

# Health Law: Quality & Liability

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Medical Malpractice -  
Standard of Care



# Standard of Care



Analogize to  
informed  
consent



PTF claims DEF failed  
to disclose X

PTF must 1<sup>st</sup> establish  
that had **duty** to  
disclose X



Medical  
malpractice



PTF claims DEF deviated  
from standard of care

PTF must 1<sup>st</sup> 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

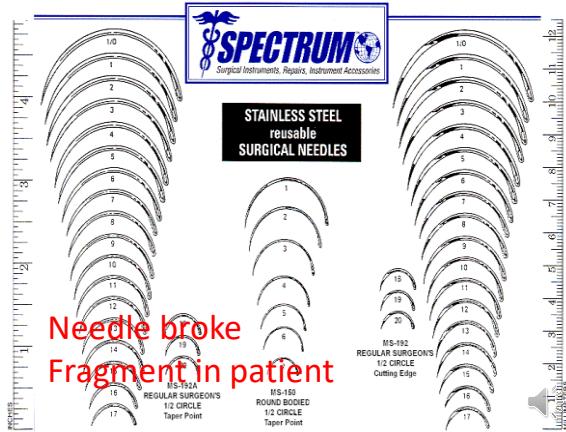


What would the **reasonable physician** have done in the circumstances



**Locke v. Pachman**





## PTF claims:

Wrong size needle

Used it wrong

Should have found it



Expert must establish



2. RPP would have pushed with curve



1. RPP would have used bigger needle



3. RPP would have found needle



Irrelevant  
what expert  
**personally**  
would have  
done



Irrelevant if DEF  
tried “her best”

RPP is objective  
standard



74<sup>2</sup>

DEPARTMENT OF EDUCATION  
THE CITY OF NEW YORK  
Borough of Manhattan  
REPORT CARD

P. S. 64 Boys' Dept.  
Pupil Alphonse G. Waters  
Term beginning Sept. 1913. Grade 6<sup>2</sup>  
Teacher J. C. C. A. M. Teacher

SATISFACTORY: A—EXCELLENT; B—GOOD;  
UNSATISFACTORY: C—POOR; D—BAD.

	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	5 <sup>th</sup>
EFFORT.....	B	B+	G	O	G
PROFICIENCY	B	B+	G	G	G
DAYS ABSENT ..	1	0	1	0	0
TIMES LATE ..	0	0	0	0	0
DEPARTMENT	G	G	G	G	G

DEFICIENT IN \_\_\_\_\_

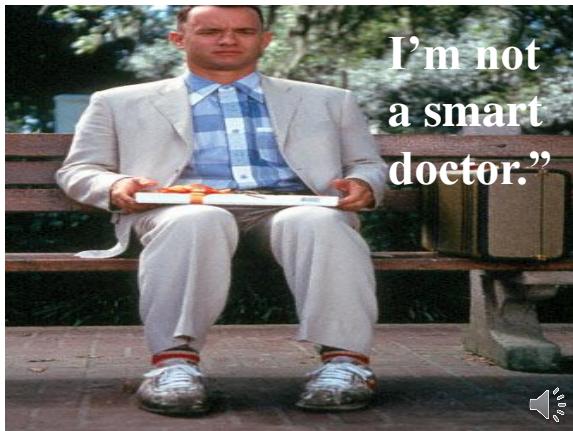
1st Month \_\_\_\_\_  
2d. " \_\_\_\_\_  
3d. " \_\_\_\_\_  
4th. " \_\_\_\_\_  
5th. " \_\_\_\_\_

The student is to be (OVER)

Effort does not matter



**No Forrest**  
Gump defense



You can be  
below average  
yet not  
negligent





# 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**



Emergency medicine  
Pediatrics



*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

