

CV301B Elements of a medical negligence claim.

To establish that (name of defendant) was at fault, (name of plaintiff) has the burden of proving two things, a breach of the standard of care, and that the breach was a cause of (name of plaintiff)'s harm.

References

Meeks v. Peng, 2024 UT 5, ¶¶ 34-43, --- P.3d ----.

Committee Amended

March 2014.

CV301C "Standard of care" defined.

A [health care provider] [doctor] is required to use that degree of learning, care, and skill used in the same situation by reasonably prudent [providers] [doctors] in good standing practicing in the same [specialty] [field]. This is known as the "standard of care." The failure to follow the standard of care is a form of fault known as either "medical negligence" or "medical malpractice." (They mean the same thing.)

The standard of care is established through expert witnesses and other evidence. You may not use a standard based on your own experience or any other standard of your own. It is your duty to decide, based on the evidence, what the standard of care is. The expert witnesses may disagree as to what the standard of care is and what it requires. If so, it will be your responsibility to determine the credibility of the experts and to resolve the dispute.

References

Meeks v. Peng, 2024 UT 5, ¶¶ 34-43, --- P.3d ----.

Lyon v. Bryan, 2011 UT App 256 (jury entitled to disregard even unrebutted expert testimony). *Jensen v. IHC Hosps., Inc.*, 2003 UT 51, ¶¶ 96, 82 P.3d 1076.

Schaerrer v. Stewart's Plaza Pharmacy, 2003 UT 43, 79 P.2d 922.

Dalley v. Utah Valley Regional Med. Ctr., 791 P.3d 193, 195 (Utah 1990).

Dikeou v. Osborn, 881 P.2d 943, 947 (Utah 1981).

Chadwick v. Nielsen, 763 P.2d 817, 821 (Utah 1981).

Kent v. Pioneer Valley Hospital, 930 P.2d 904 (Utah App. 1997).

Robb v. Anderton, 863 P.2d 1322 (Utah App. 1993).

Farrow v. Health Servs. Corp., 604 P.2d 474 (Utah 1979).

MUJI 1st Instruction

6.2

Committee Notes

The Committee has met and considered footnote 5 from the *Meeks* decision, and determined that the instructions, when read together, accurately reflect the law. CV301B states it is the plaintiff's burden to prove breach of the standard of care, and proving the standard of care is implicit in that instruction. Additionally, CV301C is generally read immediately after CV301B. If either party has additional concerns, it may be appropriate to combine CV301B and CV301C into a single instruction to further clarify that the burden is on the plaintiff. A minority of the Committee advocated amending the language of the instruction regarding the burden of proof.

In *Nielson v. Pioneer Valley Hospital*, 830 P.2d 270 (Utah 1992), and *Brady v. Gibb*, 886 P.2d 104 (Utah App. 1994), the courts held that instructions similar to this should not be given in conjunction with a "common knowledge" or res ipsa loquitor instruction unless the plaintiff is also alleging breach of a different standard of care.

Instruction CV129, Statement of opinion, should not be given when this instruction is used, as it instructs the jurors that they may disregard expert testimony.

Instruction CV324, Use of alternative treatment methods, should also be given when defendant claims to have used an alternative treatment method.