

OAJ Trucking Safety Section Article July 2019

Sleep Apnea

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Your client has been seriously injured or killed in a collision with a tractor trailer. You immediately investigate whether the employer trucking carrier may have been negligent, so you can pursue the available coverage needed to help make your client and his family whole. You review the truck driver's Medical Examination Reports, but they indicate the driver was deemed to have met the physical qualifications in 49 C.F.R. § 391.41 to operate a commercial vehicle despite his obesity. The trucking company, therefore, is insulated from liability for unreported or undiagnosed medical issues that may have been a factor in causing the collision because the driver passed his medical examination, right? Wrong.

Trucking companies are ultimately responsible for ensuring that they place only physically qualified drivers on the road. This means that they are responsible for: the quality of DOT medical examinations, including that the Medical Examiner is informed of these minimum requirements and characteristics of the work to be performed; ensuring their drivers meet medical standards prior to operation of a commercial truck; and investigating the fitness of their drivers based upon the information in the Medical Examination Reports. These duties are ongoing: 49 C.F.R § 391.45(f) imposes a continued obligation upon commercial motor vehicle drivers to seek medical examination and certification. Under 49 C.F.R § 391.45, "The following persons must be medically examined and certified . . . as physically qualified to operate a commercial motor vehicle: . . . (f) any driver whose ability to perform his/her normal duties has been impaired by a physical or mental injury or disease." Motor carriers cannot plead ignorance. They must be familiar with DOT regulations and guidance on the physical qualifications of drivers.

Whether the truck driver who struck your client suffered from undiagnosed or undertreated obstructive sleep apnea (OSA) at the time of the collision should be investigated and raised with your expert as soon as practical. 49 CFR 391.41(b)(5) requires that truck drivers have "no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with his ability to control and drive a commercial motor vehicle safely," including OSA.

OSA, if not treated and controlled, significantly impairs the ability of drivers to drive safely. OSA—the most common medical cause of excessive daytime sleepiness or fatigue—is characterized by disordered breathing during sleep due to upper airway obstruction. OSA presents serious public safety issues for companies that employ drivers: it causes drivers to be less attentive, alert, and responsive to external stimuli; to lack concentration; to fixate on objects or stare into space; and to suffer degraded judgment and decision making. OSA can cause drivers to experience episodes of "micro-sleep" and excessive daytime sleepiness or fatigue. Those with untreated OSA can suffer from neurocognitive impairments caused by fragmented sleep, lack of quality of sleep, and effects of lower levels of oxygen and higher levels of carbon dioxide in the blood, as well as oscillations in blood pressure and blood flow to the brain. See, e.g., [Fast Facts: Indispensable Guides to Clinical Practice: Obstructive Sleep Apnea; Clinical](#)

[Practice Guideline for Diagnostic Testing for Adult Obstructive Sleep Apnea: An American Academy of Sleep Medicine Clinical Practice Guideline](#). In fact, drivers with OSA have a driving impairment like drivers who are intoxicated with alcohol.

Experts on OSA have issued a “consensus statement” finding that fatigued driving “is the largest identifiable and preventable cause of accidents in transport operations (between 15% and 20% of all accidents), surpassing that of alcohol or drug-related incidents in all modes of transportation.” [Consensus Statement: Fatigue and Accidents in Transport Operations, compiled by Dr. Torbjorn Akerstedt \(2000\)](#). Drivers with OSA are two to eleven times more likely to be involved in a motor vehicle collision than persons who do not have OSA. Because OSA is prevalent and increases the risk of motor vehicle collisions, it is a significant public safety concern for all industries that employ drivers to operate company vehicles—and especially the trucking industry.

Indeed, these risks are well-known and documented in the commercial vehicle industry. A motor carrier who claims not to know them is either willfully blinding itself to this issue or has failed to take even the most basic measures to be informed of industry standards and updates. For example, various proposals and guidelines for mandatory OSA screening and compliance of drivers with OSA have been proposed and widely circulated for industry comment and reaction, including the 2006 Joint Task Force American College Of Occupational and Environmental Medicine (ACOEM), National Sleep Foundation (NSF), American College Of Chest Physicians (ACCP), 2008 FMCSA Medical Expert Panel, and 2008 FMCSA Medical Review Board Recommendations.

Telltale risks for OSA include a truck driver’s weight, neck size, and, although somewhat misleading, his BMI. A high weight, large neck size, or elevated BMI listed on a Medical Examination form (or not) should alert a carrier to the driver’s potential OSA. A carrier has a duty to investigate whether its drivers with above-normal numbers in these categories are adequately screened. This duty, again, is ongoing: a driver’s substantial weight gain between medical examinations should alert carriers that their drivers must be immediately screened for OSA.

A driver’s Medical Examination should never be taken at face value, though carriers are quick to point out—incorrectly—that they “prove” their driver met the required physical qualifications. These, however, are only minimum standards. To implicate the carrier, trucking litigators should always investigate whether a driver had an undiagnosed or untreated condition, such as OSA, despite the purported clean bill of health the carrier’s chosen Medical Examiner is prone to provide.