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# THE “MINIMALLY COMPETENT” ORTHODONTIST: THE STANDARD OF CARE IS MISUNDERSTOOD



## SPECIAL REPORT

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## THE “MINIMALLY-COMPETENT” ORTHODONTIST: THE STANDARD OF CARE IS MISUNDERSTOOD

There are several opinions being offered concerning issues in orthodontic diagnosis, treatment planning and treatment and how it relates to the standard of care. These opinions, whether in articles, presentations or otherwise, come from individuals with diverse of backgrounds and experience. As with all opinions, each practitioner/reader will need to evaluate the content for him- or herself.

A brief explanation of professional healthcare negligence (malpractice) or tort law is important to understand and to gain a perspective on how the standard of care and risk management concepts fit together. There are four (4) elements that a plaintiff/patient must prove in order to make a legal case for malpractice. They are that:

1. a duty of care was owed, i.e. that there was a doctor-patient relationship;
2. there was a breach of the duty of care; or, that the care provided/offered was deemed legally inadequate;
3. the breach of the duty of care was the cause of the patient’s injury; and,
4. damages occurred as a result of the breach.

As with all healthcare, the baseline legal duty of care for acceptable diagnosis, treatment planning and treatment is practicing at or above the “standard of care”, i.e., legally adequate. Practicing below the standard of care is considered legally inadequate and, as such, it is a breach of the duty. It proves elements 1 and 2 above and if elements 3 and 4 can be demonstrated, the malpractice case will be proven and a monetary award to the patient will result.

Once the meaning of the “standard of care” is clear, setting one’s treatment sights at this legal standard isn’t what most clinicians have as their goal. As developed in court cases and/or by statute in all jurisdictions in the United States, the standard of care is defined as: “what the ordinary, prudent, reasonable practitioner would do or should have done under the same or similar circumstances.” While some states vary the specific language, however, that is the general definition.

Furthermore, court cases have further defined the ordinary, prudent and reasonable practitioner to be “the minimally competent practitioner”, for example:

“The appropriate standard of care in a medical malpractice case is objective and centers around exercising the degree of care, diligence, and skill ordinarily possessed and exercised by a **minimally competent** and reasonably diligent, skillful, careful, and prudent (practitioner) in that field of practice.”

*Bickham v. Grant*

A sample instruction to a jury in which the judge defines the standard that the jury must apply is:

“The Court instructs the jury that the word “negligence” as used in these instructions with regard to Dr. \_\_\_\_\_’s actions means the doing of some act which a reasonably prudent, **minimally competent** (practitioner) treating a patient such as Ms. \_\_\_\_\_ would not have done under the same or similar circumstances, or the failure to do some act which a reasonably prudent, minimally competent (practitioner) treating a patient such as Ms. \_\_\_\_\_ would have done under the same or similar circumstances. Therefore, if you believe that, during his care and treatment of Ms. \_\_\_\_\_, Dr. \_\_\_\_\_ acted as a reasonably prudent, minimally competent (practitioner) would have acted when faced with the same or similar circumstances, it is your duty to return a verdict for the defendant, Dr. \_\_\_\_\_. If you believe that, during his care and treatment of Ms. \_\_\_\_\_, Dr. \_\_\_\_\_ failed to act as a reasonably prudent, **minimally competent** (practitioner) would have acted when faced with the same or similar circumstances, it is your duty to return a verdict for the plaintiff.”

*Young v. \_\_\_\_\_*

**\*Note: Emphasis and portions in parentheses are added by the authors and case citations are omitted. In addition, whenever possible, the authors omit the defendant practitioner’s name. The full case citations as well as other background information are available upon request.**

Although this may be somewhat surprising at first blush, it is easily understood if one considers that a demonstration of “minimal competence” is all that is required to obtain a professional healthcare license to practice in any state.

This makes sense if you consider that of those taking state dental boards, approximately 90% pass on their first attempt. The criteria for passing the dental board examination reduces to a simple analysis as to who is minimally competent to practice, as described above. The practitioner does not need to be perfect...but should possess a minimal competence. The practitioner should have education, training and some level of skill, and hopefully, will then, through experience, treat patients in their practice conscientiously. By doing so, the practitioner can readily comply with the ethical and legal standard of care.

From the above, it should be clear to practitioners that their legal minimum goal is to practice to the standard of care. After speaking with many orthodontists, there exists among many a misconception that their goal for diagnostic, treatment planning and treatment is to practice to the standard of care. If that is their choice, so be it. However, understanding the real definition of the standard of care, few orthodontists feel that practicing to the standard of care is their professional goal.

If the goal of a practitioner is to offer optimal care or to demonstrate a "Passion for Excellence" as was the slogan for the recently held 110<sup>th</sup> Annual AAO Washington, DC meeting, orthodontists will strive for more than merely satisfying the legal standard of care, or that of "minimal competence". They will set their goals much higher.