

Liability Issues for the Mentor

The mentor has a legal responsibility to perform tasks in a reasonable and prudent manner when working with a novice driver. The mentor should be able to show evidence of the novice driver's progress, time involved with learning, and the environments associated with teaching a novice driver. Some of the environments are required by statute and some are required by safe practices. For instance, a statute is involved when a new driver is required to drive with a mentor for a fixed period of time at night in many states. Safe practice is involved when the mentor works with a lane change or approaching and crossing a highway-rail grade crossing. When the mentor is performing in a reasonable and prudent manner, written evidence showing when the student practiced specific tasks would be available for review by a defendant's lawyer or the court system. The mentor would need to provide written evidence indicating the new driver was able to perform the tasks in a safe manner. Written documentation will be required to support any verbal evidence of driver behavior during the training period. If written evidence is not available to support verbal testimony, the mentor may hold some tort responsibility for the actions of a new driver in a civil or tort action against the novice driver.

Considerations for protecting yourself as a mentor working with a novice driver include:

1. Check with your insurance company prior to any practice driving episodes.
2. Meet with driving instructors of the school attended by the novice driver.
3. Obtain a guide for safe in-car practices from the instructor, state agency, local library, or local private agency.
4. Obtain a copy of the state driving manual for your reference.
5. Write questions or comments used for communication with local driving instructors.
6. Have evidence that an organized pattern of instruction was used.
7. Establish a liability protection file for each novice driver to include:
 - a. In-car practices guide used for instruction
 - b. State driving manual used for instruction
 - c. Written driving records for the time period including:
 - 1) Learning activities
 - 2) Time & mileage
 - 3) Performance indications
 - d. Any special notations or driving problems
 - e. Record of completed statute-based requirements
 - f. Records that clearly show driver competence at highway-rail grade crossings
 - g. Documentation for any task or activity which was not completed, based on listed driving practices, including:
 - 1) Mirror settings or usage
 - 2) Parallel parking techniques
 - 3) Holding steering wheel
 - 4) Changing lanes
 - 5) Approach to intersections
 - 6) Other personal practices

Liability Issues for the Certified Instructor

The certified instructor has a legal responsibility to perform tasks with a higher level of care than a mentor when working with a novice driver. The certified instructor is trained to follow national, state, and local guidelines for teaching a novice driver. The certified instructor is required to provide evidence indicating level of student knowledge at the start of training, the novice driver's progress through training, the time involved with learning, the progression of in-car instruction, and the competence level at the completion of instruction. Many of the requirements for a certified instructor are based on statute, regulations, guidelines, and recognized safe practices. Since the certified instructor is performing at a higher level of care, written evidence showing when the student practiced specific tasks is required for review by state and local agencies, a defendant's lawyer, or the court system. The certified instructor is required to provide written evidence indicating the new driver was able to perform the driving tasks required by statute, regulation, guidelines, or safe practice. Written documentation will be required to support any verbal evidence of driver behavior during the training period. If written evidence is not available to support verbal testimony, the certified instructor may be held culpable for any actions taken against the trained driver in civil or tort cases.

Considerations for protecting yourself as a certified instructor working with a novice driver include:

1. Meet with parents/mentors of the students being trained.
2. Provide a guide for safe in-car practices certified by state agency or local private agency.
4. Provide copies of the state driving manual used for instruction purposes.
5. Provide a mechanism to exchange written questions or comments in communicating with student mentors.
6. Evidence indicating a certified and organized pattern of instruction was used
7. Evidence that indicates a pre-assessment of driving abilities was completed
8. Evidence indicating approved lesson plans and routes support the organized pattern of instruction
9. Evidence indicating the student license/permit was checked prior to driving vehicle in each lesson
10. Evidence indicating student progress and level of competence
11. Establish an instructor liability protection file to include:
 - a. Copies of teacher certification records
 - b. Copies of additional training, coursework, or credit hours
 - c. Copies of workshops or conferences attended
 - d. Copies or reference to any article contributions
 - e. Reference to the approved in-car practices guide and/or textbook used for instruction
 - f. Reference to state driving manual used for instruction
 - g. Copies of any articles, research, booklets, or pamphlets that support practices that are not identified in approved text or in-car practices (ABS, ISHS, Fatigue, Wireless phone usage, BGE mirror method, or driving system)
 - h. Updated Bio-data or Resume record
12. Establish student files for instruction to include:
 - a. Written driving records for the time period including:
 - 1) Preassessment of abilities.
 - 2) Learning activities completed.
 - 3) Time & mileage as required.
 - 4) Performance indications.
 - 5) Level of competence.
 - 6) State or local requirements including;
 - A) License/permit number.
 - B) Driving and observation time.
 - C) Other requirements.
 - b. Any special notations, mentor comments, or driving problems.
 - c. Record of completed statute-based requirements.
 - d. Records that clearly show driver competence at highway-rail grade crossings.
 - e. Documentation for any task or activity which was not completed based on approved driving practices, including:

