

Health Law: Quality & Liability

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Medical Malpractice -
Geographical Variations



Geographical SOC variations



DEF measured
against the
**reasonable
physician**



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

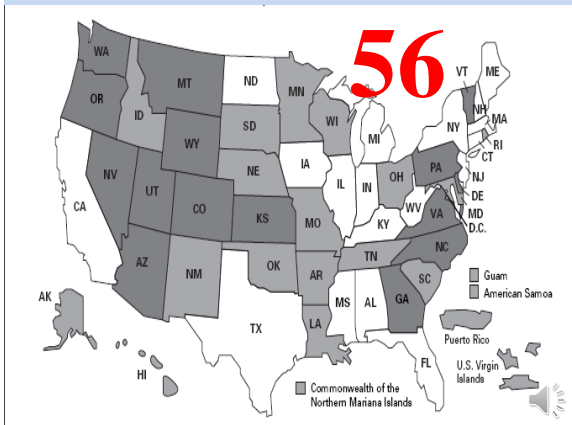


But **which**
reasonable
physician



The reasonable
physician
where





1. Strict locality
2. Statewide
3. Same or similar
4. National

MD in locality
 MD in state
 MD in same/similar
 MD in USA



**Strict
 locality**

Used to be the rule
 everywhere

No longer followed
 anywhere, except
 Idaho



“ . . . 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 to Bonner County in the northwestern corner of the state. The map includes labels for neighboring states like Washington, Oregon, Nevada, Utah, Montana, and Wyoming, and various Idaho counties and cities.

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
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PTF expert	Denman, MA Orthopedic surgeon
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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 1990)
 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 NW2d 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**

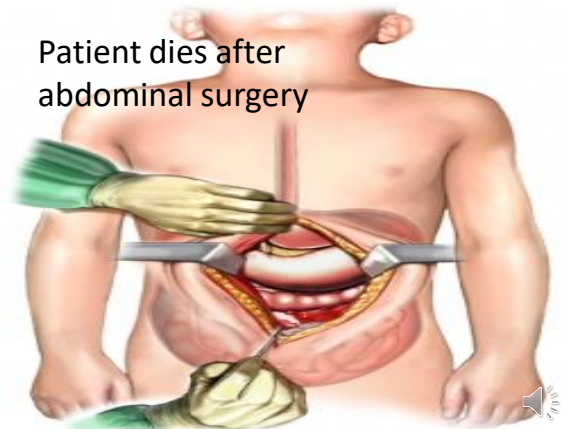




Hall v. Hillbun



Patient dies after
abdominal surgery



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

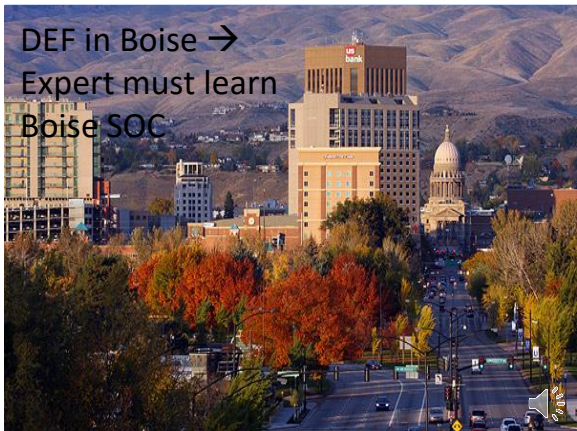


Strict locality Statewide Same or similar Nationwide	}	May be same standard
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But still an important rule of **evidence** re: how standard established



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

