



MODULE TWO

THE STANDARD OF CARE

OUTLINE

A. Introduction – Standard of Care

1. Standard of Care is a highly technical medical-legal term.
2. The standard of care is the primary legal obligation that every clinician owes to every patient in every situation.

B. Definition

1. Legal Definition: What a reasonable, prudent, and cautious physician would do under the circumstances.

a. Reason, Prudence, and Caution

- i. “Reasonable, prudent, and cautious” – the behavioral characteristics that the clinician must exhibit.
- ii. Reason describes the process of weighing risk and benefit in an objective manner. This requires us to be attentive, thorough, and unemotional. Employ a logical, focused thought process.
- iii. Prudence mandates that we approach the decision as if it were our own health or life hanging in the balance. The approach must be scientifically sound, scholarly, and diligent.
- iv. Caution means “First, do no harm.”

b. The Circumstances

- i. “Under the circumstances” – Physicians do not practice medicine in an ideal world.

ii. Under less than ideal circumstances, the standard of care will also be less than ideal, but remains the standard of care.

2. In clinical terms, the standard of care is the best available combination of risk and benefit.
3. Delivering the standard of care is an absolute and complete defense to any allegation of malpractice, no matter what happens to the patient.
4. **TAKE HOME POINT:** Deliver the standard of care and don't worry about the consequences.

C. The Simple Mistake

1. A reasonable, prudent, and cautious physician is not perfect.
2. From the outside, a simple mistake and a negligent mistake look the same.
3. **TAKE HOME POINT:** The standard of care does not require perfection, but neither does it leave much room for a mistake.

D. Experts and non-experts

1. What is the difference between the standard of care for an expert versus the standard of care for a non-expert?
2. Making appropriate referrals is part of the standard of care, derived directly from either definition.

3. **TAKE HOME POINT:** We must continually evaluate whether we are qualified to remain in the situation, or whether delivering the best available combination of risk and benefit requires someone of more skill and training.

4. Case Study: 55 year old woman with chest pain.

5. Note: the fact that every clinician must deliver the standard of care does not mean that the patient will always be cared for in the same manner.

6. Training and experience of the physician are part of the circumstances.

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7. **TAKE HOME POINT:** The standard of care requires us to perform at the level of an expert or find someone who can.

E. Guidelines

1. Following a guideline makes the physician an expert on that issue.
 2. **TAKE HOME POINT:** When a physician follows the experts, that physician is an expert and is squarely within the standard of care every single time.
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F. Community Standard of Care:

The Intellectual Component

1. Case Study: A patient with new onset migraine headaches.

2. The behaviors of the other physicians in the community are not legally binding.
3. **TAKE HOME POINT:** The intellectual weighing of risk and benefit is unaffected by the community in which a physician lives.

The Circumstances

1. The second part of the definition of the standard of care, "under the circumstances," is directly affected by the circumstances. The community is the circumstances.
2. Case Study: Car accident near a trauma center.
 - a. Physician expectation

 - b. The circumstances

 - c. The standard of care is ideal and the standard of care is as high as it can possibly be for a trauma victim.
3. Case Study: Car accident in rural North Dakota.

a. Physician expectation.

b. The circumstances

c. **TAKE HOME POINT:** The standard of care rises and falls with the community's resources, but the intellectual components of the practice of medicine are the same everywhere.

G. Two Schools of Thought

1. Case Study: DVT prophylaxis for hip replacement surgery.

2. **TAKE HOME POINT:** The standard of care often includes more than one viable option. And, when it does, any of those choices is acceptable.

H. No Schools of Thought

1. Little to no guideline from the literature.

2. The plaintiff must establish the standard of care; the physician is not required to establish anything.

3. **TAKE HOME POINT:** When the standard of care is unclear, it's clearly to your advantage.

I. Insurance Pre-certification

1. Case Study: Pre-certification for an MRI.

a. The standard of care is not defined as the **best** combination of risk and benefit; it is the **best available** combination of risk and benefit.

b. Some administrative tasks are a necessary part of the practice of medicine.

J. Insurance Denials of Coverage

1. Case Study: Insurer denies coverage for MRI.
2. The physician's obligation is to deliver the best available combination of risk and benefit.
3. "Second rate medicine" is often the standard of care.
4. **TAKE HOME POINT**: The standard of care is always available, even when something prevents the physician from doing what he or she believes is best.

K. Noncompliance

1. Case Study: The patient who does nothing.

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2. **TAKE HOME POINT**: Patient noncompliance lowers the standard of care, but it never relieves the physician of the obligation to deliver the standard of care.

L. Evolving Standards of Care

1. Standard of care is continuously evolving, but rarely defined by one study, one article or one editorial.
2. **TAKE HOME POINT**: Be careful about abandoning the boredom of that which is proven, for the excitement of that which looks promising.

M. Conclusion

1. The law requires nothing more than that the physician to make the best of his situation.