

Inappropriate Situational Sleepiness and the Law

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KEYWORDS

• Inappropriate situational sleepiness • Medicolegal • Criminal liability • Civil liability

KEY POINTS

- Sleepiness may occur in circumstances related to personal behaviors, medical conditions and in consequence of workplace behaviors: consequent impaired performance may have legal ramifications.
- Specific legislations to take account of sleepiness-impaired performance are scarce but societies attempt due account through a range of administrative and legal instruments.
- Legal and other sanctions against impaired performance causing harm and due to sleepiness are often selectively applied on the basis of perceived moral culpability.

INTRODUCTION

Sleepiness causes adverse personal consequences and inconvenience to individuals but may also impact on performance with sequelae that have potential to cause harm to others. Such harm has individual and societal consequences and therefore the community has reasonable grounds from which to use legal and other frameworks to mitigate such adverse events and sanction against their occurrence.

Elsewhere in this issue the epidemiologic, pathophysiologic, clinical, therapeutic, and other aspects of excessive sleepiness of the clinical entity of hypersomnia are presented. Where sleepiness, mediated by impaired performance, is the promoter of potential and actual harmful outcomes, communities have reacted by amending

the law and using existing legal measures to protect society in general. These protective legal constructs may be found in various fields, including criminal law, and under the omnibus category of civil law, in labor law, and health law. This article presents an overview of some aspects of the interaction between sleepiness and various facets of the law.

INAPPROPRIATE SITUATIONAL SLEEPINESS AND THE LAW: BROAD CONCEPTS

The use of the terms “hypersomnia” and “excessive daytime sleepiness” is in some ways an incomplete representation of the nature of the problem that challenges the sleepiness-law nexus. Sleepiness is an entirely appropriate physiologic response to a combination of homeostatic,

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circadian, and other (eg, drugs) factors. It is a normal part of life for humans to manifest sleepiness with a periodicity that approximates a 24-hour cycle: this is appropriate situational sleepiness. Excessive sleepiness mostly occurs in a daytime context but may also occur at night in individuals who are expected to be alert in occupational and other circumstances. Various subjective descriptions or definitions of excessive sleepiness have been applied in epidemiologic studies of this symptom when describing its community prevalence.¹ When “hyper” is prefixed, it refers to an exaggerated modifier of a quality or entity (in this instance “somnia,” for sleep) but in an adjectival or slang sense “hyper” also passes in common parlance for an individual who is overexcited, overstimulated, or keyed up. To overcome the narrowness and confusion of some of the terms commonly in use in this area, and to go some way toward capturing what is relevant in law about sleepiness, in this article a useful umbrella term, “inappropriate situational sleepiness” (ISS), is used.

The rubric ISS suggests a degree of sleepiness that takes into account prior patterns of sleep–wake cycling over days or even weeks; the time-of-day factor (potentially related to sleep homeostasis and circadian physiology); the quality of prior sleep periods (going to the issue of presence of sleep disorders); and appropriateness of the overall contextualized wake environment (eg, consideration of the consequence of falling asleep to the individual and others).

In effect ISS does not necessarily imply some underlying disorder of sleep. In a general sense the concept of sleepiness is well understood; all humans experience it, on a daily basis. The sleep medicine scientific and clinical community has developed adequate, reliable, and accurate tests of sleepiness that have application particularly in sleep laboratories and clinical and research situations. However, there is a clear need for useful sleepiness tests with wider community application, such as at the roadside or in work situations. In a practical sense, such a test is currently lacking. The most widely accepted laboratory and clinical standard tests of measuring sleepiness, such as the multiple sleep latency test and maintenance of wakefulness test, can only be applied in controlled circumstances and indeed usually in a retrospective manner when considering most medicolegal issues.

Perhaps the most readily recognized manifestation of ISS in the medicolegal domain is impaired vehicle driving performance. There is wide recognition that a problem of impaired driving of motor vehicles and sleepiness exists, and presents

potentially major individual and societal consequences.^{2–4} This applies to private motor vehicles (eg, cars); to commercial (eg, truck or bus) driving; to the piloting of marine and aeronautic vehicles; and to the operation of heavy motorized nonvehicular machinery or complex amalgams (eg, cranes, nuclear and other power plant stations, and industrial complexes).

Impaired performance caused by sleepiness can also manifest without direct reference to the operation of motor vehicles or physical machinery. Judicial decision-making may be impaired in the case of sleepiness-impaired judicial officers⁵; fiscal recommendations might be scrambled by sleep-deprived financial advisers; gamblers and others may indulge in more risky behaviors^{6,7}; military judgments may be awry in the case of sleepiness-impaired commanders⁸; and critical management decisions made by executives, government, and related operatives running space exploration, maritime, and other complex programs may be suboptimal.^{9–12} Health workers are particularly vulnerable.^{13–15} To a lesser extent (at least, to date, when compared with motor vehicle operation) the wider community also recognizes examples of impaired cognitive performance caused by ISS.

Individuals may bear direct or indirect civil or criminal liability for adverse outcomes seen to be related to ISS, and face prosecution and sanction in relevant courts or tribunals. For instance, falling asleep at the wheel of a car may result in criminal liability for dangerous driving, and a driver may incur civil liability for any harm to persons or property. Employers may also face liability when adverse outcomes accrue because of the actions of employees when those events occurred within what may be reasonably regarded as the parameters of their employees’ work practices. For employers, it also may not be just a civil law issue but may also attract criminal law sanction as a form of corporate or industrial manslaughter.^{16–18}

Physician liability is a particularly relevant category for healthcare providers. This has a patient-centered and a physician-centered aspect in terms of whom in the physician–patient relationship is impaired by excessive sleepiness. Liability for adverse outcomes may fall on those (nonsleepy) physicians whose medical advice or treatment and its consequences causes an adverse outcome for patients who are impaired by excessive sleepiness, and this outcome is considered reasonably foreseeable. Examples include a patient’s poor performance because of his or her sleepiness resulting in injury or death, as a result of inadequate physician diagnosis or treatment of a sleep disorder, or prescription of a sleepiness-associated medication without adequate warning.

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