

The HangLine

Issue #07-01

Posted January 15th, 2007

Posted on an Internet Forum or 'Board' on January 19th, 2005

To respect privacy we have only identified this individual by his 'Handle' ~ DA Aquamaster

DA Aquamaster posted; "Can anyone explain why everything good is sold in Europe. ... I suppose it is all the lawyers. The fact that it is "different", "not an industry standard" and based on "old" or even "antiquated" technology that has long since been replaced by "better" ... technology is problematic from a liability standpoint. It pretty much ensures that some moron will do something stupid with one or use it without adequate training and kill themselves as then of course some lawyer will take the case and sue the company for selling a sub standard product that allowed the moron to kill himself.

I recently finished "Fatal Depth" and while it is not the best read I have seen on diving, it provides a good example of this phenomenon. A tech diver who lied to his instructor and several other people, wrote an inflated number of dives on the paperwork to qualify for trimix training, and signed a hold harmless waiver to dive on the Andrea Doria, got himself killed on the wreck.

An attorney then represented the deceased family and sued the boat owner, the instructor and the training agency for \$36 million dollars because he felt someone should be held accountable. The defendants ultimately won the case but they still incurred substantial legal expenses in a case where the deceased was the person ultimately responsible for the events and decisions leading to his death and had willingly signed several waivers along the way indicating he knew and accepted the risks.

As long as we continue to devalue the concept of personal responsibility and allow trial attorneys to bring nuisance lawsuits we are not going to have an environment that is conducive to allowing companies to do something different. The sad part is that the ultimate cost is borne by the consumer who indirectly pays for the outrageous cost of liability insurance premiums and/or settlements on outrageous lawsuits."

Beyond the Disclaimer

By Bill Nadeau

Although we cannot confirm the detail or facts of the referenceⁱ 'DA Aquamaster' makes, we like the point he is trying to make. Every diver at one point or another wonders; 'Why do we as students sign a disclaimer or a release of liability when we sign up for a course?' One might believe that we sign a statement acknowledging

the risks involved in diver training, even when learning the most basic of skills. It is true that in most cultures and countries one cannot really be expected to give up their rights to sue Instructors or industry professionals (not in Canada anyway). There is however a mandate to have divers acknowledge the risks of what they are about to do. We are curious to know





whether Industry professionals are aware of all the risks involved in what services they offer and more importantly, if they were able to inform their students/clients of the same. Let's take an example of a basic skill one teaches a new diver?

How about removing your diving mask? That's a skill that is fairly straight forward.' Being able to clear a flooded mask and replace it is a very important skill. At what point in a diver's training program it should be taught. A common answer; '...before the end of the open water course, that's when it should be taught.'

Should be taught in any other course? Many Instructors feel strongly that if it was taught properly in a basic open water class than there is no need to teach it in any other programs, not unless the standards required it. Some Instructors might feel that students arriving in any 'advanced or technical' class should already have 'mastered' that skill and it would not be necessary for anyone to teach it again. Is this is a fair assumption keeping in mind that all Instructors are still responsible for insuring that their students are qualified to progress to the next level of training?

It is a basic premise to what has now become a streamlined and universally standardized curriculum. Training organizations over the years have done a wonderful job at designing programs that

clearly and in detail, outline what skills a person must 'master' in order to graduate from a certification program. They have created structured procedures that qualified and insured individuals can follow when teaching people to dive. They are so specific that these protocols even state how every Instructor

is to teach each single component of a particular skill, such as clearing a flooded mask. The techniques are printed in something called Agency Standards, the law for Diving Instructors. These are based on Industry Standards, minimum requirements that 'private' training and certification companies are recommended to adopt. Failure to follow these 'laws' can result in an Instructor having his license suspended, revoked or in the extreme, the Instructor him/herself being sued. It is a system that has facilitated safe and effective instruction for millions of divers. It has provided opportunities for thousands of people to make a living as professional Diving Instructors. It has enabled an industry to support a diversity of commercial enterprises from manufacturing and travel to retail and training agencies.

OVER TEN MILLION DIVERS SERVED HERE!

The larger training agencies have done to SCUBA diving what MacDonalds® did to the restaurant industry; they have devised a systematic, easy-to-follow methodology that diving professionals can follow. This





ensures every Instructor teaches the exact same thing, the exact same way no matter where you are in the world. Diving has become a low risk, inexpensive, dynamic recreational activity as a result. What about varying the ways there are to teach students to remove and replace their mask underwater? What if they have thick gloves or a bulky drysuit hood on? What if they wear contacts? What if their mask comes off when they are hovering on a wall that drops to a 150 feet below? Can we train a diver in an Open Water course to deal with mask problems that are caused or affected by other factors such as equipment or current? Take this real life example:

Let us suppose a diver who because of limited visibility is following his buddy fairly closely. They are swimming along a shallow reef, fifty feet under the surface when the following diver turns quickly to his buddy only to have his mask swiped off his face by the other diver's fin.

Not only did the mask get dislodged but the diver's regulator from which he breathes (air delivery system) was also knocked out of his mouth. This now distraught diver, who was originally trained on a holiday in the tropics, is wearing a drysuit hood and gloves and is having difficulty finding his mask and regulator due to the loss of dexterity in his hands. Has this diver been competently prepared to handle this situation?



Note that we did not ask if this person had been competently certified. In all likelihood they have been taught properly following all of the protocols and meeting of all of the standards. In short they have been certified to use a particular piece of equipment in a very specific environment.

