

1 **13-1101. Duty of doctor or other health care provider.**

2 In [treating] [operating upon] [making a diagnosis of] [caring for] a patient,
3 _____ (*name of defendant*) is under the duty to possess and apply the
4 knowledge and to use the skill and care ordinarily used by reasonably well-qualified [doctors]
5 [_____]'s (*other health care provider*)] practicing under similar circumstances,
6 giving due consideration to the locality involved. A [doctor] [_____ (*other health*
7 *care provider*)] who fails to do so is negligent.

8 [The only way in which you may decide whether the [doctors] [_____]'s
9 (*other health care provider*)] in this case possessed and applied the knowledge and used the skill
10 and care which the law required of [~~him~~ [~~her~~]them] is from evidence presented in this trial by
11 [doctors] [_____]'s (*other health care provider*)] testifying as expert witnesses. In
12 deciding this question, you must not use any personal knowledge of any of the jurors.]

13 USE NOTES

14 The name of the defendant should be inserted in the first blank. In the other blanks, the
15 type of health care provider, such as doctor, nurse, or chiropractor, should be inserted. Bracketed
16 language should be chosen as appropriate. The bracketed final paragraph should be omitted in
17 those cases in which the court determines that expert testimony is not required and negligence can
18 be determined by resort to common knowledge ordinarily possessed by the average person.

19 This instruction sets forth the general standard of care applicable to a medical professional.
20 Where the defendant held [~~himself or herself~~]themselves out as a specialist, UJI 13-1102 NMRA
21 should be used instead of this instruction.

1 [As amended, effective January 1, 1987; November 1, 1991; August 15, 1997; approved, effective
2 February 24, 1998; as amended by Supreme Court Order No. S-1-RCR-2025-00126, effective for
3 all cases pending or filed on or after December 31, 2025.]

4 **Committee commentary.** — This chapter was revised in 1997 because, in the Committee’s
5 view, there had been sufficient development of the law and sufficient experience with the existing
6 instructions to justify overall revisions to update and improve the medical malpractice instructions
7 generally. Substantial comment from the bar was considered in revising these instructions.

8 The revised medical negligence instructions make a number of basic changes from the prior
9 instructions covering the same subject. These basic changes include:

10 1. The terms “doctor,” “physician,” and “defendant” were used interchangeably
11 throughout the prior instructions. A single term “doctor” has been substituted for simplicity
12 and uniformity. Similarly, “plaintiff,” “person,” and “patient” as used in the prior
13 instructions have been replaced with the single term “patient.” If the existence of a physician-
14 patient relationship is an issue for jury determination and the court is concerned that reference to
15 the parties as “doctor” and “patient” may be misleading to the jury, the court has the
16 power pursuant to ~~[NMRA 1-051(D)]~~ Rule 1-051(D) NMRA to modify this and other instructions
17 to refer to the parties as “plaintiff” and “defendant,” by their proper names, or in other
18 appropriate terms.

19 2. The term “malpractice” is no longer used. This term adds nothing to a jury’s
20 understanding of either a physician’s responsibilities or a patient’s rights. On the other hand,
21 labeling this area of negligence with a term such as “malpractice” injects an element which
22 carries with it the preconceptions of those who read or hear it. Hence, it has been eliminated. The

1 change in no way alters the applicable standard of care which, as the instruction makes clear, in
2 most cases is a professional standard defined by expert witnesses.

3 3. Reference to reasonably well-qualified practitioners in [“]“the same field of medicine[”]” as the
4 defendant, previously included in the statement of the standard of care, has been eliminated. The
5 phrase was included in the prior instruction to make clear that a physician is to be judged by the
6 standard of care that exists in that physician[’]s field of practice such as medicine, chiropractic
7 medicine, or osteopathy. It was not intended to define the kind of physician who may testify as an
8 expert in a malpractice case. That is not a jury question but one for the trial court, which must rule
9 on whether an expert witness is qualified to testify in a case. *See* [NMRA]Rule 11-702 NMRA. In
10 practice, however, the phrase was used in argument and often considered by the jury to mean that
11 a physician could be judged only by the testimony of another physician practicing in the same
12 specialty. This is contrary to New Mexico law. *See Vigil v. Miners Colfax Med. Ctr.*, 1994-NMCA-
13 054, ¶ 20, 117 N.M. 665, [~~670~~,] 875 P.2d 1096 [~~1101~~ (Ct. App.)], *cert. denied sub nom. Vigil v.*
14 *Tiku*, 117 N.M. 744, 877 P.2d 44 (1994); *Blauwkamp v. [University]Univ. of N.M. Hosp.*, 1992-
15 NMCA-048, ¶ 21, 114 N.M. 228, [~~233~~,] 836 P.2d 1249 [~~1254~~ (Ct. App.)], *cert. denied*, 114 N.M.
16 82, 835 P.2d 80 (1992). Additionally, in many areas of medicine, physicians from different fields
17 of medicine perform essentially the same procedures using the same standard of practice.
18 Consequently, to include the phrase [“]“the same field of medicine[”]” places an issue before the
19 jury that does not exist under the law. To the extent any differences between the field of practice
20 of a qualified expert and that of the defendant go to the weight of the expert[’]s testimony, another
21 uniform instruction informs the jury that it is their prerogative to determine the weight to be given
22 to the testimony of an expert witness. *See* UJI [Civ.]13-213 NMRA.

1 4. While this chapter of the Uniform Jury Instructions is intended to be complete with respect to
2 the basic elements of liability, other instructions from the general negligence chapter may be
3 applied in the medical negligence area as the law evolves and the circumstances make it
4 appropriate.

5 5. The final paragraph is included in brackets to make it clear that expert testimony is not required
6 if the jury can decide the matter based on its common knowledge without the need for medical or
7 scientific expertise.

8 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]