

PRESENTATION 5: *The Standard of Care*

Negligence is a tort. A tort is a civil wrong for which the courts will grant a remedy.

Negligence is a violation of the “reasonable person rule” that results in damage or injury to others. Professional negligence is a violation of the “reasonable professional rule” that results in damage or injury to others. It’s better known as a failure to abide by the standard of care which results in damage or injury to others.

Standard of care is the ordinary skill and competence exercised by members of a profession in good standing in the community at the time of the event creating the cause of action.

- Ordinary skill and competence
- Profession (something done principally with one’s head, not hands)
- In good standing in the community

- Action (litigation and trial)

Professional negligence: A failure to abide by the standard of care that results in injury or damage to others.

- Are the damages real? Unjust enrichment.

The trier of fact must rely on an expert witness to determine the standard of care. The opinion of an expert must be regarded as fact.

- How does a trier of fact decide which expert to believe?
- Impeaching the testimony of a hired gun. The case of the inexpert expert.
Recommended Practices for Design Professionals Engaged as Experts in the Resolution of Construction Industry Disputes.