



CNA HealthPro

Determining the Standard of Care

The dental standard of care is a moving target, changing as techniques and procedures evolve. This article looks at how the standard of care is established in court and how dentists can stay current.

Standard of care is at the heart of dental malpractice claims and lawsuits. Some states require that an expert dental witness certify that there is a reasonable and meritorious cause for filing a lawsuit. The expert dental witness bases this decision on whether or not the standard of care has been followed. The following questions and answers examine some of the issues surrounding this key concept.

Q. What is the formal definition of the standard of care, and how is it used to determine negligence?

A. The standard of care is legally defined as the degree of care that a reasonable and prudent dentist would exercise under the same or similar circumstances. (Historically, the standard has been expressed in terms of a dentist “in the community with similar education and experience.”) Conduct failing to conform to the standard of care constitutes a breach of duty to the patient – an element of negligence.

Q. How is the standard of care utilized in malpractice trials?

A. To demonstrate this element of negligence on the part of the defendant dentist, the plaintiff’s attorney offers evidence of what standard of care should have been followed under the circumstances, and attempts to show that this standard was not met. The attorney for the defendant dentist then typically counters by presenting differing criteria as evidence that the standard of care was followed. This evidence is presented to a judge or jury, who then must evaluate the evidence of the appropriate standard of care for the treatment given, as well as whether the dentist complied with this standard.

Q. What is the role of the expert witness?

A. Expert witnesses present opinion testimony relating to the standard of care to the judge or jury. Because of their education, experience, knowledge of dentistry, and professional standing, they are considered to be authorities on the treatment in question. Their opinions may be found more or less compelling by the judge or jury, depending upon the experts’ credentials, insight and clarity of explanation.

Q. Who can be an expert witness?

A. The laws governing expert witness usage vary by state. In cases involving treatment that falls within the scope of what a specialist would ordinarily provide, the plaintiff will generally retain a member of that specialty as an expert witness. This results in the standard of care being articulated by the specialist, regardless of whether the defendant dentist is another specialist or a general practitioner.

There are exceptions, however. In some states, only a dentist with very similar training and experience to that of the defendant dentist is permitted to testify as an expert witness. In such states, for example, a defendant general practitioner would be confronted only with another general practitioner as the plaintiff’s expert. Specialists would be barred from testifying as expert witnesses. Check with your attorney regarding specific laws and rules governing expert witness testimony in your jurisdiction.

Q. What supporting evidence do expert witnesses rely on?

A. Expert witnesses use information from dental sources to support their opinions and increase their credibility. Supporting evidence of the applicable standard of care may be found in several different sources, such as

- articles in peer-reviewed professional journals
- research findings
- textbooks
- professional organization guidelines
- dental school curricula
- protocols, policy and procedure manuals
- personal experience

For example, a description of an endodontic procedure published by an endodontic association may be used by either side as evidence of the standard of care for a certain procedure. Furthermore, the dental practice act in some states specifically defines certain aspects of the standard of care.

Q. How can a dentist stay current with the standard of care?

A. Advances in technology continue to make dentistry a truly dynamic profession. One consequence is a continually evolving standard of care. For example, the standard of care in the direct placement of a Class II restoration in 1985 differs from the standard of care for 2005, due primarily to the advances in adhesive and restorative materials.

Keeping up with these changes requires a commitment to continuous learning. The continued review of professional scientific literature is essential. Membership in professional organizations can be very helpful, as is participation in continuing education courses, local dental study groups, and professional meetings. Our risk management courses and *Dental Expressions* also examine standard of care issues. Finally, the Internet offers vast amounts of information – including board rulings, legal precedents and liability trends – to any dentist with a computer.

As a moving, changing benchmark, the standard of care will always be subject to debate. The “reasonable and prudent dentist” should strive to use current technology, techniques, and thought to practice at or above the standard of care.

This publication is for educational purposes only. It is not legal or dental advice. CNA makes no representations as to its correctness or completeness and accepts no liability for any injury or damage that may arise from its use. Specific legal or dental questions should be referred to a competent attorney or dental professional. This material may address and discuss matters for which your policy does not provide coverage, and the material does not create or imply the existence of coverage. Please consult your insurance policy for the specific terms and conditions of coverage.

CNA policies are underwritten by the property/casualty companies of CNA, Chicago, IL. CNA is a registered service mark of CNA Financial Corporation. ©2005 Continental Casualty Company. All rights reserved.