

# Health Law: Quality & Liability

Prof. Thaddeus Pope

Medical Malpractice -  
Geographical Variations



# Geographical SOC variations



DEF measured  
against the  
**reasonable  
physician**



What would the  
**reasonable  
physician** have  
done in the  
circumstances



But **which**  
reasonable  
physician



The reasonable  
physician  
**where**







“ . . . as an essential part of his or her case in chief . . . negligently failed to meet the applicable standard of health care practice **of the community** in which such care allegedly was or should have been provided . . . .”

“in comparison with similarly trained . . . providers . . . in the **same community, . . . that geographical area** . . . nearest to which such care was or allegedly should have been provided.”

MD in Bonner's Ferry held to reasonable physician in Bonner's Ferry

A map of Idaho showing county boundaries and major cities. A red arrow points from the text 'MD in Bonner's Ferry' to the location of Bonner County in the northwestern part of the state.

VERY few physicians know the standard of care in specific Idaho towns

**Hard** to sue an Idaho physician



Mass General  
expert **can**  
**know** SOC

Formerly Boise  
**or**  
Learns it - for  
the case



# Statewide

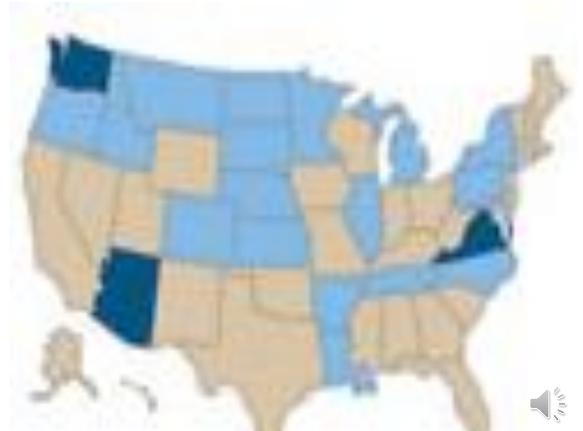


## Statewide Standard#

Arizona: Ariz Rev Stat §12-563 (2005)

Virginia: Va Code Ann §8.01-581.20 (2006)

Washington: Wash Rev Code §7.70.040 (2006)



DEF duty =  
reasonable MD  
in **state** of DEF



Legal duty  
What RP VA  
physician would  
do



What a RP VA physician would do might not be "best"



Dr. Merenstein followed EBM

Yet he still **loses**

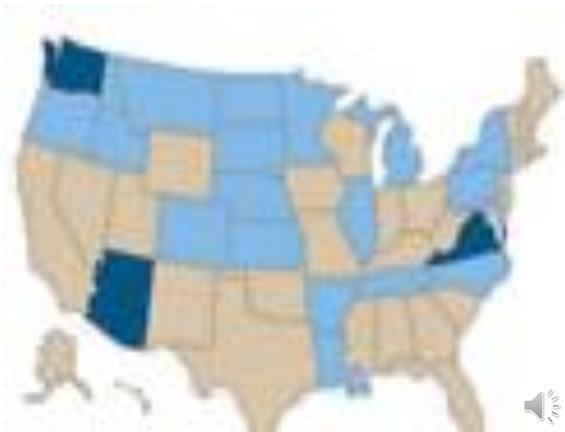


Same or similar



Same or Similar Community Standard

- Arkansas: Ark Code Ann §16-114-206 (2006)
- Illinois: *Jenkins v Lee*, 209 Ill2d 320, 282 Ill Dec 787, 807 NE2d 411 (2004)
- Kansas: *Tompkins v Bise*, 259 Kan 39, 910 P2d 185 (1996)
- Maryland: Md Code Ann, [Cts & Jud Proc] §3-2A-02(c) (2006)
- Michigan: Mich Comp Laws Serv §600.2169 (2006)
- Minnesota: *Lundgren v Eustermann*, 370 NW2d 877 (Minn 1985)
- Nebraska: Neb Rev Stat §44-2810 (2006)
- North Carolina: NC Gen Stat §90-21.12 (2006)
- North Dakota: *Winkjer v Herr*, 277 NW2d 579 (ND 1979)
- Oregon: Or Rev Stat §677.095 (2006)
- Tennessee: Tenn Code Ann §29-26-115 (2005)



DEF duty to act as reasonable physician in DEF community **or** one similar to it



## Case Example 1



*Johnson v. Richardson* (Tenn. App. 2010)

Expert: Springfield, MO

Defendant: Memphis, TN

May this expert testify?



