



NEW LAWS

What Is A “Textalyzer” And How Can It Help End The Texting-While-Driving Crisis?

Most states have banned texting (or even holding a device with one hand) while driving. Some States have spent loads of money on public service campaigns aimed at getting drivers to refrain from texting behind the wheel. If you are in New York, you have probably seen the “it can wait” ads, as well as the new signs on the Thruway announcing “text stops” (formerly “rest stops”).

Still, the problem persists. Boy does it! Surveys show that even more drivers, even more often, are texting while driving, and even using Facebook and other social media from behind the wheel. But the problem is this: How do you “catch” someone texting while driving? The police can obtain a warrant to gain access to smart phone records, but this takes time and resources and thus discourages the police from investigating on a regular basis. Compare this to when someone appears drunk while driving. The officer who pulls them over or investigates the crash can immediately administer a “breathalyzer” if he has any suspicions. But there is nothing like that for texting while driving. Or is there?

WELCOME TO THE

Michaels & Smolak Newsletter!

Don't hesitate to send your comments (*the good, the bad and the ugly!*) to Mike Bersani at bersani@michaels-smolak.com.

And if you like what you see, please add us on Facebook, follow us on Twitter ([@cnylawyers](https://twitter.com/cnylawyers)) and subscribe to our blog (centralnewyorkinjurylawyer.com).

For Serious Cases

forseriouscases.com

Our Team



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MICHAELS

& SMOLAK

pledge

we deeply appreciate the trust our clients have placed in us and we will strive to uphold that trust by working hard and fighting for our clients' rights.

Enter the "Textalyzer". See photo below. The device is the texting equivalent of the Breathalyzer. A police officer investigating a crash or pulling over a driver would use the Textalyzer to instantly examine the operating system of the driver's smart phone to check for recent activity. The textalyzer shows whether the smart phone has been recently used to email, text, etc. but does not give access to the contents of the emails, texts, etc.

Under a first-of-its kind proposed law in New York a warrant would not be needed for an officer to use a Textalyzer to extract this limited information. And refusal to hand over a phone for textalyzing could lead to the suspension of a driver's license, just as a driver's refusal to allow a breathalyzer does now. If the Textalyzer shows distracted driving was going on, the driver could be arrested just like a drunk driver. A warrant would then be needed for further analysis of the phone data to see exactly when the driver was using the phone and what he was doing with it.

The Textalyzer legislation has been called Evan's Law for 19-year old Evan Lieberman who died in a crash when he was asleep in the back of a friend's car. The police did not bother getting a warrant to look into the driver's phone to see whether the driver had been texting, but Evan's father later brought a civil suit, and then subpoenaed the phone. Lo and behold: the driver had been texting right before the crash.

This is a great new technology and great new proposed law for combating distracted driving. Together they will save lives.





NEW LAWS

Docs Who Write Scripts With Pen May End Up In Pen

On March 27 New York became only the second State (after Minnesota) to ban handwritten drug prescriptions and instead require e-prescriptions. And unlike the Minnesota law, the New York one has real teeth: Docs who use a paper and pen to prescribe drugs instead of a computer will face serious fines and even possible jail time. In other words, if they use a pen they may end up in the “pen”.

Why this law? Why now? Two reasons: (1) To avoid drug abuse through fraudulent prescriptions and (2) to avoid prescription errors due to physicians’ infamously illegible handwriting.

As for number 1 (fraud), opioid abuse is rampant these days. And handwritten prescriptions are a recipe for opioid abuse. Drug abusers are able to alter handwritten prescriptions to increase the quantity or dosage stated. But with e-prescriptions they won’t even touch the prescription. The e-prescription goes directly from the physician’s computer to the pharmacist’s, by-passing the patient completely.

As for number 2 (prescription errors), we have seen our share of prescription mistakes due to poor handwriting. For example, a pharmacist will read a doctor’s handwritten “2” as a “9”, or a “3” as an “8”. The mistake can be deadly.

