Some of the false assumptions about epilepsy have included: that all persons lose consciousness when they experience a seizure; that once a person has a seizure, he or she is always at high risk of having another one; and, that persons with epilepsy are more unreliable than people with other medical conditions. Medical advances have enabled many people with epilepsy to gain control of their seizures and studies have shown that these individuals as a group do not pose a greater risk while driving than do people with other chronic medical conditions. A. James Rowan et al., Epilepsy and Driving, **in** The Medical Treatment of Epilepsy **647 (1992)**. In fact, the risk of a driver having a seizure is far less than the risk posed by drunken drivers, the major source of fatalities on the road. **Id.**

While all states permit the licensing of persons with seizure disorders, these individuals are subject to special scrutiny by the state. In gaining licensure from the state to drive, these individuals have met various requirements which demonstrate that they do not pose an unreasonable safety risk. Most other drivers are not subjected to any comparable level of examination. By granting driving privileges, the state has thus decided that these individuals are safe to be on the road.

There is an increased risk of accidents when people with epilepsy are allowed to drive. However, there is no data to suggest that the risk of accidents among drivers with epilepsy is any greater than for individuals with other chronic medical conditions. Allan Krumholz, Driving and Epilepsy, Presentation at the Meeting of the American Academy of Neurology (April, **1997**). In a study of drivers with medical conditions done in **1965**, epilepsy presented a relative risk ratio of **1.95** times the control risk. Cardiovascular

disease had a risk ratio of **1.62**, diabetes had a risk ratio of **1.78** and mental illness posed a risk ratio of **2.12**. A miscellaneous category which included other medical problems and substance abuse presented a risk ratio of **2.80**. Robert S. Fisher, et al., Epilepsy and Driving: An International Perspective, 35(3) *Epilepsia* 675 – 684 (1994). More recently, a study of the risk of accidents of drivers with epilepsy concluded that the overall risk ratio was **1.33**, as compared with the general population. Id. In another study which reviewed the driving statistics from the state of Washington, women with epilepsy had a lower accident rate than did men without epilepsy. Id. Further, a woman with epilepsy under the age of 50 who had been seizure-free for six months had a lower risk of accident than any male aged **18** or older and she had less than half the risk for men between the ages of **18** and 30. A. James Rowan et al., Epilepsy and Driving, in The Medical Treatment of Epilepsy 647 (1992).

The above statistics formed the basis for the liberalization of driving laws for people with epilepsy over the years. This trend also comports with the desire to remove the stigma from epilepsy and to treat it like other medical conditions. The state legislature recognized that the benefits to people with epilepsy and to society at large far outweigh the costs associated with licensure. People with epilepsy have increased autonomy by driving and gain the ability to be productive citizens in a society which comprises all its members.

**POINT III**

**IT IS GROSSLY UNJUST AND UNDERMINES PUBLIC POLICY TO SUBJECT SOMEONE TO CRIMINAL PUNISHMENT WHO INJURES ANOTHER AS A RESULT OF AN UNEXPECTED MEDICAL EVENT.**

Criminal penalties are designed to punish a wrong committed by people who act outside the scope of the law. When a driver fulfills the state's licensing requirements and is compliant in taking prescribed anti-convulsant medications, he or she should not be found criminally responsible in the rare circumstance of experiencing a seizure behind the wheel. He or she has not broken any law by driving.

It is grossly unfair to criminally punish people for having seizure-related accidents when they have no expectation, indication, or warning that a seizure may occur. To do so is to hold people with epilepsy to a much higher standard than the rest of society. It also has the practical effect of denying people with epilepsy of much-needed independence, for constant fear of criminal repercussions.

The Epilepsy Foundation recognizes that, just like all licensed drivers, some with epilepsy may be negligent. They may drive recklessly, not take their medications or fail to follow their doctors' advice. The Foundation does not suggest that such individuals be immune from liability for negligence or even criminal penalties, depending upon the particular facts of the case. Rather, we are concerned with the case where uncontroverted medical evidence exists, such as in Appellant's case, that a seizure occurred, was an unforeseen event, and occurred through no fault of the Appellant.

There are many other medical maladies which occur without warning, where it would be equally unjust to hold the drivers criminally responsible for any unforeseeable

consequences. People with heart disease drive and are subject to sudden attacks without warning while driving. Individuals may faint for a variety of reasons: a sudden drop in blood pressure, high fever, pregnancy. Diabetics run the **risk** of hypoglycemia, disorientation, and coma. Just as it would be unreasonable and unjust to apply criminal sanctions in these circumstances, so should such reasoning apply to epilepsy cases.

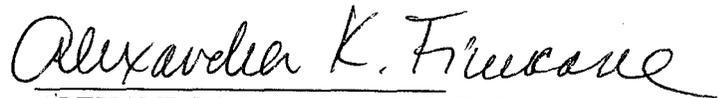
### CONCLUSION

There are certain risks inherent in allowing anyone to operate an automobile. A person who is newly-licensed may present a danger on the road; some elderly people whose reflexes are slowed also may be a threat. These are the risks society takes, balanced against the values that automobile use have brought to society in terms of mobility, employment and economic growth. A person with epilepsy, **as** demonstrated in this case, may pose danger if a seizure occurs while driving. However, the state of Florida, like all states of the Union, has made a policy decision to allow some people with epilepsy to drive, so long as certain requirements are met. This was a decision based on a desire to protect its citizens, while at the same time allowing the most independence to all members of society. In this case all requirements were duly met, and it would thus be grossly unjust to hold **an** individual criminally liable for injuring someone because of a seizure.

The Foundation is deeply concerned that the trial judgment, if allowed to stand, will have a devastating impact on all people with seizure disorders. People who are driving with a valid license will live in fear **of** criminal sanctions should they, through no fault of their own, experience a seizure while driving. This decision undeservingly

isolates a group of people and makes them criminally responsible despite their compliance with all aspects **of** the law and in following their physician's recommendations about medication use to prevent seizures and about driving. The Foundation is not advocating that people be free from accountability for activities which rise to the level of criminal negligence; but rather **asks** the Court to recognize that medical conditions, such as epilepsy, are involuntary, can affect a person suddenly and without warning, and are not deserving of punishment.

Respectfully submitted,



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I, GARLAND PINKSTON, JR., Clerk of the District of Columbia court of Appeals, do hereby certify that

Alexandra Finucane

was on the 15th day of December, 1978,  
duly qualified and admitted as an attorney and counselor and  
entitled to practice before this Court and is, on the date  
indicated below, an active member in good standing of this Bar.

In Testimony Whereof, I have  
hereunto subscribed my name and  
affixed the seal of this court  
at the City of Washington, D.C.

this 2nd day of  
December, 1998.

GARLAND PINKSTON, JR., CLERK

By: Stacy Carl  
Deputy Clerk