

**1023.7 PROFESSIONAL NEGLIGENCE: REGISTERED NURSES AND LICENSED TECHNICIANS PERFORMING SKILLED SERVICES**

At the time in question, (defendant) was a (registered nurse) (licensed technician) serving in this capacity at \_\_\_\_ Hospital. As a (registered nurse) (licensed technician), it was (defendant)'s duty in (describe the service rendered (plaintiff) to use the degree of care, skill, and judgment which reasonable (registered nurses) (licensed technicians) would exercise in the same or similar circumstances, having due regard for the state of learning, education, experience, and knowledge possessed by (registered nurses) (licensed technicians) at the time in question. A (registered nurse) (licensed technician) who fails to conform to this standard is negligent. The burden is on (plaintiff) to prove that (defendant) was negligent.

A (registered nurse) (licensed technician) is not negligent solely because a bad result may have followed (describe the professional service rendered by the defendant). The standard you must apply in determining if (defendant) was negligent is whether (defendant) failed to use the degree of care, skill, and judgment which a reasonable (registered nurse) (licensed technician) would exercise at the time the service was rendered.

You have heard considerable testimony during this trial from experts in the field of nursing and medicine who have been called as expert witnesses by both sides. The reason for this is because the degree of care, skill, and judgment which a reasonable (registered nurse) (licensed technician) would exercise is not a matter within the common knowledge of laypersons. These standards are within the special knowledge of experts in the field of nursing and medicine and can only be established by their testimony. You, therefore, may not speculate or guess what those standards of care, skill, and judgment are in deciding this case, but rather must attempt to determine this from the expert testimony that you have heard

during this trial. (In determining the weight to be given an opinion, you should consider the qualifications and credibility of the expert and whether the reasons for the opinion are based on facts in the case. You are not bound by any expert's opinion.)

(Insert appropriate burden of proof instruction.)

(Insert appropriate cause instruction.)

#### COMMENT

The instruction and comment were originally approved in 1974 and revised in 1988, 1998, 2011, and 2016.

The instruction was revised in 1998 to conform to the explanation of professional negligence in Nowatske v. Osterloh, 198 Wis.2d 419, 543 N.W.2d 265 (1996). See Comment to Wis JI-Civil 1023. The previous version of this instruction based the standard of care on what was "usually exercised" by registered nurses or licensed technicians or what "the average" registered nurse or technician would do.

Tills v. Elmbrook Memorial Hosp., Inc., 48 Wis.2d 665, 180 N.W.2d 699 (1970); Shier v. Freedman, 58 Wis.2d 269, 206 N.W.2d 166 (1973); Trogun v. Fruchtman, 58 Wis.2d 596, 207 N.W.2d 297 (1973).

**Expert Testimony.** For the requirement of expert testimony on the standard of professional nursing care, see Kujawski v. Arbor View Health Care Center, 139 Wis.2d 455, 407 N.W.2d 249 (1987). In 2011, the Committee added language which instruct the jury that in determining the weight to be given expert testimony, it should consider the qualifications and credibility of the expert and whether the reasons for the opinion are based on facts in the case. The jury is further instructed that it is not bound by any expert's opinion.

**Negligence; Standard of Care.** See the comment to Wis JI-Civil 1005.