

**1023.14 PROFESSIONAL NEGLIGENCE: DENTAL**

In [(treating) (diagnosing) (plaintiff)'s (injuries) (condition)], (dentist) was required to use the degree of care, skill, and judgment which reasonable (dentists who are in general practice) (specialists who practice the specialty which (dentist) practices) would exercise in the same or similar circumstances, having due regard for the state of dental science at the time (plaintiff) was (treated) (diagnosed). A dentist who fails to conform to this standard is negligent. The burden is on (plaintiff) to prove that (dentist) was negligent.

A dentist is not negligent, however, for failing to use the highest degree of care, skill, and judgment or solely because a bad result may have followed (his) (her) care and (treatment) (diagnosis). The standard you must apply in determining if (dentist) was negligent is whether (dentist) failed to use the degree of care, skill, and judgment which reasonable (dentists who are in general practice) (specialists who practice the specialty which (dentist) practices) would exercise given the state of dental knowledge at the time of the (treatment) (diagnosis) of (plaintiff).

**[Use this paragraph only if there is evidence of two or more alternative methods of dental treatment or diagnosis recognized as reasonable:** If you find from the evidence that more than one method of (treatment for) (diagnosing) (plaintiff)'s (injuries) (condition) was recognized as reasonable given the state of dental knowledge at that time, (dentist) was at liberty to select any of the recognized methods. (Dentist) was not negligent because (he) (she) chose to use one of these recognized (treatment) (diagnosis) methods rather than another recognized method if (he) (she) used reasonable care, skill, and judgment in administering the method.]

You have heard testimony during this trial from witnesses who have testified as experts. The reason for this is because the degree of care, skill, and judgment which a reasonable dentist would exercise is not a matter within the common knowledge of laypersons. This standard is within the special knowledge of experts and can only be established by the testimony of experts. You, therefore, may not speculate or guess what the standard of care, skill, and judgment is in deciding this case, but rather must attempt to determine it from the expert testimony that you heard during this trial.

**[Insert the appropriate cause instruction. To avoid duplication, JI-1500 should not be given if the following two bracketed paragraphs are used.]**

[The cause question asks whether there was a causal connection between negligence on the part of (dentist) and (plaintiff)'s (injury) (condition). A person's negligence is a cause of a plaintiff's (injury) (condition) if the negligence was a substantial factor in producing the present condition of the plaintiff's health. This question does not ask about "the cause" but rather "a cause." The reason for this is that there can be more than one cause of (an injury) (a condition). The negligence of one (or more) person(s) can cause (an injury) (a condition), or (an injury) (a condition) can be the result of the natural progression of (the injury) (the condition). In addition, the (injury) (condition) can be caused jointly by a person's negligence and also the natural progression of the (injury) (condition).]

[If you conclude from the evidence that the present condition of (plaintiff)'s health was caused jointly by (dentist)'s negligence and also the natural progression of (plaintiff)'s (injury) (disease), you should find that the (dentist)'s negligence was a cause of the (plaintiff)'s present condition.]

[The evidence indicates without dispute that when (plaintiff) retained the services of (dentist) and placed (himself) (herself) under (dentist)'s care, (plaintiff) was suffering from some (disability resulting from injuries sustained in an accident) (illness or disease). (Plaintiff)'s then physical condition cannot be regarded by you in any way as having been caused or contributed to by any negligence on the part of (dentist). This question asks you to determine whether the condition of (plaintiff)'s health, as it was when (plaintiff) placed (himself) (herself) under (dentist)'s care, has been aggravated or further impaired as a natural result of the negligence of (dentist)'s treatment.]

**[Insert appropriate damage instructions.]**

[(Plaintiff) sustained injuries before the treatment by (dentist). Such injuries have caused (and could in the future cause) (plaintiff) to endure pain and suffering and incur some disability. In answering these questions on damages, you will entirely exclude from your consideration all damages which resulted from the original injury; you will consider only the damages (plaintiff) sustained as a result of the treatment by (dentist).]

[It will, therefore, be necessary for you to distinguish and separate, first, the natural results in damages that flow from (plaintiff)'s original (condition) (injuries) and, second, those that flow from (dentist)'s treatment and allow (plaintiff) only the damages that naturally resulted from the treatment by (dentist).]

**COMMENT**

This instruction and comment were approved in 1998 as (JI-Civil 1023.10). The comment was updated in 2015 and 2016. The instruction was re-numbered in the January 2005 supplement. The instruction reflects the changes recommended by the Wisconsin Supreme Court for instructing juries on professional negligence. Nowatske v. Osterloh, 198 Wis.2d 419, 543 N.W.2d 25 (1996).

**Expert Testimony.** Expert Testimony is required. See Albert v. Waelti, 133 Wis.2d 142, 394 N.W.2d 752 (Ct. App. 1986). The degree of skill required of a dentist performing dental procedures, such as a root canal or removal of a cap, and the question of whether a violation of that standard caused the plaintiff's medical condition are not within the common knowledge of laypersons. Expert testimony is required on both these issues, except in the rare case where the common knowledge of laypersons affords a basis for finding negligence. In Waelti, the court of appeals saw no distinction between physicians and dentists.

**Duty to Inform a Patient.** See Wis JI-Civil 1023.15, 1023.16, and 1023.17.

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