

# Epilepsy-related automobile accidents in Japan: legal changes about a precedent and penal regulations

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**Abstract.** – In Japan, having epilepsy was defined as an absolute disqualification for driving license in the Road Traffic Act enacted in 1960. In view of subsequent changes in domestic road traffic conditions and advances in epilepsy treatment and owing to efforts by interested parties, the 2002 revision of the Road Traffic Act conditionally permitted epileptic patients to obtain a driver's license. However, as fatal traffic accidents associated with driving by epileptic patients continued thereafter, their legal responsibility for driving a car was extensively discussed in newspapers and other media as well as in the Diet. In June 2013, the Road Traffic Act was again revised to incorporate punitive clauses applicable to those with difficulty in driving (not limited to epilepsy only but including various diseases and conditions) who falsely claimed that they had no driving difficulty in the procedure for obtaining or renewing their driver's license. With this revision marking a turning point, the Act on Punishment for Acts That Cause Death or Injury to Others by Driving a Car was enforced as a new statute in May 2014. This paper presents five cases of traffic accidents involved with epileptic patients to explain the impact of these accidents on the 2013 legal revision and a subsequent trend of toughening of legal penalties.

*Key words:*

Epilepsy, Driving license, Traffic accident, Road Traffic Act, Disqualification.

## Introduction

### *The Global Trend of Driving License Standards for Epileptic Patients*

The legal standards of driving licenses granted to epileptic patients widely vary from country to country. <sup>1)-10)</sup> Globally, restrictions on epileptic drivers' licenses have been loosening. In Japan, however, the seizure control period of two years required for the grant of driving license remains unchanged since 2002. Partly due to a series of

serious car accidents involving epileptic patients in the recent years, the legal restriction on epileptic drivers has been tightening.

In the United States, the qualification standard for driving license was revised from absolute disqualification to relative disqualification in 1949. As the American licensing system depends on each state government, the standards vary from state to state. In many states, the seizure control periods required for the grant of driving license typically range from three to six months<sup>1</sup>. The relative shortness of these periods is based on the fact that the comparison of fatal accident rates among states respectively adopting three-month, six-month, twelve-month, and indefinite periods of seizure control requirement shows no significant differences<sup>2</sup>. As a whole, the required seizure control period for an epileptic patient in the United States to be permitted to drive has been shortened.

In Canada, the seizure control period officially required for an epileptic patient to drive is six months except for the Province of Quebec<sup>3</sup>, where its original stipulation requires one year of control period<sup>4</sup>. Despite the difference in the requirements, a study has demonstrated the absence of significant differences in accident rates between different provinces<sup>5</sup>.

In Australia, the standard requirement for the epileptic seizure control period is one year.<sup>6)</sup> While the same length of period is required in New Zealand, it can be shortened down to six months by a doctor's diagnostic recommendation<sup>4</sup>.

European Union (EU) countries have been moving towards the standardization of driving licenses across the member states to facilitate interstate travels of their citizens<sup>7,8</sup>. Under such trend, an official notification was issued in 2009 to limit the maximum seizure control period required for epileptic patients to have driving licenses to one year or less in Italy, United Kingdom, Germany,

France, the Netherlands, Spain, Switzerland, Belgium, and many other countries. In Poland, Portugal and Slovenia, however, the minimum requirement is two years, and Greece adopts the three-year requirement<sup>4,9</sup>. The ground for the most EU countries' decision to adopt one-year or less standard is the statistic calculation demonstrating that the risk of traffic accident involving epileptic patients is not necessarily higher than that of people in general<sup>10</sup>.

### ***An Overview of Automobile Driving by Epileptic Patients in Japan***

On automobile driving by epilepsy patients, our Road Traffic Act, instituted in 1960, sets out in its Article 88 specifically that "those who fall under either one of the following shall not obtain a driver's license: (snip) (2) Who are mentally ill, feeble minded, epileptic, blind, deaf or dumb". Therefore, epilepsy is defined as an absolute disqualification for getting a driver's license. However, due partly to repeated demands from epilepsy patients, the government's Headquarters for the Promotion of Measures for the Disabled issued in August of 1999 "the Review of Disqualification Conditions for the Disabled", which eventually led to the publication of the "Guidelines for Determining Driving Aptitude of Those with Epilepsy" compiled jointly by the Research Committee of Legal Issues of the Japan Society of Epilepsy, and the National Police Agency<sup>11</sup>. Through such developments, in May 2002, the Road Traffic Act was revised and since June 1<sup>st</sup> of the year 2002, it has become possible for epilepsy patients to obtain driver's license under certain conditions. The conditions were as follows<sup>12</sup>:

