

A patient who had suffered a severe fracture of her leg was treated by an orthopedist, who set the patient's leg and put it in a cast. When the leg continued to bother the patient six months later, she consulted a second orthopedist in the same town. The second orthopedist surgically inserted a pin to facilitate healing.

The patient brought a malpractice action against the first orthopedist, claiming that he should have surgically inserted a pin at the time of initial treatment.

The only evidence that the patient offered in support of her malpractice claim was the testimony of the second orthopedist, as follows:

In response to the question "Would you have inserted a pin initially?" the second orthopedist testified, "I personally would not have been satisfied that the leg would heal properly without a pin."

At the close of the patient's evidence, the first orthopedist moved for judgment as a matter of law. Should the motion be granted?

- A. No, because the patient has introduced evidence that the first orthopedist failed to give the care that the second orthopedist would have provided.
- B. No, because the second orthopedist practices in the same town and field of specialty as the first orthopedist.
- C. Yes, because the patient has failed to introduce evidence that the first orthopedist's care fell below the professional standard of care.
- D. Yes, because the second orthopedist also treated the patient and is thus not sufficiently objective to offer expert testimony.

Explanation:

Elements of professional malpractice

Duty	All professionals (eg, physicians, lawyers, nurses) owe clients professional standard of care
Breach	Professional failed to exercise same knowledge, skill & care as another professional in similar community National (not community) standard applied to medical specialists*
Causation	Breach actually & proximately caused plaintiff's harm
Damages	Plaintiff suffered physical harm (ie, personal injury or property damage)

*A modern trend applies a national standard of care to *all* physicians.

All **professionals** owe their clients a professional **standard of care**. For most professionals, this means that they must demonstrate the **same knowledge, skill, and care** as a **normal member** of the profession in a **similar community**. However, **medical specialists** (eg, orthopedists) are held to a **national standard** of care. Any professional whose conduct falls below the applicable standard of care and causes the plaintiff physical harm is liable for malpractice (a specialized negligence claim).

Here, the first orthopedist set the patient's fractured leg and put it in a cast without inserting a pin. In the patient's malpractice action, a second orthopedist testified that he *personally* would not have been satisfied that the leg would heal without a pin. However, this testimony does not establish that the first orthopedist failed to provide the same level of care as normal orthopedists *nationwide* (**Choice A**). And since the patient has offered no other evidence to support her claim, the court should grant the first orthopedist's motion for judgment as a matter of law.

(Choice B) The fact that both orthopedists practice in the same town and field shows that they are comparable professionals in similar communities—but a national standard of care applies here. And the second orthopedist's testimony as to his *personal* standard of care does not prove that the first orthopedist breached a *national* (or community) standard of care.

(Choice D) The fact that the second orthopedist also treated the patient does not bar his **expert testimony** establishing breach of the applicable standard of care. However, his testimony failed to do so.

Educational objective:

Most professionals are required to demonstrate the same knowledge, skill, and care as a normal member of the profession in a similar community. But medical specialists (eg, orthopedists) are held to a national standard.

References

Restatement (Second) of Torts § 299A (Am. Law Inst. 1965) (explaining the professional standard of care in malpractice cases).

O'Neil v. Great Plains Women's Clinic, Inc., 759 F.2d 787, 789–91 (10th Cir. 1985) (applying a national standard of care in a malpractice action against a specialist).

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