Community size

Hospital size

Number & type medical facilities

Discussed with providers

Visited hospital



## Case Example 2



*Chapel v. Allison* (Mont.)

DEF	Livingston, MT GP
-----	----------------------

PTF expert	Denman, MA Orthopedic surgeon
------------	----------------------------------



PTF expert need not be from Bozemon

PTF expert must be familiar with SOC in place like Bozemon



Expert can acquire that knowledge specifically for litigation

e.g. visit Bozemon (or similar)

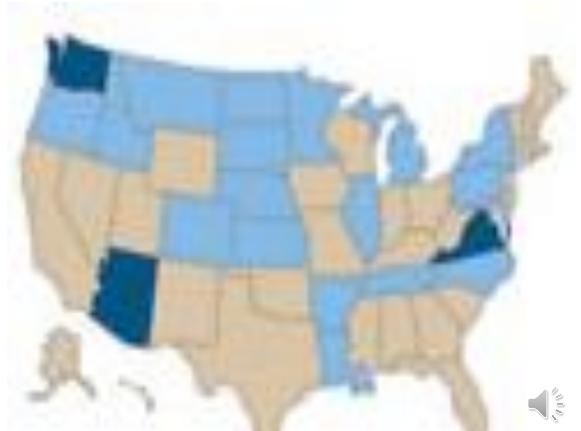


# National



#### National Standard†

Alabama: Ala Code §6-5-548 (2005)  
 Alaska: Alaska Stat §09.55.540 (2006)  
 California: *Barris v County of Los Angeles*, 20 Cal 4th 101, 972 P2d 966, 83 Cal Rptr 145 (1999)  
 Connecticut: Conn Gen Stat §52-184c (2006)  
 Delaware: Del Code Ann. tit 18, §6801 (2006)  
 Florida: Fla Stat §766.102 (2006)  
 Georgia: *McDaniel v Hendrix*, 260 Ga 837, 401 SE2d 260 (1991)  
 Hawaii: *Hirahara v Tanaka*, 87 Haw 460, 959 P2d 830 (1998)  
 Indiana: *Vergara v Doan*, 593 NE2d 185 (Ind 1992)  
 Iowa: *Estate of Hagedorn ex rel Hagedorn v Peterson*, 690 NW2d 84 (Iowa 2004)  
 Kentucky: *Branham v Nazar*, 2004 Ky App LEXIS 312  
 Maine: *Downer v Veiloux*, 322 A2d 82 (Me 1974)  
 Massachusetts: *Brune v Belinckeff*, 354 Mass 102, 235 NE2d 793 (1968)  
 Mississippi: *Hall v Hilburn*, 466 S2d 856 (Miss 1985)  
 Missouri: Mo Rev Stat §538.225 (2006)  
 Nevada: Nev Rev Stat Ann §41A.009 (2006)  
 New Hampshire: NH Rev Stat Ann §507-C:2 (2006)  
 New Jersey: *Velasquez v Portadin*, 163 NJ 677, 731 A2d 102 (2000)  
 New Mexico: *Pharmaseal Laboratories Inc v Geffe*, 90 NM 753, 568 P2d 589 (1977)  
 Ohio: *Bruni v Tatsumi*, 46 Ohio St 2d 127, 346 NE2d 673 (1976)  
 Oklahoma: Okla Stat tit 76, §20.1 (2005)  
 Rhode Island: *Sheely v Memorial Hospital*, 710 A2d 161 (RI 1998)  
 South Carolina: *Durham v Vinson*, 360 SC 639, 602 SE2d 760 (2004)  
 Texas: *Am Transitional Care Centers of Tex Inc v Palacios*, 44 Tex Sup Ct J 720, 46 SW3d 873 (2001)  
 Utah: *Dalley v Utah Valley Regional Medical Center*, 791 P2d 193 (Utah 1993)  
 Vermont: Vt Stat Ann tit 12, §1908 (2006)  
 Washington, DC: *Morrison v MacNamara*, 407 A2d 555 (DC 1979)  
 West Virginia: W Va Code §55-7B-3 (2006)  
 Wisconsin: *Phelps v Physicians Ins Co of Wis Inc*, 282 Wis2d 698 N.W.2d 643 (2005)  
 Wyoming: Wyo Stat Ann §1-12-601 (2006)