- 1) Mirror settings or usage.
- 2) Parallel parking techniques.
- 3) Holding and using steering wheel.
- 4) Changing lanes.
- 5) Approach to intersections.
- 6) Other personal practices.

Twenty-one General Guidelines for Conducting In-Car Practice

1. Select and pre-drive areas appropriate to the individual lesson objectives and new driver's ability.
2. Check to be sure that driver, mentor, and instructor have appropriate licenses, permits, and insurance cards prior to moving the vehicle.
3. At the beginning of each lesson, make sure the new driver understands the objectives of the lesson and review the last lesson.
4. Establish a procedure or command that allows the driver to give control of vehicle to the mentor or instructor before moving the vehicle.
5. Be calm and patient, but alert at all times.
6. Sit so your left hand can be placed on the steering wheel to help guide the new driver if necessary.
7. Read the traffic environment ahead, to the sides and behind while observing the new driver's behavior.
8. When giving directions, first direct where, and then state the action to take [i.e. At the second intersection, turn left].
9. Give directions to turn at least one block before the turn, and always check mirrors before giving directions.
10. Avoid the use of terms with possible double meanings [i.e. Instead of "right" in response to a question, say "that's correct"].
11. Demonstrate what and how to do something to save time.
12. For each new maneuver, guide the new driver through two or three practice trials, and then allow practice without specific assistance or direction.
13. If a mistake is made, repeat the maneuver while talking the new driver, step by step, through the process.
14. If a mistake can be allowed without undue risk, permit the new driver to learn from a mistake.
15. If a lengthy discussion or explanation is needed, move to a safe place to stop and park the vehicle.
16. Never allow a new driver to drive into a dangerous situation. Take control or give specific direction.
17. Always base in-car techniques and procedures on State Vehicle Code and approved state or local practices.
18. Involve the new driver in the evaluation of his/her performance.
19. Remember, learning demands patience, understanding and mutual respect.
20. Follow a plan for in-car instruction based on approved safe practices.
21. Document your activities and learning progress to aid in future instruction and any potential litigation.

CNN.com

Dad avoids jail for fatal driving lesson

Young mother died after tossing baby to safety

PHILADELPHIA, Pennsylvania (AP) -- A father whose driving lesson with his underage daughter ended in a woman's death was sentenced Monday to three years' probation.

Abstract. Richard Miller was giving his 15-year-old daughter, who wasn't old enough to have a learner's permit, a weekend lesson in an empty parking lot last April when she sped across a street, jumped a curb and landed on a lawn where Sarah McGinley was playing with her 1-year-old daughter. McGinley, 18, tossed the infant to safety moments before she was struck and killed in front of her fiancé's home. Prosecutors said Miller's daughter hit the gas pedal instead of the brake. Miller said he tried unsuccessfully to push the brake pedal with his hands as the car surged toward McGinley.

Miller, 47, pleaded guilty last month to involuntary manslaughter. He could have gotten a year in prison. His daughter pleaded guilty in juvenile court in June to causing the accident and was sentenced to 200 hours of community service. Miller apologized Monday to about a dozen members of the victim's family in court. "Every hour I mourn for your daughter," he said. "I am terribly sorry for the tragic loss of Sarah. Please know that you are in my prayers constantly."

The judge also ordered Miller to pay \$7,500 to cover funeral costs, and he must pay an amount to be determined for the mother's tombstone. A civil case also is pending. In keeping Miller out of prison, Judge Benjamin Lerner cited his "exemplary life," his lack of a criminal record and his guilty plea.

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