We are thrilled that New York has put an end to handwritten prescriptions. It’s about time! This law will save lives. We salute New York’s legislature for taking this important step.



COMMUNITY SPOTLIGHT

Mark Lawn Optician

We’re Auburn’s homegrown personal injury law firm. And although we are from a small town, we get big city results. Our clients come from all over, including Syracuse and Rochester, because of our reputation. But we are not the only bigtime homegrown business in this small town. Mark Lawn J. Optician is another. So we stopped in for a visit and talked with owner Mark Lawn:

MICHAELS & SMOLAK: *Mark, tell us first how you got started as an Optician in Auburn.*

LAWN: I started in Dr. Thomas Stapleton’s office at 2 South Street and then in 1970. I went out on my own just down the road at 12 South Street. In 1994, I moved up to 13 East Genesee Street and that’s where I still am, going strong!

What exactly does an “optician” do?

I sell, fit, and services eyeglasses as well as contact lenses, for remedying defects of vision in accordance with the prescriptions of ophthalmologists and optometrists. I’m a certified, advanced optician. And I’m a fellow in the Contact Lens Society.

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Sounds like you are at the top level of what you do.

I hope so. And proud of what I do! I love giving superb service to my clients. And I can only do that by staying “on top of my game”.

How do you stay at “the top of your game”?

I have an exceptional amount of training and education in the field. I take far more ongoing optician education courses than the New York law requires me to take.

Geez, if my math is correct, you’ve been providing optician services here in Auburn for over 45 years.

How are things different now from way back in the beginning?

Well, first, the technology has changed. Lenses used to be simple spheres, but now they are programmed and ground digitally. This makes them far more accurate.

Ok, so technology has improved.

How about the sales part of the job. Has that changed, too?

Somewhat. Contact lenses used to make up about 30% of my business, but now it’s down to only about 10%.

Wow. How come?

Well, in the old days, most people didn’t like the way they looked in glasses. Glasses were considered nerdy. But now they have become “cool”, a fashion accessory. Every fashion designer has its own line of frames. So as a result I sell far fewer contact lenses and far more glasses. Second, you can buy contact lenses



SAFETY CORNER

Four Ways New York Auto Insurance Law Can Protect You While You Are Riding Your Bicycle

It seems strange that auto insurance can protect you while you are on your bicycle, but believe us, it really does. To be precise, there are four ways New York auto insurance can protect you if you are struck by an automobile while on your bike.

First, New York’s so-called “No-Fault Law”, a/k/a Mandatory Personal Injury Protection (“PIP”) (Article 51 of New York Insurance Law) requires that the insurance on the vehicle that strikes a pedestrian or a bicyclist provide insurance coverage to the injured cyclist/pedestrian up to a maximum of \$50,000 in medical expenses and lost income, regardless of whose fault it was.

To benefit from this law, you have to submit a “no-fault application” to the insurance carrier within 30 days of the crash. If you have a good excuse for not complying with this time limit, you can overcome it, but you should make every effort to comply.

Second, if the collision was the motorist’s fault, you can tap into the “liability” (a/k/a “bodily injury”) portion of the car’s policy. This portion of the policy will pay you “pain and suffering” compensation, but only if your injury is serious enough. It will also pay any of your medical bills and lost income that go beyond the no-fault insurance limits regardless of whether your injury was serious enough to entitle you to “pain and suffering” compensation. Unfortunately, the liability coverage limits of the vehicle that struck you might be too small to fully compensate you. The minimum amount in New York is \$25,000, and if you have a very serious injury, this amount will fall far short.

