# Medical Standard of Care

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## Medical Standard of Care

This paper will focus on the standard of care a physician owes to his or her patient. It will begin with an overview of the relationship between duty and standard of care in medical negligence cases, after which it will discuss the general principles used by a court in determining the standard of care. The paper will proceed to highlight key factors considered by a court when conducting a standard of care analysis, and it will conclude by discussing two defences that are commonly raised against allegations of medical negligence that relate to the standard of care.

### DUTY OF CARE AND STANDARD OF CARE INTERRELATIONSHIP

The law is clear that in a physician/patient relationship, the doctor owes a duty of care to his or her patient. Although the duty of care is often thought of as an overarching duty of the doctor towards the patient, it may also be considered as a number of component duties, including duties to attend, to diagnose, to refer, to treat, to take notes, to anticipate, to instruct, and to reconsider.
For each of these specific duties, just as for the broader duty of care of doctor to patient generally, there is a corresponding standard of care. Because a duty of care in a case involving medical negligence is often taken for granted, a court's analysis will often focus on (or at least begin with) establishing the scope or degree of care required by the duty (standard of care).

Through the course of this paper reference will be made to case-law that helps in the determination of standards of care associated with the component duties noted above. With the foregoing in mind, however, it is important to remember that there is an overriding principle in the determination of a doctor's standard of care, and that it is important for courts not to focus too narrowly on one specific alleged wrongdoing because of the potential risk of collapsing the broad standard of care analysis into an examination of only one feature that may confuse the issue: Ellen I. Picard & Gerald B. Robertson, Legal Liability of Doctors and Hospitals in Canada, 4th ed. (Toronto: Thomson Canada Limited, 2007) "Picard", p. 296. The overriding principle in a standard of care analysis will be discussed presently.

### STANDARD OF CARE GENERALLY

A determination of the appropriate standard of care is a question of law; whether that standard of care has been met is a question of fact: ***Allen (Next Friend of) v. University Hospitals Board***, 2002 ABCA 195, at para. 8.

The following passage from ***Percy v. Kieser***, [2005] A.J. No. 1757 (Q.B.) at para. 77 sets out the generally accepted statement of law regarding the standard of care to be exercised by a physician:

> A doctor undertakes that she possesses and utilizes the skill, knowledge and judgment of the average reasonable doctor. In judging the average reasonable doctor regard must be had to the special class and community to which the doctor belongs. If she holds herself out as a specialist, a higher degree of skill is required of her, equal to that of a reasonably competent

member in her group of specialists: Wilson v. Swanson, [1956] S.C.R. 804; Challand v. Bell (1959), 18 D.L.R. (2d) 150 at 154 (Alta. S.C.).

The classic statement with respect to standard of care was stated in ***Crits v. Sylvester***, [1956] O.R. 132 (C.A.) at 143; aff'd [1956] S.C.R. 991:

> Every medical practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. He is bound to exercise that degree of care and skill which could reasonably be expected of a normal, prudent practitioner of the same experience and standing, and if he holds himself out as a specialist, a higher degree of skill is required of him than one who does not profess to be so qualified by special training and ability.

These quotations highlight the well-entrenched and overriding principle that the doctor must conduct himself or herself according to the standard of the reasonable physician with reference to the particular circumstances at the material time. The test is an objective one and does not take into account the individual's own physical characteristics, intelligence, or personality: Picard, 227.

To illustrate the variety of standards of care based on the component duties of care listed above, note the case of ***Skeels Estate v. Iwashkiw***, 2006 ABQB 335. In that case, an allegation was made that a family practitioner whose practice included a component of low risk obstetrics had breached the standard of care in delivering a baby. The baby experienced shoulder dystocia (a situation where the shoulder of the infant cannot pass below the pubic symphysis of the mother) in delivery. The court highlighted the standard of care relating to a family practitioner in the position of the defendant, at para. 81:

> First, [the standard of care] embodies the requirement to stay current.
>
> Second, it embodies the requirement to understand concepts of informed consent and to be able to communicate these concepts in a fair, balanced and complete way so that a patient may make an informed decision.
>
> Third, the practitioner must know the relative risk of the condition occurring and the risks of probable outcomes if the condition does occur.
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> Fourth, the practitioner must know the proper medical response if the risk occurs; including the requirement to call for help, if that is the appropriate response.
>
> Fifth, the practitioner must have a clearly defined plan for a proper medical response if the practitioner encounters the problem, be in control of the treatment environment and be able to implement the proper medical response.