



Crucial Conversations for Older Adults: Driving

To drive or not to drive is one of the more challenging issues associated with later life. Viewed by most folks as an inalienable right, elders hold their drivers' licenses as dear as any 16-year-old! Aging does not diminish one's desire for independence and a sense of control, along with the power to access the community and friends.

Thirty states have enacted legislation that imposes additional requirements on older adults. Tennessee is not one of them.

In Tennessee, where public transportation options are limited, an older adult may feel like the only alternative to driving is to be housebound (read: imprisoned) and dependent upon others for rides (read: burden).

While there are some older adults who recognize that they are no longer safe on the road, a few who comply with their physicians' recommendations, and a couple more who cooperate with pleas from worried children and spouses, how to keep Momma off the road is among the more common reasons families seek the advice of an attorney. Concerns for the safety of the elder and the public are typically most prominent, but families are also concerned as to whether or not the family will be personally liable if Momma has an accident. A Lexis search has not revealed any cases in which a son or daughter has been held liable for Momma's fender bender, unless the case involves "negligent entrustment." In other words, if the adult child allowed an impaired older adult driver to drive the child's vehicle, and the child knew the parent was impaired and should not be on the road. You may advise the client to read her Momma's auto liability insurance policy. There may be an exclusion from coverage if a doctor has ordered or recommended that Momma refrain from driving due to a medical condition. The policy probably requires notice of a change in circumstances. If there is an accident, the company may deny coverage in the event they have not been

informed of the change in an older adult's driving abilities.

Thirty states have enacted legislation that imposes additional requirements on older adults. Those additional requirements may include a vision test, a road test or a comprehensive driving analysis. Tennessee does not have any restrictions on an older adult renewing her license based on age. However, in 2011, Rep. Eddie Bass posed several questions to the Attorney General's office regarding these issues. The Attorney General opined:

1. Tennessee may enact laws requiring seniors to submit to a re-examination as a condition of receiving or renewing a driver's license.
2. Tennessee may modify driver's examinations for senior drivers to address concerns that aging drivers may experience as they continue to drive, such as reduced depth and distance perception, as long as the requirements are rationally related to a legitimate state interest.
3. Likewise, Tennessee may require a senior driver be retested if the driver has experienced one or more accidents, or if a family member requests retesting due to a concern that the senior's driving skills have deteriorated, as long as such requirements are rationally related to a legitimate State's interest.
4. The doctor's transmission of a report to authorities is not a violation of HIPAA.

5. These measures would not constitute unlawful discrimination as long as those measures are rationally related to a legitimate state interest.¹

Indications that it is time for The Driving Talk include the occurrence of scratches, dings and fender benders, traffic violations and getting lost. Physical illness or decline, cognitive impairment, vision and hearing loss and the use of medications with certain side effects should also signal that driving is no longer safe.

So, when a family asks you for advice about Momma's driving, where do you start?

Step 1: Educate the Family

When it comes to helping families tackle the complex decisions regarding curtailing or stopping a loved one from driving, we have found that there are many exceptional resources available that provide both information and tips on executing those crucial conversations. These resources are free and may be ordered online from the websites.

The Tennessee Department of Safety (TDOT):

TDOT² promulgates information about different services available for seniors who need to drive less, or not at all. They provide the contact information and a website for public transportation options, both urban and rural, in various parts of Tennessee.³ There are several booklets and resources on the website that are free, and they will ship these resources to you in bulk.

- **The Yellow DOT Program:** "The Tennessee Yellow DOT Program is designed to provide first responders with an individual's medical information in the event of an emergency on Tennessee's roadways. The information can truly mean the difference between life and death in the "Golden Hour" immediately following a serious incident. Participants in the program receive a Yellow DOT decal, a Yellow DOT folder and a

medical information sheet; the driver's photo is taken and placed on the sheet. The participant completes the medical information sheet, which consists of their emergency contact information, medical information, recent surgeries, hospital preferences, current medications, insurance and physicians' information. This information should remain in the glove compartment inside the yellow folder provided. The Yellow DOT decal will be placed on the driver's side rear window of their vehicle."⁴

- **Decisions for Tennessee's Senior Driver** (pdf) is a resource for senior drivers.

- **Driver Safety for Tennessee Seniors** (pdf) is a resource for family members and caregivers.

