

105.03.01 Duty Of A Health Care Institution--Institutional Negligence

Negligence by a [hospital/other institution] is the failure to do something that a reasonably careful [hospital/other institution] would do, or the doing of something that a reasonably careful [hospital/other institution] would not do, under circumstances similar to those shown by the evidence.

[In deciding whether the defendant [hospital/other institution] was negligent, you may consider (opinion testimony from qualified witnesses) (evidence of professional standards) (evidence of by-laws/rules/regulations/policies/procedures) (evidence of community practice) (and other evidence) presented in this case.]

The law does not say how a reasonably careful [hospital/other institution] would act under these circumstances. That is for you to decide.

Notes on Use

This instruction incorporates the duty of a hospital or other treating institution as defined in *Darling v. Charleston Community Memorial Hosp.*, 33 Ill.2d 326, 211 N.E.2d 253 (1965). *See also Stogsdill v. Manor Convalescent Home, Inc.*, 35 Ill.App.3d 634, 343 N.E.2d 589 (2d Dist.1976); *Magana v. Elie*, 108 Ill.App.3d 1028, 439 N.E.2d 1319, 64 Ill.Dec. 511 (2d Dist.1982); *Wogelius v. Dallas*, 152 Ill.App.3d 614, 504 N.E.2d 791, 105 Ill.Dec. 506 (1st Dist.1987); *Alford v. Phipps*, 169 Ill.App.3d 845, 523 N.E.2d 563, 119 Ill.Dec. 807 (4th Dist.1988). Ordinarily, this duty involves the hospital's own management responsibility.

This instruction does not apply where the institution's liability is based on vicarious liability for the professional negligence of a doctor or nurse or similar professional. For such vicarious liability, use IPI 105.01 with appropriate agency instructions.

This instruction does not apply if the case involves only ordinary principles of negligence, such as premises liability, as opposed to *professional* negligence.

If the jury is entitled to rely on "common knowledge" in determining the standard of care, omit the second paragraph of this instruction.

Comment

A hospital is not an insurer of a patient's safety, but it owes the patient a duty of protection and must exercise reasonable care toward him as his known condition requires. *Slater v. Missionary Sisters of the Sacred Heart*, 20 Ill.App.3d 464, 314 N.E.2d 715 (1st Dist.1974). A hospital is under a duty to conform to the legal standard of reasonable conduct in light of the apparent risk. *Ohligschlager v. Proctor Community Hosp.*, 55 Ill.2d 411, 303 N.E.2d 392 (1973); *Johnson v. St. Bernard Hosp.*, 79 Ill.App.3d 709, 399 N.E.2d 198, 35 Ill.Dec. 364 (1st Dist.1979); *Andrews v. Northwestern Memorial Hosp.*, 184 Ill.App.3d 486, 540 N.E.2d 447, 452; 132 Ill.Dec. 707, 712 (1st Dist.1989). "A hospital has an independent duty to its patients to review and supervise treatment." *Id.*

Whether or not the defendant has conformed to this standard of care may be proved by a

wide variety of evidence, including, but not limited to, expert testimony, hospital by-laws, statutes, accreditation standards, customs, and community practice. *Darling v. Charleston Community Memorial Hosp.*, 33 Ill.2d 326, 211 N.E.2d 253 (1965); *Andrews v. Northwestern Memorial Hosp.*, 184 Ill.App.3d 486, 540 N.E.2d 447, 452; 132 Ill.Dec. 707, 712 (1st Dist.1989). There is no case law on whether the breach of the duty of an institution must be proven generally only by expert testimony or other evidence of professional standards. Accordingly, the second paragraph of this instruction does not use the mandatory language contained in the third paragraph of IPI 105.01. *See Northern Trust Co. v. Louis A. Weiss Memorial Hosp.*, 143 Ill.App.3d 479, 492; 493 N.E.2d 6, 15; 97 Ill.Dec. 524, 533 (1st Dist.1986); *Andrews v. Northwestern Memorial Hosp.*, *supra* (expert *medical* testimony not required in an institutional negligence case to establish standard of care).

One must distinguish cases of institutional *professional* negligence from cases that involve only ordinary principles of negligence, such as premises liability. *Compare Kolanowski v. Illinois Valley Community Hosp.*, 188 Ill.App.3d 821, 544 N.E.2d 821, 136 Ill.Dec. 135 (3d Dist.1989) (hospital's alleged failure to provide adequate patient restraints, such as bed rails, was professional negligence requiring expert testimony) *with Owens v. Manor Health Care Corp.*, 159 Ill.App.3d 684, 512 N.E.2d 820, 111 Ill.Dec. 431 (4th Dist.1987) (fall from wheelchair in nursing home involved only ordinary negligence). This instruction necessarily applies only to the former.

The predecessor version of this instruction and its Notes on Use were criticized in *Ellig v. Delnor Community Hospital*, 237 Ill.App.3d 396, 411-412; 603 N.E.2d 1203, 177 Ill.Dec. 829 (2d Dist.1992).