Operation Standards for Agreeing/Denying, etc. of Driver's License for Those with Certain Illnesses: Epilepsy (relevant to Article 33-2-3, Clause 2, Item 1 of the Ordinance)

- (1) There shall be no denial, etc. in either of the following cases;
  - a. No fit has occurred in the last 5 years and it has been diagnosed by a doctor that "no fit is likely to occur hereafter".
  - b. No fit has occurred in the last 2 years and it has been diagnosed by a doctor that "no fit is likely to occur within X years or so".
  - c. After observation for 1 year, it has been diagnosed by a doctor that "a fit will be limited to simple partial convulsion without accompanying disturbance of consciousness and there is no likelihood of aggravation of symptoms thereafter".

- d. After 2 years' observation, it has been diagnosed by a doctor that "a fit will occur only in sleep and there is no likelihood of aggravation of symptoms hereafter".

(Notes: In the case of **b.** "No fit has occurred in the last 2 years and it has been diagnosed by a doctor that 'no fit is likely to occur within X years or so', so an ad hoc aptitude test shall be conducted every X years.)

The revision in the Act has paved the way for epilepsy patients to apply for the driver's license. According to the National Policy Agency, however, the number of traffic accidents attributable to the driver's fit or illness amounted to 254 in 2011, of which epilepsy patients accounted for 73, with 5 accidents resulting in deaths. In the following, we will take up traffic accidents involving epileptic drivers<sup>13</sup>.

### **(1) Five Cases of Traffic Accidents Caused by Epilepsy Patients and Transition in Court Rulings<sup>14-18</sup>**

Addressing the traffic accidents caused by epilepsy patients, 2 cases stand out conspicuously: one happened in Kanuma City<sup>17</sup> and the other in Kyoto City<sup>18</sup>. Many more traffic accidents by epileptic drivers preceded these two well-known cases. In these accidents, one characteristic feature was that the court rulings split into not guilty and guilty verdict.

#### ***Case 1: Accident in Miki City, Hyogo Prefecture<sup>14</sup>***

In 1999 in Miki City, Hyogo Prefecture, an epileptic woman driver had a fit while driving her car and crashed into the queue of 3 elementary school children on their way home. One child died of whole-body bruises and 2 pupils sustained serious injuries. The Kobe District Court pointed out that "After examination, it was found highly possible that the driver was attacked by a fit of her chronic disease immediately prior to the accident, and the court entertains a reasonable suspicion for her responsibility capacity", driver admitted her assertion of insanity, saying that "the drug she was taking had no side effect in causing acute drowsiness", and ruled to acquit her with a non-guilty verdict. One issue raised in regard to the ruling for this accident in Miki City was that, despite the Road Traffic Act still specified epilepsy as a disqualification for driver's license in

1999, which the woman driver had not declared in applying for the license. She caused the accident to happen, and yet the ruling did not touch upon her failure to make such declaration.

***Case 2: Accident in Rittoh City, Shiga Prefecture<sup>15</sup>***

In 2002 in Rittoh City, Shiga Prefecture, an epileptic male patient had a fit of epilepsy while driving his car, diverted into the opposite lane and collided head-on with a light truck, crushing the truck driver to death with severe bodily bruises. The Ohtsu District Court found that “While the defendant was aware of an onset of losing his consciousness, it is possible that he lost consciousness before deciding to stop the car. There is no denying that the point at which the driver became aware of the onset was possibly so close to the place of the accident, thereby leaving reasonable doubt for the prosecutor’s assertion that responsibility to avoid accident had already accrued with the defendant”, pointed out that there was no negligence of responsibility for stopping the car, and acquitted the defendant.

(Negligence of responsibility to suspend driving is suspected when, for instance, the driver has kept on driving while he was feeling ill, thinking that no accident would possibly happen).