The Hartford

The Hartford publishes a free booklet, *At the Crossroads: Family Conversations about Alzheimer's Disease, Dementia and Driving*.⁵ It includes a section titled "Conversation Planner: How can I have good conversations about not driving?" There are many other excellent free booklets on the Hartford website.⁶

AAA Resources

AAA has created a website specifically for senior driving information and tips.⁷ One section of the site⁸ offers useful suggestions for safer night-driving, while another section⁹ explains features available in cars that can make them safer and more comfortable for older drivers, depending on individual needs. For example, the site recommends specific features (and explains why the features may help) for people who have arthritic hands, limited back and neck range-of-motion, diminished vision, and even cognitive decline. The interactive page allows readers to select their concerns, choose the features that sound appealing, and then generate a list of cars that offer the features chosen.

Medications are also a common concern, as many have the potential to temporarily affect the ability to drive

safely — especially when combined with other medications. For seniors who are on several different medications, it may be difficult to discern interactions and risks. AAA has created a service, called "Roadwise Rx," through which one may enter all her medications to "receive personalized feedback about how drug side effects and interactions between medications may impact the ability to drive safely."¹⁰

Step 2: Leverage the Doctor

After the family is educated and has had a series of crucial conversations about driving, Momma may still refuse to stop driving. If an at-risk parent is unwilling to stop driving, recommend that a family member accompany her to her doctor's visit and share the family's concerns. The doctor may advise his patient that she should not be driving for health reasons. Request that the doctor write those "orders" legibly on a prescription pad, and (after making a couple of copies) then tape it to the elder's refrigerator door. Family may request that the doctor submit a medical form to TDOT outlining his concerns and recommendations. Family may also send a letter to TDOT describing their specific concerns.

Leveraging the doctor empowers families with some messenger clout, while transferring the burden of being the "Bad Guy" to a qualified, trusted expert.

Step 3: Utilize a Comprehensive Driving Program

The doctor may also refer his patient to a community resource where several aspects of driving ability are assessed. In our community, the Patricia Neal Rehabilitation Center provides a "Comprehensive Driving Program." The Center requires a physician's referral to the program, which consists of a two-part evaluation that includes a clinical evaluation and an on-the-road test. The test lasts about three hours.

Continued on page 28

Step 4: Take the Car Keys, Disable, or Better Yet, Remove the Car

This is a last resort, but it may have to be done in order to protect the senior. In taking such steps, families must keep in mind that many elders can be remarkably resourceful when it comes to getting themselves back behind the wheel. Having new keys made, or repairs completed are readily accomplished by those elders determined to get back on the road. We have even had a hospitalized client and several in assisted living facilities to purchase new vehicles over the telephone and have them delivered. Families need to be aware that this is a possibility, and consider ways to address the issue.

The driving conversation is seldom brief and tidy. When dementia plays a role, it also may have to take place many times. In these cases, direct action is usually necessary because “promises” are

even less reliable. The elder’s self-esteem and sense of personal autonomy and control tend to take a major “hit” in this process. In even the happiest of relationships, complex family dynamics (are there any other kind?) may generate additional drama. Preparation should include awareness about the public and private transportation resources available in the community and how those may be accessed. Equally important is the ongoing support of family. This will help to assure that the elder does not experience this major transition as a life sentence to solitary confinement. ⚖️

MONICA J. FRANKLIN is a certified elder law specialist. She has assembled a multi-disciplinary team to serve east Tennessee’s elderly and disabled clients through: Life Care Planning, Estate Planning and Conservatorships. Email: Monica@MonicaFranklin.com or www.MonicaFranklin.com.

Notes

1. www.tn.gov/attorneygeneral/op/2011/op11-80.pdf
2. <http://www.tdot.state.tn.us/yellowdot/>
3. “Driver Safety for Tennessee Seniors: A Resource for Family Members and Caregivers,” published May 2009 by the Tennessee Department of Transportation.
4. <http://www.tdot.state.tn.us/yellowdot/>
5. To download or order free copies, visit safedrivingforalifetime.com/publications.
6. <http://www.thehartford.com/mature-market-excellence/publications-on-aging>.
7. <http://seniordriving.aaa.com/>
8. <http://seniordriving.aaa.com/understanding-mind-body-changes/vision/driving-night-managing-glare>
9. <http://seniordriving.aaa.com/smartfeatures>
10. <http://seniordriving.aaa.com/medical-conditions-medications/how-medications-can-affect-driving-ability-roadwise-rx?zip=37919&stateprov=tn&city=knoxville&devicecd=PC&referer=www.aaa.com>

ENHANCING DISPUTE RESOLUTION

Cooperation

Collaboration

Communication



REBECCA ADELMAN, ESQ.

Tennessee Supreme Court Rule 31 General Listed Civil Mediator

radelman@hatlawfirm.com

545 South Main Street, Suite 111, Memphis, TN 38103 ~ 901 · 529 · 9313