

Health Law: Quality & Liability

Prof. Thaddeus Pope

Medical Malpractice -
Standard of Care



Standard of Care



Analogize to
informed
consent



PTF claims DEF failed
to disclose X

PTF must 1st establish
that had **duty** to
disclose X



Medical
malpractice



PTF claims DEF deviated
from standard of care

PTF must 1st establish SOC



Almost always,
PTF needs **expert
witness** to
establish SOC



Basic
Flowcharts:
Establishing
SOC



No expert → no SOC
No SOC → no breach
No breach → no case



What question
does the
expert answer

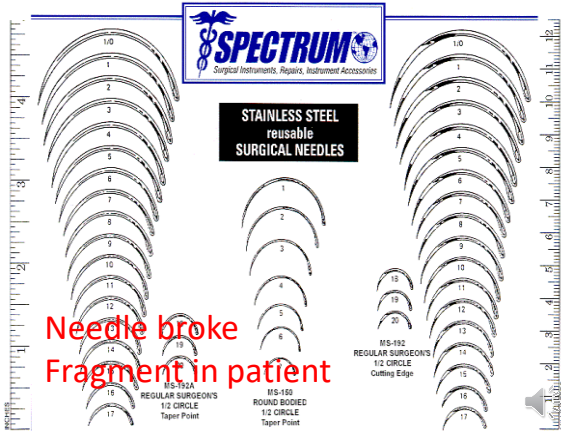


What would the
**reasonable
physician** have
done in the
circumstances



**Locke
v.
Pachman**





PTF claims:

Wrong size needle

Used it wrong

Should have found it

Expert must establish

1. RPP would have used bigger needle

2. RPP would have pushed with curve

3. RPP would have found needle

Irrelevant
 what expert
personally
 would have
 done



Irrelevant if DEF
 tried "her best"

RPP is objective
 standard



74²
 DEPARTMENT OF EDUCATION
 THE CITY OF NEW YORK
 Borough of *Manh.*
REPORT CARD
 P. S. 64 *Boys' Dept.*
 Pupils *Chapman, Walter*
 Term beginning *Sept. 13* Grade *4*
J. C. ... Teacher
 SATISFACTORY: A—EXCELLENT B—GOOD
 UNSATISFACTORY: C—POOR D—BAD

	MONTHS				
	1 st	2 ^d	3 ^d	4 th	5 th
EFFORT.....	B	B+	B	B	B
PROFICIENCY	B	B+	B	B	B
DAYS ABSENT ...	12	0	2	0	0
TIMES LATE ...	0	0	0	0	0
DEPARTMENT	A	A	A	A	A

DEFICIENT IN

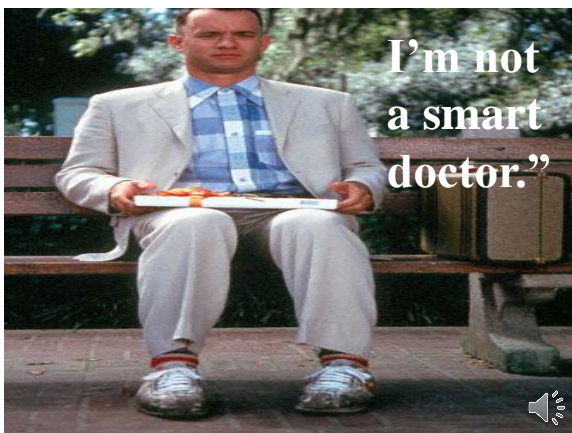
1st Month
 2^d "
 3^d "
 4th "
 5th "

Effort does not matter

W. ... (COVER)



No Forrest
 Gump defense



You can be
 below average
 yet not
 negligent





Optimal care
 Very good care
 Good care
 Average Care
 Substandard care **Negligence**
 Reckless care
 Gross incompetence




Experts

Qualification




Qualification

Credibility & weight



Thompson

v.

Carter




Experts should normally be
of the **same** specialty

But title and degrees do not
matter as much as
knowledge and training



Look to **specific** issue at
hand

General surgeon can testify
against **plastic** surgeon re
general surgical issues

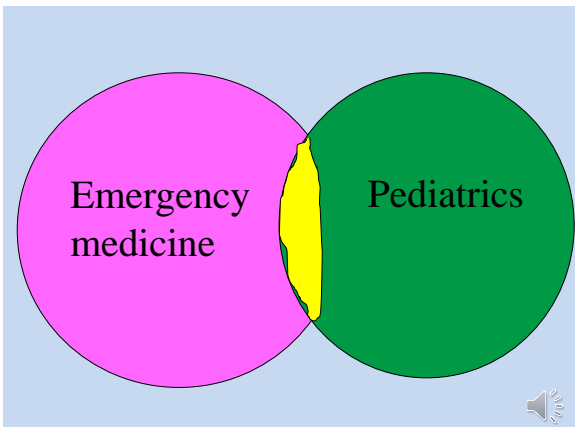


DEF

Dr. White
Board-certified **internist**

PTF expert

Dr. Krenytzky
Board-certified **pediatrician**



DeMuth v. Strong (Md. App. 2012)

Vascular surgeon testified that
orthopedic surgeon breached SOC

In the context of post-op
treatment, these specialties
overlap



Cornfeldt v. Tongen (Minn. 1977)

Nurse could testify
against physician
re anesthesia



Experts

Credibility & weight



Standard of Care (variations)



There is **no single** standard of care applicable to all physicians



Geography
Economic factors
Specialization
School of thought
Judicial
CPG