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Third, your OWN auto insurance might provide you with additional compensation if you are seriously injured. This may seem strange because your vehicle was not involved in the collision. But many auto insurance policies have something called “supplemental under-insured motorist” coverage, a/k/a “SUM” coverage. This means that if the car that struck you has less liability insurance than your own car, the SUM coverage in your own policy acts like a super-insurance, giving you the same total benefits as if you were hit by a car with as much insurance as your own policy had. For example, if the car that struck and injured you has only \$25,000 in liability (bodily injury) coverage, and your injuries are worth \$100,000 or more, and your own car has \$100,000 in SUM coverage, then your total liability coverage will be \$100,000 (\$25,000 from the at-fault vehicle’s policy and then an additional \$75,000 from your own policy). That’s why it is important – especially if you are a cyclist – to check your auto insurance policy to make sure you have SUM coverage. If you don’t, get it. It’s really cheap and provides a whole lot more protection for bicyclists.

Fourth and finally, your own car insurance might have additional no-fault type protection called “Additional Personal Injury Protection” (APIP). For example, if your policy has \$50,000 in APIP, then once you “exhaust” (spend through) the \$50,000 PIP (no-fault) of the car that struck you, your own APIP will kick in and start paying the bills if you continue to need medical care and income replacement (up to the monetary limit of your APIP policy)

The important messages to take from all this are: (1) If you are a cyclist, you should check your insurance policy BEFORE you are ever unlucky enough to have a run in with a car on your bike, and make sure you get the right insurance to protect you (**call Mike Bersani at Michaels & Smolak with your auto policy in hand and he’ll go through it with you FOR FREE**) and (2) should a vehicle ever strike and injury you while you are on your bike, you should again check your own auto insurance to see what kind of additional benefits (besides those from the insurance for the car that struck you) you can obtain to best compensate you for your injuries and losses.

Stay safe, and well-insured, on your bike. Call us with any questions (for free!).

areas in which WE CAN HELP

our attorneys can help with all personal injury & malpractice cases such as:

- Motor Vehicle Accidents
- Catastrophic Injuries
- Construction Accidents
- Slip/Trip and Falls
- Wrongful Death
- Medical and Legal Malpractice
- Defective Products
- Almost any Accident or Malpractice Case of Any Kind

attention attorneys

INJURY & MALPRACTICE REFERRALS

a lot of lawyers and law firms refer all their injury and malpractice cases to Michaels & Smolak. Why?

(1) We are known for getting top dollar (in settlement or verdict) for the referred case

(2) We carry all expenses of the case

(3) We give personal attention to your clients

Consider referring your cases to us!

SAFETY CORNER

Six Safety Tips Every Cyclist Should Know

Half of Michaels & Smolak (Lee Michaels and Mike Bersani) are avid cyclists. Together they have compiled their “top-six” safety tips for fellow cyclists:

1. ALWAYS WEAR A HELMET

Yes, it’s fun to feel the wind blowing through your hair (if you still have any!), but is it worth the risk of leaving your brains on the street? No. Protect your most important organ!

2. ASSUME YOU ARE INVISIBLE TO MOTORISTS

We handle many car-on-bicycle collision cases. There is a repeated theme in them: The driver “never saw” the cyclist who “came out of nowhere”. So to protect yourself, you have to ASSUME they don’t see you.

3. TRY TO BE VISIBLE

Ok, you should assume you are invisible, but at the same time DO EVERYTHING YOU CAN TO BE VISIBLE. What makes you more visible? Brightness and lights. Yes, wear those goofy colorful cycling shirts. Yes, use flashing lights (white for front red for back) even on a sunny day. (You can buy them especially made for bicycles online or at your local bicycle shop).

4. RIDE ON THE RIGHT

It is not only against the law to ride a bicycle “against traffic”, it is unsafe. The danger is that when you reach an intersection, the motorist coming out of a street on your left will not be looking for traffic coming down the left lane of the street to his right. He won’t expect to see you at all, which means he probably won’t see you.

