THE STANDARD OF CARE: FIVE FAQS

Q1: What exactly is the standard of care?

A:
The standard of care is commonly understood by physicians to be what is appropriate treatment for a particular patient depending upon his or her particular condition. Although it applies to medicine, the standard of care is in fact a legal term. While the precise definition varies from state to state, most are similar to that found in Connecticut Code §52-184c: "...that level of care, skill and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers."

While at one time the standard of care was dependent upon a physician's location (a physician in the tiny town of Pittsburg, Kansas for example, was not expected to meet the same standards as a physician in the large city of Pittsburgh, Pennsylvania), very few states have retained the locality standard. Given today's easy access to research via the Internet and consultations via telehealth, the majority of states follow a national standard, and it would be our risk management advice that psychiatrists follow this standard as well.

It's important to remember that the standard of care does not mean optimal care. It is a continuum, with barely acceptable care at one end, and the ultimate in care at the other end. Of course, physicians should always aim in the direction of the ultimate in care, but from a malpractice liability perspective, as long as they make it onto the continuum, they should be able to avoid exposure.

To demonstrate that their care was appropriate – particularly if an unanticipated outcome later suggests that care was substandard - physicians should document their clinical judgment and decision-making process so that their treatment can be understood, whether by expert witnesses in litigation or subsequent treaters.

Q2: What is the relevance of the standard of care to psychiatrists?

A:
The standard of care is relevant in medical malpractice lawsuits. To prevail in a malpractice case, the plaintiff must prove all four of the following elements:

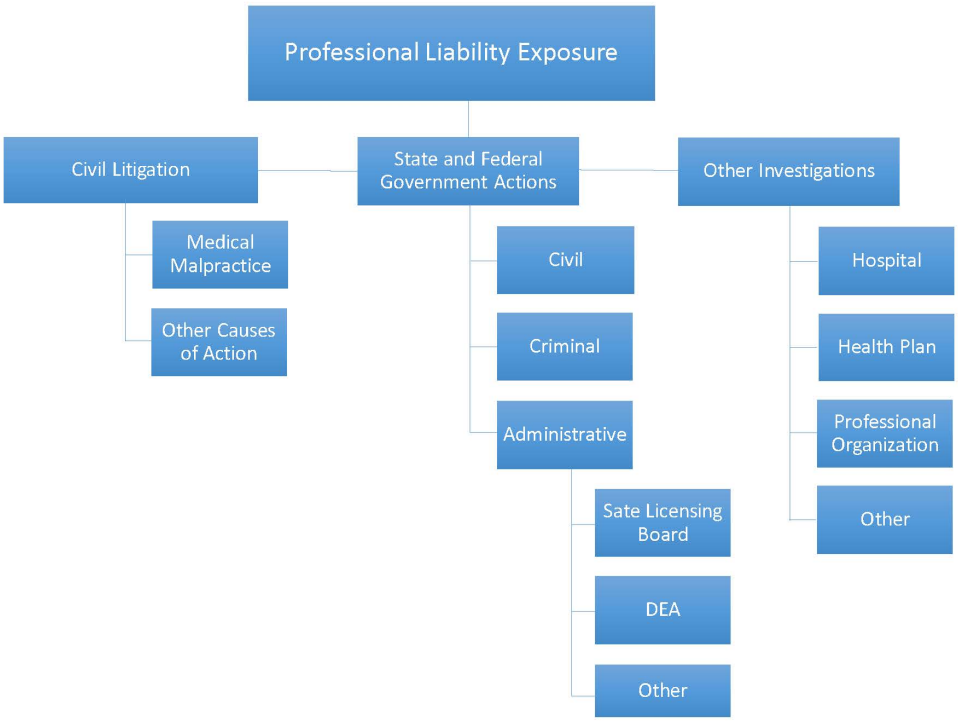
Duty: The physician owed a duty to meet the standard of care to the plaintiff patient.

Negligence: Breach - the physician did not meet the standard of care.

Harm: The plaintiff suffered some type of harm – physical, emotional, and/or financial.

Causation: The plaintiff's harm was directly caused by the defendant physician's failure to meet the standard of care.
In order to prove all four of these elements, the plaintiff must be able to demonstrate what the standard of care was in a particular instance and how the defendant physician failed to meet it.

But the standard of care is not relevant in all liability actions that can be brought against psychiatrists. As can be seen on the chart on the following page, medical malpractice, where the standard of care is relevant, is only one of the many different types of actions that can be brought against psychiatrists.



Notes:
* These actions are not mutually exclusive
* Professional liability insurance policies do not cover all these actions

The standard of care – what reasonably prudent similar health care providers are doing in similar circumstances – is not relevant in government investigations. In those cases, what other psychiatrists are doing is irrelevant; the sole question is whether the psychiatrist under investigation followed the law.

Q3: How is the standard of care determined?

A:
There are a variety of factors that can evidence the applicable standard of care in any clinical situation. In descending order of relevance, these factors are:

- Statutes – federal and state, such as prescribing laws.
- Regulations – federal and state, such as confidentiality regulations.
- Court opinions – such as duty to warn case decisions.
- Other regulatory statements – federal and state, such as guidelines from licensing boards.
- Authoritative clinical guidelines – in and of themselves, guidelines are not the standard of care, but are a factor that will be sued to determine the standard of care. Just as following guidelines does not preclude negligence, not following guidelines does not equal negligence. If authoritative clinical guidelines (not utilization review guidelines) are not
- followed, the reason and clinical judgment should be documented.
- Policies and guidelines from professional organizations, such as from the APA, AACAP, etc.
- Journal / research articles
- Accreditation standards
- Facility policies and procedures
- Etc.

In litigation, each side's expert witnesses will testify as to the applicable standard of care, based on the factors listed above, in addition to their own clinical experience. Contemporaneous documentation of your decision making (what you did and why,

as well as what you considered but rejected and why) will enable an expert witness in litigation to understand your treatment decisions. The fact finder, the jury (or the judge in a case without a jury), will decide which side's expert is determinative.

Q4: Does the standard of care change during disasters to some type of emergency standard of care?

A:
No, as discussed in the first question above, the standard of care is basically what a reasonably prudent similar health care provider would do in similar circumstances. In light of this, there is flexibility for the standard of care to be tailored to the specific circumstances, so there is no need for an emergency or disaster modified standard of care.

Q5: Does the standard of care change when doing telepsychiatry?

A:
No. States agree that the standard of care for telemedicine is the same as if seeing the patient in person. States that have answered this question have done so by statute, regulation, or licensing board guidance.