

Legal and Regulatory Aspects of Sleep Disorders



Saiprakash B. Venkateshiah, MD^{a,1}, Romy Hoque, MD^b,
Lourdes M. DelRosso, MD^{c,d}, Nancy A. Collop, MD^{e,*}

KEYWORDS

- Sleep disorders • Legal aspects • Regulatory aspects • Obstructive sleep apnea • Parasomnia
- Sleep disparities

KEY POINTS

- There are multiple aspects of sleep disorders that may interact with the law making it important to increase awareness of such interactions among clinicians.
- Patients with excessive sleepiness may have civil (and in some states criminal) liability if they fall asleep at the wheel and cause a motor vehicle accident.
- An employer may be held “vicariously liable” for the acts of an employee performed as part of their duties if the employee driver falls asleep and injures a third party in a crash.
- Parasomnia-associated sleep-related violence represents potential medicolegal issues for clinicians, who may be called on to consider parasomnia as a contributing, mitigating, or exculpatory factor in criminal proceedings.
- Improving access to sleep medicine care in both pediatric and adult populations is an important aspect in reducing the adverse consequences of undiagnosed/untreated sleep disorders.

INTRODUCTION

Sleep disorders afflict a large proportion of the population and result in a high economic burden to society. Sleep disorders manifest in a variety of ways and are often not obvious to the individual who has the disorder. These complexities result in occasional entanglements with the legal system as we highlight in this article. We cover the most common interactions between sleep disorders and the law including the challenges of excessive sleepiness and driving including specifically sleepiness

owing to obstructive sleep apnea (OSA); the legal ramifications of underdiagnosing or misdiagnosing OSA by physicians and employers; the liabilities associated with parasomnia disorder; and the ramifications of health disparities as they relate to sleep disorders.

LEGAL AND REGULATORY DIMENSIONS OF EXCESSIVE SLEEPINESS

Excessive daytime sleepiness can occur owing to a variety of causes, including sleep disorders such

Disclosure Statement: The authors have nothing to disclose. Dr N.A. Collop receives royalties from UpToDate and honoraria from Best doctors.

^a Division of Pulmonary, Critical Care and Sleep Medicine, Department of Medicine, Emory University School of Medicine, 615 Michael Street, Suite 205, Atlanta, GA 30322, USA; ^b Department of Neurology, Emory Sleep Center, Emory University School of Medicine, 12 Executive Park Drive NE, Atlanta, GA 30329, USA; ^c Department of Pediatrics, University of California San Francisco, 747 52nd street, Oakland, CA 94609, USA; ^d Department of Pediatrics, UCSF Benioff Children's Hospital Oakland, 747 52nd Street, Oakland, CA 94609, USA; ^e Division of Pulmonary, Critical Care and Sleep Medicine, Department of Medicine, Emory Sleep Center, Emory University School of Medicine, 12 Executive Park Drive Northeast, Atlanta, GA 30329, USA

¹ Present address: 250 North Arcadia Avenue, RM 2D173, Decatur, GA 30030.

* Corresponding author.

E-mail address: nancy.collop@emory.edu

Sleep Med Clin 12 (2017) 149–160

<http://dx.doi.org/10.1016/j.jsmc.2016.10.002>

1556-407X/17/© 2016 Elsevier Inc. All rights reserved.

as OSA, narcolepsy, restless leg syndrome, insomnia, or from insufficient sleep syndrome, other medical disorders or medication induced sleepiness. OSA and insufficient sleep syndrome are the 2 common etiologies for excessive sleepiness. OSA is a very common condition, with a prevalence of around 5% in adults and 1% to 2% in children. OSA has wide-ranging complications, including an increase in motor vehicle crash risk in both general driving population and commercial drivers with many studies finding a 2- to 3-fold increased risk.¹⁻⁵

Insufficient sleep syndrome is a chronic voluntary sleep restriction that is a widely prevalent cause of excessive daytime sleepiness and daytime fatigue. The Behavioral Risk Factor Surveillance System survey performed by the Centers for Disease Control and Prevention in 2009 included estimates of drowsy driving and unintentionally falling asleep during the day. In 74,571 adult respondents in 12 states, 35.3% reported fewer than 7 hours of sleep during a typical 24-hour period, with 37.9% reported unintentionally falling asleep during the day at least once in the preceding month, and 4.7% reported nodding off or falling asleep while driving at least once in the preceding month.⁶ Clinicians, patients, and, in some cases, employers need to be aware of the legal and regulatory aspects that can impact the patients with sleep disorders. This is particularly important in patients working in safety-sensitive occupations, such as commercial trucking, aviation, railroads, and nuclear power plants.