The issue in this accident in Rittoh City is that, while the epileptic fit was a likely cause of the accident, the court blamed the defendant only for the negligence of caution in driving

***Case 3: Accident in Nagano City, Nagano Prefecture<sup>16</sup>***

In 2004 in Nagano City, Nagano Prefecture, an epileptic male patient had a fit of epilepsy while driving his car and slammed into 5 cars from behind that were stopped for the signal to change, evolving into a multiple-car collision case, killing one person from severe whole-body damage and hurting 6 others with light or heavy injuries. The Nagano District Court, pointed out that the defendant “had suffered on previous occasions from disturbed consciousness due to epilepsy, caused property damage accidents in 1999 and was advised by his doctor to refrain from driving” and also that “he chose at his own arbitrary judgment to lessen the amount of medication for suppressing epileptic fits, which was prescribed to be administered 3 times a day, kept on driving for diversion purposes and, as a result, caused the accident”, ruled and sentenced the defendant to 4 years in prison.

The ruling for the Nagano accident, in which the defendant was held accountable for negligence in failing to take medication as prescribed, is noteworthy as the judgment conflicts with that of the Rittoh case, while the cause of the accidents was similar to each other.

In the foregoing, we looked into 3 cases. The issue we could make out of these cases will be; “No penalty for the failed declaration of disqualification cause” and “no appropriate charge to correspond to traffic accidents caused by epileptic drivers”. Thus, in 2011 and 2012 consecutively, we witnessed the occurrence of two tragic accidents.

***Case 4: Accident by a runaway crane truck in Kanuma City<sup>17</sup>***

In April 2011 in Momiya-cho, Kanuma City, Tochigi Prefecture, an epileptic male patient, then 26 years of age, was driving his 10-ton crane truck, rammed into a file of elementary school pupils (about 20-30) on their way to school en masse and drove into the nearby house wall to a stop. Six pupils were hit and died. The male driver had chronic fits of epilepsy. Ever since he had obtained his moped license, he caused many accidents. Prior to the current accident, he hit an elementary school child and injured him seriously, for which he was found guilty (on count of drowsing while driving) and put on probation. He had caused a total of 12 accidents in the past. Despite such record of accidents, he never declared his chronic disease when renewing his license, neglected taking medication as prescribed, and just before the accident he had been up late into the night, and slept for 3 and half hours only.

The male driver was arrested and indicted for manslaughter by automobile driving. This major accident, where 6 pupils lost their lives, resulted from the driver’s failure to take the curative medicine, so it was considered to charge with lethal injury by dangerous driving that has 20 years of maximum statutory penalty. Since lethal injury by dangerous driving presupposes reckless driving by “intent”, however, it was questioned whether the negligence in taking medical care could be construed as intentional. The fact that the driver had caused similar accidents repeatedly was made much of, but as lethal injury by dangerous driving stipulates “a condition where normal driving is rendered difficult under the influence of alcohol or drug”, the prosecutor had to give up proving “intent” ultimately. Hence, the charge was settled for manslaughter by automobile driving.

In July 2011, the Utsunomiya District The court determined that, in light of the male driver having neglected to take medication and caused accidents in the past, the driver had a premonition of an epileptic fit. And, the court sentenced him to 7 years in prison on one count of manslaughter by automobile driving. The defendant did not appeal by January the next year, and the sentence was finalized.

**Case 5: Accident by a runaway light van in Gion, Kyoto City<sup>18</sup>**

In April 2012, in Gion, Higashi-ku, Kyoto City, Kyoto Prefecture, a 30-year old male recklessly ran a light van through a thoroughfare, killing 8 people including him, and injuring 11 street walkers. The cause of the accident was tracked down ultimately to his chronic fits of epilepsy. The male driver, since sustaining brain contusion in a single motorbike traffic accident in 2003, had been suffering from sequela epileptic fits. He did not declare his disease when renewed his driver's license. In 2012, he had 2 fits of loss of consciousness.

In August 2013, the Kyoto District Public Prosecutors' Office dismissed the case on account of the death of the suspect. The Prosecutors' Office also decided not to prosecute the woman president of the employer company of the male driver on grounds that she had not been cognizant of the driver's chronic disease.

This accident happened only 3 days after the bereaved family members of the Kanuma City traffic accident had submitted to Minister Ogawa, the Ministry of Justice, a petition signed by a total of some 170,000 followers demanding revisions in the Road Traffic Act to prevent recurrence of similar tragedies. The National Policy Agency had already indicated its intention to start reviewing measures for traffic accidents related to epileptic patients. The revisions made in 2002 in the Road Traffic Act allowed epileptic patients to obtain driver's license under certain conditions such as non-occurrence of fits within the last 2 years and presence of a doctor's diagnosis. However, there was still no penalty imposed on non-declaration of the chronic disease, and such declaration was left to the driver's discretion. Driven by the active movements of the bereaved families of traffic accident victims across the nation, asking for revisions in relevant laws to impose penalty relative to driving, our fellow countrymen have started moving toward strengthening the traffic regulations.

