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Message from the President

Frank Flaherty, Esq., State Bar of Nevada President



got sleep?

“A sleep-deprived lawyer may struggle to be creative and will instead remain “inside the box” using tired and repetitive language (such as the preceding cliché).”

I read in the online ABA Journal that law is the profession with the second most sleep-deprived members. As a group, we apparently average seven hours per night. Wow! That sounded pretty good to me, but then I remembered that this number was an “average” – dang, just can’t escape that math stuff – and that this is second-from-the top on one of those “bad” lists. Police officers are just behind us at seven hours and one minute. Then come physicians and paramedics, who, on average, sleep in an extra full two minutes (cue yawning stretch). Reading about this group got me thinking about prior media coverage concerning the dangers of having sleep-deprived doctors on duty.

According to Wikipedia, a 2004 study found that medical residents who slept fewer than four hours in a sleep cycle made twice as many errors as those who slept for more than seven hours. Anyone who has ever known a medical resident is likely unsurprised by Wikipedia’s alarming statistics indicating that fewer than 7 percent of medical residents surveyed get more than seven hours of sleep a night.

In an August 5, 2011, *New York Times* article, Dr. Darshak Sanghavi observed that, “the overworked, sleep-deprived doctor, valiantly saving lives, is an archetype ... deeply rooted in the culture of physician training Doctors, influenced by their own residency experiences, often see hospital hazing as the most effective way to learn the practice of medicine.” But Dr. Sanghavi went on to say that this “archetype” is now being replaced by the sleep-deprived medical resident committing serious medical errors. For lawyers, the following quote from the same article should be of interest: “Doctors think they’re a special class and not subject to normal limitations of physiology.” Sound like anyone you know?

The serious consequences of sleep deprivation have been documented in other professions as well. Wikipedia reports that after the crash of a regional jet in Buffalo, New York, killed 50 people in

February 2009, the Federal Aviation Administration reviewed the procedures it had in place for ensuring that pilots got enough sleep. Well, as a group, we are sleepier than doctors, paramedics and airline pilots. What might this mean for our clients?

The effects of sleep deprivation are well documented, a fact I can attest to because I watch many science shows on television at night, often nodding off in my recliner as I do so. Thus, in my expert opinion, I think in this month's Message from the President, we should focus a bit on the frontal lobe which, according to a Biology 202 Web Report at Bryn Mawr University, is "the most fascinating section of the brain with relation to sleep deprivation." According to that report and its sources, this area of the brain is associated with speech as well as with novel and creative thinking. Thus, a sleep-deprived lawyer may struggle to be creative and will instead remain "inside the box" using tired and repetitive language (such as the preceding cliché). Especially alarming for those of us who engage in oral advocacy, a sleep-deprived lawyer apparently "is less able to deliver a statement well ... may show signs of slurred speech, stuttering, speaking in a monotone voice or speaking at a slower pace than usual." Yikes! So much for that riveting direct examination of an accountant.

Also particularly challenging for the advocate, or any lawyer with a fast-paced practice, sleep-deprived test subjects in research studies did not react well to sudden, unpredicted changes. According to the Bryn Mawr Web Report, "[s]leep deprived people do not have the speed or creative abilities to cope with making quick but logical decisions, nor do they have the ability to implement them well." The ability to "multitask" is also impaired. According to the report, test subjects were not paralyzed and still reacted when confronted suddenly with complex scenarios, but they were likely to pick "unoriginal solutions" and, of special concern for lawyers because the stakes are often so very high, "[i]f presented with a similar situation multiple times with slight variations in the information presented the subject chooses the same solution, even though it might not be as applicable to the new scenario."

Rest assured that I would not presume to lecture you about something as personal as how much sleep you want to get or actually do get. The purpose of this column was just to get you thinking about the problem, or perhaps the alleged problem.

Because I am sure you must be wondering, the most sleep-deprived professionals are home healthcare workers, who rack up only six hours and 57 minutes per sleep cycle, and the least sleep deprived professionals are forest and logging workers, who, on average, snuggle up with their chain saws for seven hours and 20 minutes a night; maybe they don't stay up late watching science shows on TV. ■