DEF duty to act as reasonable physician  
**in USA**  
 (majority standard)

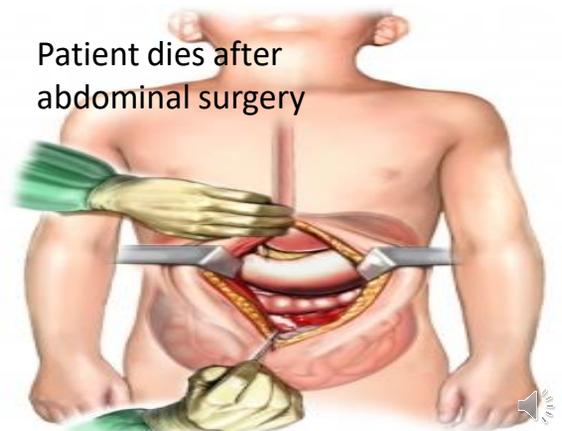


Physician expected to possess medical **knowledge** and to exercise medical **judgment** as possessed by reasonable doctor **anywhere in the United States**



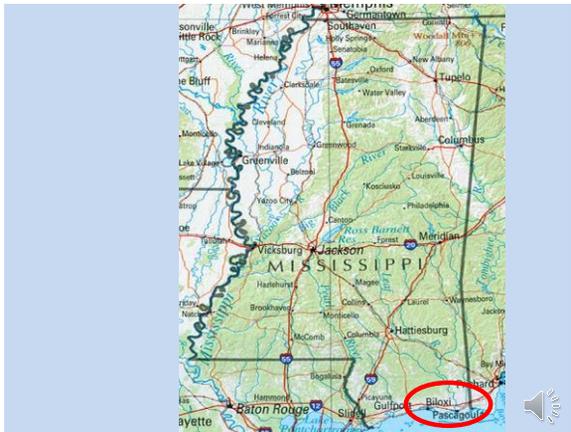


# Hall v. Hillbun



## 4 theories of negligence

1. Decision to operate
2. Surgery itself
3. Post-op care
4. Sponge left





**Okay** if plaintiff experts have never been to MS before. Same SOC OH.



# Geography Recap



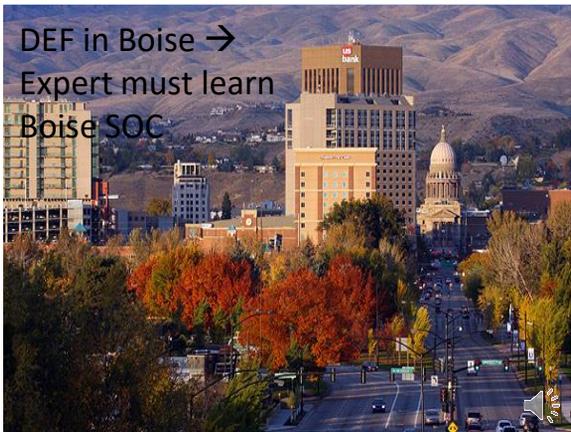
Is medicine really different in Idaho - NO



Strict locality Statewide Same or similar Nationwide	}	May be same standard
But still an important rule of <b>evidence</b> re: how standard established		



Assume expert is from Mayo Clinic (Rochester, MN)



DEF in Seattle →  
Expert must learn  
WA SOC



DEF in Grand Marais →  
Expert must learn SOC  
there or similar place



DEF in St. Louis →  
expert qualified  
(geographically)



Let's move from  
geographic SOC  
to SOT