5. STAY FAR RIGHT.

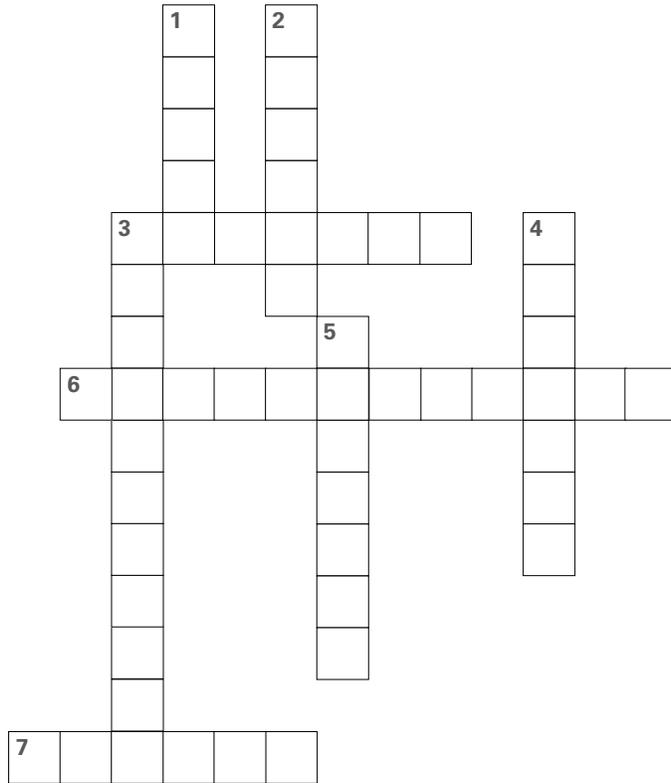
Ride as far to the right as safely possible. Two riders can legally ride abreast, but must revert to single file if a car is attempting to pass. You can “take the lane” for left hand turns, but do so very carefully, signaling with your left arm your intention to take the lane.

6. SIGNAL YOUR TURNS.

You are required by law to signal your turns. This makes safety-sense, too; motorists need to know what you are about to do so as to avoid you. The simplest way to signal is to extend your left arm straight out sideways for left turns, and do the same with your right arm for right turns.

Have fun out there and be safe!

NEW M&S NEWSLETTER FEATURE
Legal Crossword Puzzle



ACROSS CLUES:

3. The person who swears to an affidavit.
6. "If she sues me, I'll sue her, too, by way of a _____"
7. An oral or written request to the court made by a party for a ruling or order.

DOWN CLUES:

1. A document prepared by the lawyers on each side of a dispute and submitted to the court in support of their arguments.
2. The act of freeing someone from a criminal charge after a verdict or decision in his or her favor.
3. A postponement of a legal proceeding.
4. Verb meaning to select and swear in jurors.
5. When a defendant fails to plead or otherwise defend a lawsuit within the time allowed, or fails to appear at the trial, a _____ can be granted against him or her.

If you need help, email us for a "hint", or for the answer key:
 bersani@michaels-smolak.com

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on line, but you really need to buy glasses from someone like me so I can fit them for you. So while the internet has cut into my contact lens sales business, it has not really touched my glasses sales.

How do your clients end up coming to you? Do you advertise?

Most of them are direct referrals from the ophthalmologists or word of mouth from satisfied customers I have taken care of over the years. Customers send their relatives and friends to me.

Why do you think people keep coming back and sending their friends to you?

Well, first, I'm very service oriented. Let me tell you about my idea of service: A customer actually called me from the top of a ski mountain saying he lost his glasses on the chairlift, and by the time he got back to Auburn, I had a new pair waiting for him. That's the kind of service that keeps them coming back and sending me their friends and relatives. Also, my customers learn quickly that I do a lot of repairs to save them money that many opticians won't do.

What kind of repairs are you talking about?

Like soldering glasses, repairing hinges. Most of the chains will tell you that you need a new frame, but it really requires just a simple repair.

Mark, thanks so much for your time. Sounds like you have a great thing going, here. Auburn is lucky to have you!

Thanks. You're welcome.

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