

Elders and Driving

The Delicate Balance Between Safety and Independence

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Every so often there is an article or news item that features an elder driver who has had an unfortunate accident.

We hear reports of drivers who hit the wrong pedal or lost control of the car and then ended up in the front window of a store, on someone's lawn, or hit another car. These stories often go on to report that the driver was elderly, and the reporter then infers that the accident occurred primarily due to the age of the driver.

While it is true that some older individuals should not be driving and possibly could not pass a driving test, age alone is not sufficient as a reason to deny a person the right to drive.

As individuals age, their reaction time may not be quite as good as in earlier years, and their eyesight may also diminish. While these issues may not be reason enough to deny a person the right to drive, these two matters, coupled with reduced mobility, a bit of diminished mental capacity, and other physical or mental factors, may well create a situation within which an individual should not be driving.

In some states a person is required to take a driving test after they reach a certain age, and every few years thereafter, in order to verify their ability. This restriction has often been criticized as being discriminatory against the elderly, but another interpretation is that driving is a right, and it must be established and renewed from time to time.

The issue of whether the right to drive should be restricted by age is one that will be debated for years, and there may be no happy medium for those who are adamant on each side of the argument. Nevertheless, the potential to cancel one's license sometimes occurs when an individual is involved in an accident, viewed by a police officer driving "inappropriately," or reported by a physician who has observed a physical or mental disability and recommends that the



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person's license should be revoked.

Once any of these events occurs, the driver is normally deemed to be incapable of driving unless any of the aforementioned restrictions is removed and resolved and a satisfactory road test is completed by the driver. In Western Mass., there is a facility that is licensed to conduct such a driving test or at least assess the older individual to determine whether capacity exists that allows the person to drive safely.

Although elder driving is an issue that is not often debated — it normally surfaces when an elder's family member, neighbor, close friend, or the elder himself is injured in an accident or causes one, or his family believes that he or she shouldn't be driving any longer.

One of the most difficult things you may ever face is the need to tell your family member or friend that they should not be driving. This has the net effect of taking away one's independence, because they will be no longer able to drive themselves to the grocery store, library, religious services, activities, etc, and loss of license will have a great impact on your loved one's life. You may hear your loved one argue that he promises to only drive during the daytime

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Lawyers sometimes receive phone calls from clients stating that their license was revoked, or that their family wants to take it away. While this is certainly an inter-family issue, there may also be a legal one regarding one's inherent right to drive. On the other hand, although your elderly family member or friend may still have a valid driver's license, should he really be on the road is he a threat to the safety of himself and others?

When discussing legal documents with elderly clients, estate planning lawyers may suggest that your loved one sign a document stating that he will not contest the event of having his license taken away when someone believes that the time has come to terminate his driving rights. While no one ever wants to hear that they shouldn't be driving, during this highly volatile time it is oftentimes helpful to have this signed statement ready so your loved one may be reminded of their willingness to be cooperative.

Another avenue is to contact the Driv-

ing Advisement Program at The Weldon Rehabilitation Hospital at Mercy Medical Center in Springfield for an evaluation of your loved one's driving skills. If you want this assessment covered by insurance, be sure to first obtain a prescription from your loved one's physician stating a need for "occupational therapy evaluation for functional community mobility" that includes a medical diagnosis. Once there, your loved one will be appraised regarding his vision and perception, physical status, mobility, upper and lower extremity reaction time, traffic sign/situation identification and interpretation, and cognition, including problem-solving, attention, and memory, and any adaptive equipment he may have.

Since he will have the opportunity to

prove that he is or is not capable of driving safely, this may be a happy medium that can retain peace within your family.

In Massachusetts, the statutes governing elder driving give law enforcement officers and physicians the right to revoke one's license until such time as an elder can prove physically that they are no longer under a doctor's care, and he may be required to take both a written and physical driving test. Until that time, his license may be revoked.

We have all heard stories of the family members who disconnect the battery, remove the alternator, etc., so that an elderly family member cannot drive. While this may be a temporary fix, the bigger issue will have to be dealt with eventually.

Hopefully a medical professional will step in on your behalf, but if not, you must be brave enough to discuss your loved one's ability to safely drive and the possibility that it may be time to surrender the keys. ❖

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