**(2) Bereaved Families' Petition in Kanuma City<sup>19</sup> – Revisions in Penal Code and Driver's License Issue System**

Petition of the bereaved families was twofold:

Revision in the Penal Code provisions (1) and Revision in the driver's license issue system (2). Let's take a closer look at the petition. We refer to the petition submitted by the "Rally of the Bereaved Families of Kanuma Children Victimized in Fatal Crane Truck Accident". Motivated by this petition, and in line with the rising voices of the public asking for strict penalization, relevant laws have been toughened. The issues in the Kanuma City accident were "improper acquisition of driver's license by non-declared epileptic applicants" and "charging the defendant for manslaughter by automobile driving, and not for lethal injury by dangerous driving".

(1) Revision in Penal Code Provisions

They were petitioning for revisions in the Penal Code provisions to ensure application of the charge of lethal injury by dangerous driving in cases of fatal accidents caused by holders of improperly acquired driver's licenses under no declaration of epileptic disease.

The Rally of the Bereaved Families asserted that the perpetrator had acquired the driver's license as well as a license for operating large-sized special motor vehicles under false application, caused repeated traffic accidents, 12 times in 10 years, concealed his chronic epileptic episodes even during the court proceedings, and caused yet another accident while on probation. Could this be construed as mere "negligence", they questioned. They suspected something was blatantly wrong when the court ruled, on grounds that there was no provision to apply in the Penal Code otherwise, to charge manslaughter by automobile driving, a crime that has the maximum penalty of 7 years in jail. The petition called for revised provisions that allow for charging lethal injury by dangerous driving as a potential means to deter criminal offenses by malicious drivers such as those who defy laws by non-declaration, etc.

(2) Revision of Driver's License Issue System

They petitioned for building a system of issuing the driver's license that can effectively exclude improper applications and acquisitions and deal with driver's license issue on self-declaration of epileptic disease.

According to the Bereaved Families Rally, after the crane truck accident the National Police

Agency reportedly put in place some measures like “setting up consultation desks”, “putting up posters”, “inducing declarations”, “probing thoroughly into asserted dozing-off while driving”, “soliciting collaboration with relevant bodies”, etc.. The Rally suggested that, while these measures may result in reducing the number of traffic accidents, they may not contribute as much in preventing the accidents. For that reason, the Bereaved Families Rally called for revising the system in such a way as to winnow out improper acquisition of the driver’s license by undeclared applicants.

The police reported that 2,430 epileptic drivers made their declarations during the period of 2011 and 2012. The Rally assumed that, by taking the maximum 5-year term of the gold driver’s license as a yardstick, 5 times the total number of declarants, about 12,000 that may represent the total universe of epileptic declarants. On the other hand, however, it is reported that there is one epileptic patient in 100 people, amounting to 1 million to 1.2 million patients nationwide. Assuming that one-third of them are adults, the total number of epileptic drivers would be 400,000, which means that only about 3% of them (12,000) have actually declared. Accordingly, they proposed introduction of a “doctor’s reporting system” similar to the one already in practice in California, USA. Under this system, doctors would be required to report to public security authorities about “all patients and people suspected of epilepsy”, thereby providing the authorities with such benefits as to catch those who have failed to declare and to probe into cases of drowsy drivers.

Since the Road Traffic Act was revised, The Japan Society of Epilepsy has continued conducting periodic questionnaire surveys on the current status and questions of driver’s license issue relevant to epileptic drivers<sup>20</sup>. In the meantime, the National Police Agency had filed a request with the Japan Medical Association for its member doctors to prepare a reporting guideline for the National Public Safety Commission<sup>21</sup>.

### **(3) Revised Road Traffic Act and Strict Legal Penalty**

In the following, we will address how strict legal penalty is to be enforced.

In June 2013, the Road Traffic Act was revised and as a measure for drivers with certain diseases etc., penalty provisions have been newly introduced for false applications made at the time of acquiring or renewing the driver’s license.

