

What Does ‘Standard of Care’ Mean from a Legal Compliance Perspective?

Urgent Message: Urgent care centers are not required to deliver the “best possible care” but rather an “acceptable” level of care, which is legally defined as the “standard of care.”

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Medical malpractice occurs when a physician’s actions, or failure to act, during patient care don’t meet accepted medical standards and cause harm to the patient. To be successful in a medical malpractice action, a patient must prove 4 elements:

1. The doctor had a duty to care for the patient
2. The doctor was negligent
3. The negligence caused harm
4. The patient suffered damage because of it

A medical malpractice victim must show that the healthcare professional deviated from or failed to meet the accepted standard of care and that the departure was a proximate cause of the victim’s injuries.¹

Examples of deviations include:

- Misdiagnosing or failing to diagnose a patient
- Prescribing a drug that has a known dangerous interaction
- Prescribing the wrong dosage
- Prescribing medications for off-label treatment

What Does the Concept of ‘Standard of Care’ Mean?

The benchmark for determining whether the defen-



dant’s conduct was a “gross deviation” must derive from the conduct of a “reasonable person” in that factual context.² Generally, the applicable standard of care in a negligence action is whether the defendant acted reasonably as measured against a hypothetical, “reasonable” similar actor in similar circumstances.³

The conduct of a member of a profession who has special training and expertise is thus measured against the standard of a hypothetical, reasonable person with similar training and expertise. Such a professional owes a special duty of care to a client or patient that is beyond

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Staying Current

“Standard of care” may evolve over time as medical professionals are expected to keep up with technological advancements, new medical research findings, and changes to evidence-based guidelines. Factors that determine “standard of care” include:

- Evidence-based guidelines by medical professionals and organizations based on scientific research
- Professional organization (eg, American Academy of Pediatrics, American Academy of Family Physicians) policies and guidelines
- Medical literature, journal articles, and research (eg, *JUCM*).
- Accreditation standards set by accrediting bodies, including the Urgent Care Association
- Facility policies, procedures, and internal guidelines within hospitals or clinics
- Expert testimony in legal cases and expert witnesses (other healthcare professionals) who opine as to the applicable standard of care given the circumstances

the duty that would be owed by a general member of the public and that is commensurate with the professional’s training and expertise.⁴

How Is the Applicable Standard of Care Determined?

Generally, “the standard of care for a physician is one established by the profession itself.”⁵

Determining whether there was a breach of duty in a professional malpractice action entails 2 steps: a determination of the relevant standard of care; and a determination of whether the defendant’s conduct met that standard.⁶ To establish the causation element in a professional malpractice action, “the plaintiff must show that the defendant’s failure to exercise the proper standard of care caused the plaintiff’s injury.”⁷

To prove deviation from the standard of care, a plaintiff usually must present expert witness testimony. Typically, this expert is a healthcare professional in the same specialty who will opine on the accepted medical standard and what should have been done under the circumstances. Expert testimony is required in a medical malpractice action to establish the 4 elements of negligence and the proper standard of care.⁸ However, a medical opinion need only demonstrate, with a reasonable degree of medical certainty, that a defendant’s conduct increased the risk of the harm actually sustained, and the jury then must decide whether that conduct was a substantial factor in bringing about the harm.⁹

In addition, recommendations made in clinical prac-

tice guidelines issued by professional organizations do not by themselves determine the standard of care.¹⁰ Nevertheless, an expert witness may rely on those guidelines in evaluating a doctor’s conduct. Consequently, clinical practice guidelines—though not determinative—may “assist in establishing the relevant standard of care.”¹¹

Can There Be Variations of the Standard of Care?

Specifically, there can be *different* standards of care based on location. Most important is to understand the local community standards of care. This means that the standard of care for a well-connected urgent care physician in the affluent suburbs will likely be different than the standard of care for a doctor working in a small, rural clinic with limited support resources.

For example, courts in Idaho have held that in medical malpractice cases in the state, the geographical scope of the relevant community is a factual issue, defined by Idaho Code § 6-1012 as “that geographical area ordinarily served by the licensed general hospital at or nearest to which such care was or allegedly should have been provided.”¹² The “community” isn’t defined by physical distance from the healthcare provider but by “the locations from which its patient base is derived.”¹³

An expert testifying as to the standard of care in medical malpractice actions must show that he or she is familiar with the standard of care for the particular healthcare professional for the relevant community and time.¹⁴ When deciding whether an expert is familiar with local community standards of care, “courts must look to the standard of care at issue, the proposed expert’s grounds for claiming knowledge of that standard, and determine—employing a measure of common sense—whether those grounds would likely give rise to knowledge of that standard.”¹⁵

How Is the Standard of Care Applied?

There are a number of consequences that can result from a physician’s violation of their standard of care, including the following.

Disciplinary Action

The mission of the state medical board in Minnesota, for example, is “to protect the public’s health and safety by assuring that the people who practice medicine or as an allied health professional are competent, ethical practitioners with the necessary knowledge and skills appropriate to their title and role.”¹⁶

A state’s medical licensing board has the authority to

investigate complaints against physicians. If the standard of care is found to be violated, the board can impose sanctions, such as fines, mandatory retraining, supervision of practice (chaperone), suspension, restrictions on practice, or revocation of the physician's medical license.

Employment

Physicians can be terminated for malpractice; however, with 1 in 3 doctors facing a malpractice lawsuit at least once in their careers, the likelihood of being fired is low. Termination for malpractice usually occurs only when there's an ongoing trend of negligence or if a specific incident was extremely dangerous, negligent, or egregious. If a doctor is fired, it can be hard for them to find new employment in medicine.

Insurance

Physicians who are found liable for malpractice may see higher malpractice insurance premiums; and in extreme cases, a carrier may decline to renew the doctor's malpractice insurance policy.

Professional Restrictions

Another consequence is the loss of hospital privileges, which can dramatically affect a physician's ability to practice, especially in hospitals.

Legal Action

Patients or their families may initiate a lawsuit alleging medical malpractice against a doctor. If the physician is found liable, the physician may be required to pay compensatory damages for medical expenses, lost wages, and pain and suffering in some instances where the conduct was particularly egregious.¹⁷

Damage to Reputation and Financial Losses

A recent study found that among the general public, around 84% of people trust the opinions and recommendations of healthcare providers.¹⁸ Research also shows that patients who have long-standing relationships with their doctors tend to have better outcomes and are more satisfied with their care.¹⁹

But a medical malpractice lawsuit and/or disciplinary action are frequently public record—which can be damaging to the physician's reputation. This can also mean fewer patients, which would affect the physician's practice and income.

Summary

The standard of care for an urgent care physician is based on the local community standards of care.

It is important to note that while physicians are frequently the defendants in medical malpractice cases, they aren't the only healthcare professionals who can be held accountable for medical negligence. Nurse practitioners, physician assistants, and other healthcare providers can also be sued for malpractice if they breach the standard of care and cause injury. In some cases, a healthcare facility can also be held liable for the actions of their employees. ■

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