



Sorting out federal policies on sleep disorders and driver fatigue

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The Federal Motor Carrier Safety Administration (FMCSA) has investigated the issue of sleep disorders for several years now. While it's becoming increasingly clear that FMCSA will make some movement on the issue in the near future, it's not enough for a trucking company to simply wait for the federal government to take action.

What sleep apnea is and why truckers are at risk

[Sleep apnea](#) is a serious, potentially life-threatening breathing-related sleep disorder. A person with this disorder stops breathing for as long as 10 seconds during sleep. This interrupts rest and leaves the person feeling tired during the day, perhaps even falling asleep uncontrollably.

While this disorder occurs in all population groups, [certain factors may put people at higher risk](#), including: a family history; being overweight (with a body mass index over 35); a large neck size (17 inches or greater for men; 16 inches or greater for women); smoking and alcohol use; and being over age 40.

A Harvard University study showed that those with sleep apnea are 242 percent more likely to have a vehicle crash. A 2002 study conducted by the University of Pennsylvania and sponsored by FMCSA and the American Transportation Research Institute of the American Trucking Association showed that as many as 28 percent of truckers may have the disorder.

The prevalence of sleep apnea increases with age and degree of obesity.

Federal action on the issue

FMCSA has studied the issue of sleep apnea for several years and related advisory committees have issued various opinions and statements about the need for some sort of screening. While FMCSA

has not yet issued formal rules on the subject, there are a number of initiatives in place that suggest it won't be long in coming.

Earlier this year, FMCSA placed a notice in the federal register seeking public comments on mandatory screenings. It was withdrawn a few days later; the agency said that the notice had been placed prematurely.

The adoption of federal standards for medical examiners -- who certify that an individual is fit to drive -- is certainly a step in that direction. FMCSA adopted that requirement earlier this year; medical examiners have until mid-2014 to register. This will ensure that those who perform medical testing are properly trained on a number of issues, including recognizing the risks of sleep apnea. The training instructs examiners to withhold issuance of a medical certificate to those who fit the profile until sleep screening has ruled out a sleep disorder for those who exhibit symptoms.

Already, the administration's Medical Review Board and the Motor Carrier Safety Advisory Committee -- an industry group -- have issued their recommendations to FMCSA. Though the two come at the topic from different angles -- one representing the medical community and the other the industry -- both have recommended that FMCSA issue some sort of regulations related to sleep apnea.

Liability for companies

Even without regulations in place, the issue has entered the courts. In December, a Canadian trucking company paid \$3.25 million to a Texas woman whose husband was killed after their car was rear-ended by a truck. The driver had been diagnosed with sleep apnea, which had not been treated.

With a body of scientific evidence on the risks of sleep apnea and now, case law, this likely will not be the last of these large damage awards.

It is important to note that sleep apnea is treatable. While the trucker in the lawsuit was fired from his previous trucking job for failing to submit to a sleep study, treatment is extremely successful for those with the disorder. A typical remedy is the use of a Continuous Positive Airway Pressure (CPAP) sleeping device, an over the mouth mask which allows for better, uninterrupted sleep.

Some machines are able to record date, length and time of use so that motor carriers and enforcement officers can verify that the driver is, indeed, using the device. Once successfully treated, drivers may regain their medically-qualified-to-drive certificate.

What companies should do

Sleep apnea is really just another manifestation of driver fatigue and there are steps that companies must undertake to ensure that when a driver is behind the wheel, he or she is rested:

- a. Recognize that drivers need to be alert when they report for duty and drive. Passenger-carrying vehicles have a particularly strong obligation to monitor individual driver's fitness

for duty. Reinforce to fleet drivers management's expectations about fitness for duty requirements and its commitment to monitor them.

- b. Establish an overall Fatigue Management Program aimed at establishing a competent way to assist drivers to receive adequate sleep, including being aware of apnea signs and directing a sleep screening test, particularly for drivers displaying fatigue patterns. As with most safety oversight programs, a fatigue management program can yield cost-effective results.
- c. Even though the DOT has not yet mandated sleep screening, the recent issuance of advisory criteria to medical examiners establishes a strong imperative for examiners to look for and treat apnea risk factors. Plaintiffs' attorneys have been known to cite the failure of motor carriers to recognize fatigue by citing the rule that "a motor carrier may not require or permit a driver to operate a commercial motor vehicle if the driver has a medical condition (including sleep apnea) that would affect the driver's ability to safely operate the vehicle."
- d. Ensure company scheduling and dispatching practices do not compromise the opportunity for drivers to gain restorative sleep.

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