A specific system of questionnaire has been implemented by the Public Safety Commission on medical conditions of the applicants etc. for driver’s license, and penalty of imprisonment for 1 year or less or a fine of ¥300,000 or less will be imposed on those who have responded with false replies. A reporting system has been introduced on a voluntary basis for doctors who examined those with certain diseases, etc. Legislation has well arranged for doctors to be exempted from confidentiality obligations.

Provisions have been set forth to cause temporary suspension within the limits of 3 months as the doctor finalizes its diagnosis for those suspected of certain diseases, etc.

These revisions, however, have not lived up to the expectations of the bereaved families in Kanuma City. Yet, the penalty created for false applications and the doctor’s reporting system, albeit voluntary, of epileptic patients will go a long way toward furthering future policies.

In May of 2014, the Law Regarding Punishment of Death Causing Acts, etc. by Automobile Driving (Hazardous Driving Punishment Law) was enacted and implemented after a series of controversies.

Previously, we had 2 charges against those who committed wrongdoing in causing traffic accidents by automobile driving; “manslaughter by automobile driving” and “lethal injury by dangerous driving”. On November 27 2013, a new law was enacted under the “Hazardous Driving Punishment Law” and it has gone into effect since May 20, 2014. The new law deleted provisions for “manslaughter by automobile driving” and “lethal injury by dangerous driving” in the old Penal Code, and is replaced with a new provision for traffic accidents causing people’s deaths and injuries. The old charge for manslaughter by automobile driving was subject to a “condition that makes normal driving difficult” and judgment was focused on the dangerous behaviors while driving the car and not on the aptitude, duty, qualification or responsibility of the driver. Thus, it created a wide disparity between the legal concept of dangerous driving and the general public view of dangerous driving. Conditions for application of dangerous driving behaviors were broadened from previous scopes

of drunk driving, uncontrollable driving and immature driving to include driving without license and driving by drivers with undeclared illnesses such as epilepsy, etc. The diseases referred here as “ones suspected of causing hazards in driving the car” include epilepsy, schizophrenia disorder, recurrent lipothymia, asymptomatic hypoglycemia, bipolar depression, and sleep disorder accompanied by severe drowsiness. The punishment under the new law will be imprisonment for 15 years or less in the event the victim died and 12 years imprisonment or less for inflicting injuries in “fatal accidents caused by drivers including epileptic patients in such conditions as suspected of inducing hazards in normal driving (under the influence of alcohol, drug or diseases designated by ordinance or decree)”, for which punishment is much heavier as compared to the penalty for manslaughter by automobile driving.

In 2013 and 2014, much controversy flared up with regards to intensifying the regulation of dangerous drugs and the reckless driving practices by drug-users, adding to the momentum of expanding the hitherto limited category of “dangerous driving”. This was a piece of gratifying news not only to those families of victims in traffic accidents caused by epileptic patients but also to other bereaved families of traffic accidents caused by unlicensed drivers and reckless addicts of unlawful drugs. While these revisions in law are still short of bringing the maximum 20 years of penalty provided for lethal injury by dangerous driving, it is certain that the will and reportage of the Bereaved Families Rally in Kanuma City and the backup support by the public have well been reflected in these revised laws and newly implemented traffic safety measures.

In September 2014, the Japan Medical Association published the “Guidelines for Voluntary Reporting to Public Safety Commission by Doctors Examining Those with Certain Symptoms, etc. under Road Traffic Act”<sup>21-23</sup>.

## Conclusions

As touched upon earlier, the biggest issues in ruling the traffic accidents caused by epileptic patients were twofold; one was that “no penalty provision existed for non-declaration and declaration was left to the patient’s discretion. Therefore, in case of an accident, the driver could not be prosecuted for such non-declaration”, and another was that “only the charge for manslaughter by auto-

mobile driving could be applied, with little regard to the sentiments of the bereaved family of the victim, in an accident caused by the epileptic patient who kept on driving, knowing the possibility of having a fit while driving, which should obviously constitute dangerous driving”. However, after all, the pleas and petitions by the Bereaved Families Rally in Kanuma City and other bodies of the bereaved families of traffic accident victims, etc., have culminated in revisions of the relevant laws to resolve these issues, and punishment has been instituted for non-declarants, and the scope of dangerous driving is expanded.

## Conflict of Interest

The Authors declare that there are no conflicts of interest.

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