105. 01 Professional Negligence – Duty

A _____ must possess and use
[specialist/doctor/nurse/therapist/health-care provider/accountant/lawyer/other]

the knowledge, skill, and care ordinarily used by a reasonably careful

_____.
[specialist/doctor/nurse/therapist/health-care provider/accountant/lawyer/other]

The failure to do something that a reasonably careful

_____
[specialist/doctor/nurse/therapist/health-care provider/accountant/lawyer/other]

[practicing in the same or similar localities] would do, or the doing of something that a reasonably careful _____ would not do, under
[specialist/doctor/nurse/therapist/health-care provider/accountant/lawyer/other]

circumstances similar to those shown by the evidence, is "professional negligence".

The phrase "deviation from the standard of [care][practice]" means the same thing as "professional negligence".

The law does not say how a reasonably careful _____ would act [specialist/doctor/nurse/therapist/health-care provider/accountant/lawyer/other]

under these circumstances. That is for you to decide. In reaching your decision, you must rely upon opinion testimony from [a] qualified [witness] [witnesses] [and] [evidence of professional standards][evidence of by-laws/rules/regulations/policies/procedures] [or similar evidence]. You must not attempt to

determine how a reasonably careful _____
[specialist/doctor/nurse/therapist/health-care provider/accountant/lawyer/other]

would act from any personal knowledge you may have.

Instruction revised April 2020. Notes on Use revised September 2011. Comment revised December 2011.

Notes on Use

The bracketed language ("deviation from the standard of practice") in the second paragraph may be more appropriate for an accountant or attorney malpractice case than the "deviation from the standard of care" language that is most appropriate for medical negligence cases.

The second paragraph must be given unless the Court determines that expert testimony is not necessary because the case falls within the "common knowledge" exception. *Jones v. Chicago HMO, Ltd. of Illinois,* 191 Ill.2d 278, 296, 730 N.E.2d 1119, 246 Ill.Dec. 654 (2000); *Borowski v. Van Solbrig,* 60 Ill.2d 418, 328 N.E.2d 301 (1975).

The bracketed language in paragraph three is limited to those cases where the evidence warrants its use and is not to be viewed as an alternative to expert testimony. *Studt v. Sherman Health Sys.,* 951 N.E.2d 1131, 2011 Ill. LEXIS 1093, 351 Ill.Dec. 467 (2011) (citing *Ohligshager v. Proctor Community Hosp.*, 55 Ill.2d 411, 303 N.E.2d 392 (1973); *Metz v. Fairbury Hosp.*, 118 Ill.App.3d 1093, 455 N.E.2d 1096, 74 Ill.Dec. 472 (1983)).

The locality rule has largely faded from current practice. If there is no issue of an applicable local standard of care, the locality language should be deleted. *Purtill v. Hess,* 111 Ill.2d 229, 489 N.E.2d 867, 95 Ill.Dec. 305 (1986); *Karsten v. McCray,* 157 Ill.App.3d 1, 509 N.E.2d 1376, 109 Ill.Dec. 364 (2d Dist. 1987). The locality rule has also been applied in attorney malpractice cases. *O'Brien v.* Noble, 106 Ill.App.3d 126, 435 N.E.2d 554, 61 Ill.Dec. 857 (4th Dist. 1982).

Comment

In *Studt v. Sherman Health Sys.*, 951 N.E.2d 1131, 2011 Ill. LEXIS 1093, 351 Ill.Dec. 467 (2011), the Illinois Supreme Court distinguished between professional medical negligence and institutional medical negligence, holding that expert opinion testimony is required in a professional medical negligence action, except in limited circumstances. Compare with IPI Civil 105.03.01 Duty of a Healthcare Institution – Institutional Negligence.

This instruction supersedes IPI 105.01 found in the IPI 2011 and previous editions.