You see, over the years in order to instill a sense of confidence and accomplishment in divers, and to provide a system of recognizable

qualification, training agencies have broadly categorized a hierarchy of certification levels (i.e. Open Water Diver, Advanced Open Water Diver, Rescue Diver, etc) all defining a somewhat generalized criterion of restrictions. For example an Open Water Diver level is qualified to dive down to a depth of eighteen meters of salt water (18 MSW /60 FSW) just as a person with an Ice Diver Specialty

certification has been qualified to dive under ice.

We are not suggesting that the system is responsible for allowing the diver in the above example to get into trouble. In fact this is probably one of the greatest challenges the diving industry is facing today – identifying what an Instructor is responsible for teaching and what a student is responsible for learning. This needs to be





clearly understood by every person who dons a SCUBA tank.

So what went wrong? Well to begin with, the vast majority of certified divers are qualified in warm clear waters where learning a skill like clearing a diver's mask is easier. That is not the only contributing factor to our distressed diver's predicament. During the part of the course where a student is taught to remove and replace his mask, the Instructor guides the skill development gradually. First the student learns about it in class, perhaps gets a chance to see a video of another diver demonstrating it and then he gets an opportunity to have an Instructor demonstrate the skill right in front of him. The diver will then practice it on the surface before trying it in the shallow end of a pool and then again in the deeper pool waters. Finally the diver will demonstrate to his Instructor that he has mastered the skill by performing the task in an open water session. This is usually done in clear water so the Instructor can monitor everything that is occurring safely. The Instructor lines his students up in a row, kneeling comfortably on the bottom. Then the Instructor grabs hold of the students one by one (in case they have problems and panic) and coaches them through each step of a mask removal and replacement by getting them to slowly flood the mask, slowly remove it, and slowly put it back on.

Successful demonstration of this skill (and others) by the student will qualify him as an Open Water Diver. The diver should feel proud of this accomplishment; it is the result of hard work and practice. But does it really mean that he is ready to deal with

any kind of mask problems? In reality, does a mask always come off when you are kneeling on the bottom of a shallow protected dive site while an Instructor is holding on to you and you are psychologically prepared to perform such a task? Nope, and in the earlier example our diver also had to contend with the cold water he was not used to or trained in.



It happens when you least expect it and there are other matters complicating the situation, like current, like a wetsuit hood that you have never worn before that did not allow the mask to seal on your face properly in the first place, and like a regulator that was torn from your mouth.

Our point is this: when we train someone to dive, we do not qualify them to do anything but rent and purchase SCUBA gear and participate in SCUBA activities offered by businesses that require divers to have certification cards from recognized training agencies. There are very few places on this planet where the government laws say you have to be certified to dive, to buy or rent gear or to get onto a dive boat. The industry alone has set these rules and the





rules are self-regulated by industry members. It transfers liability back to the diver by making a very simple but incredibly important statement:

In recognizing you as a certified diver, we, the dive industry, have been affirmed that you have taken a specific level of training by which you have come to understand and accept the inherent risks to SCUBA diving, that you are responsible for being familiar with those risks and because only you can control the amount of training and practice you do, and only you know what your personal limits are. We are not responsible for your level of competency while diving.

The diver in our example completed the minimum standards and demonstrated an acceptable performance in all of the required skills to earn an Open Water Certification. This does not mean the diver was competently prepared to handle the situation he was in.



FACT:

An Open Water Diver certification does not competently prepare divers to dive in all types of environments identified by the

limitations of that certification (i.e.

certified to dive to 60fsw). It merely prepares him to safely begin to gain experience at a gradual pace and to help him better identify what his personal limits are.

When attempting to achieve that level of competency, there is far more involved than just taking a course. No Instructor in the world, regardless of the type of course being taught, is responsible for ensuring his students are trained to obtain such a level. No Instructor with the ability to teach such a course exists and no course could ever be designed to include the myriad of facets which make a diver competent in all environments, using any kind of equipment in every manner that divers could possible use them.

And even if we could find such an Instructor to teach such a course, we still could not account for the most uncontrollable, unpredictable and indefinable element of all, human nature. Putting an Instructor in a position to assume that kind of responsibility would not be fair to him. Finally, allowing an Instructor, his training agency, and the industry as a whole to accept that kind of responsibility ultimately promotes a lack of accountability on the diver's part to ensure each and every dive he makes is within his own personal limits.

So, apart from following the standards set forth by the SCUBA Industry, what is an Instructor's primary responsibility when issuing a certification card to a student?





That Instructor is responsible for providing his students with the all of the tools reasonably necessary to determine how they are going to safely make every single dive. That does not mean he is required to show his students how to replace a mask that might be knocked off in any kind of situation, nor does it mean he is responsible for teaching his students about every academic or practical aspect of SCUBA diving. But the instructor is responsible for showing his students how to recognize, and evaluate the risks involved in any dive they might make.

How is this then done? How do we as divers and dive Instructors determine when and how every dive should be made in order that it is made safely, when there are so many complex and dynamic facets to the sport?

Let's go back to the original question about the basic skills a diver must learn such as our example with the diving mask. We now

realize that this skill, although taught in a basic Open Water Course, is a skill that must be practiced and mastered in a variety of environments such as cold water or in current. We also know that each time our equipment changes (such as wearing a new wetsuit hood) we must practice those skills repetitively to see how it affects our ability to respond to the various problems we might have with our mask. And we must also practice it while participating in the different kinds of diving activity we do such as diving on a wall or while holding onto a very expensive camera. We realize now that we cannot assume that our open water training prepared us for any of these situations. We also know that it is not a skill taught or practiced only in an Open Water Course. ~ BN

ⁱ Source:

<http://www.scubaboard.com/forums/archive/index.php/t-70275.html>.