The “blameworthiness” of an individual for a behavior is addressed by the legal issue of culpability. Anglo-American law discusses 2 components to crime: *actus rea*, the criminal act itself, and *mens rea*, criminal intent, both of which are required for criminal responsibility. The standard common law test of criminal liability is expressed by the Latin phrase “*actus non facit reum nisi mens sit rea*” (the act does not make a person guilty unless the mind is also guilty), wherein the guilty mental state must be present at the time of the action for criminal liability. This requires the act to have occurred in a conscious state, but in cases of sleepiness-related accidents, can be extended to include actions that begin in an unconscious state. Driving while drowsy is a decision made by the driver in a conscious state, but an accident may have occurred during sleep. Awareness before and during the sleepiness-related accident is often the central point when determining criminal liability. Herein we review relevant cases to point out how the law has decided in cases of “sleepy drivers.”

LEGAL CASES INVOLVING SLEEPY DRIVERS

The Connecticut Supreme Court in 1925 addressed the driver’s legal duty when possessed by sleep or other unconscious episode. In *Bushnell v Bushnell*, Mr and Mrs Bushnell drove from Connecticut to Rhode Island. On the return trip, Mr Bushnell dozed off at the wheel and crashed into a tree. Mrs Bushnell, who was a passenger in the car, was injured in the accident and sued her husband for negligence for failing to operate the car in a reasonable manner. Mr Bushnell argued that sleep occurs without warning. Hence, he was to be excused from his duty to maintain control of the car while asleep. The court challenged Mr Bushnell’s explanation that he had no advance warning of sleep onset. The court reviewed medical evidence indicating that, unlike a sudden blackout, sleep displays routine and recognizable precursor conditions such as fatigue and dulling of the senses. Hence, the court ruled that Mr Bushnell knew, or should have known, that sleep was affecting his driving and that he should have pulled off the road. Because his sleep episode was foreseeable, the court found Mr Bushnell liable for the cost of his wife’s injuries.^{7,8}

This ruling did point out that an unforeseeable loss of consciousness (eg, sudden unexpected seizure or blackout) would excuse the driver’s duty to exercise due care in driving. The “sudden blackout” defense is a legal protection for drivers who suffer from a sudden and unforeseen onset of sleep but may be difficult to establish if the patients has past experience of a tendency to fall asleep while driving. If one knew that he or she suffered from “sleep attacks” several times a day, it would be negligent for that individual to get behind the wheel of a car even if the “sleep attacks” were unexpected. This principle was reaffirmed in 2006 in Vermont, *State v Vallyou*. In this instance, the defendant dozed off many times on the way to work but still continued to drive, ultimately colliding with another vehicle after falling asleep.^{7,9}

These cases are not specific to a sleep disorder, but deal with excessive sleepiness and drowsy driving leading to motor vehicle crashes. The same legal principles would be applicable if patients have a motor vehicle crash owing to drowsy driving regardless of etiology of excessive sleepiness.

Some states have laws that can lead to criminal liability for drowsy driving. The states are New Jersey, through enactment of Maggie’s Law in 2003, and, Arkansas, through enactment of Arkansas Act 1296 in 2013. Maggie’s Law states that a sleep-deprived driver qualifies as a reckless driver who can be convicted of vehicular homicide. It is an

Download English Version:

<https://daneshyari.com/en/article/5684704>

Download Persian Version:

<https://daneshyari.com/article/5684704>

[Daneshyari.com](https://daneshyari.com)