

13-1119A. Duty of hospital; patient care.

In _____ (*insert description of conduct in question*), a hospital is under a duty to use ordinary care to avoid or prevent what a reasonably prudent person would foresee as an unreasonable risk of injury to another. A hospital that fails to do so is negligent. "Ordinary care" is that care which a reasonably prudent person would use in the conduct of the person's own affairs. What constitutes ordinary care varies with the nature of what is being done. As the risk of danger that should reasonably be foreseen increases, the amount of care required also increases. In deciding whether ordinary care has been used, the conduct in question must be considered in the light of all the surrounding circumstances.

In _____ (*insert description of conduct in question*), a hospital is under a duty to possess and apply the knowledge and to use the skill and care ordinarily used in reasonably well-operated hospitals under similar circumstances, giving due consideration to the locality involved. A hospital that fails to do so is negligent. The only way in which you may decide whether the hospital in this case possessed and applied the knowledge and used the skill and care which the law required of it is from evidence presented in this trial by _____ (*insert appropriate category, e.g., hospital administrators, doctors, nurses, or other health care providers*) testifying as expert witnesses. In deciding this question, you must not use any personal knowledge of any of the jurors.

USE NOTE

This instruction sets forth the duty of a hospital in providing patient care and describes how the hospital's compliance with that duty is assessed. It consists of two optional paragraphs. The first paragraph relates to conduct which can be evaluated by the jury without the aid of expert testimony, whereas the second concerns conduct which can be evaluated only in light of the testimony of expert witnesses. The trial court must determine which paragraph is applicable to the hospital conduct in question, depending on the particulars of the case. Different kinds of hospital conduct may be at issue in a single case, requiring both paragraphs to be given. See committee commentary. The conduct in question, such as "providing equipment appropriate for use in treating patients" or "developing protocols for the proper administration of certain medications", should be inserted in the blank at the beginning of the appropriate paragraph.

Where a more specific instruction from another chapter of these Uniform Jury Instructions is applicable to a claim against a hospital (*see, in particular, the premises liability instructions contained in Chapter 13*), the specific instruction with any appropriate modifications, rather than the more general instruction contained in this chapter, should be given. In cases of hospital liability for negligence in the credentialing of staff physicians, *see Diaz v. Feil*, 118 N.M. 385, 881 P.2d 745 (Ct. App. 1994).

The bracketed final paragraph should be omitted in those cases in which the court determines that expert testimony is not required and negligence can be determined by resort to common knowledge ordinarily possessed by the average person.

[13-1119 NMRA; as amended, effective August 15, 1997; as amended and recompiled, effective September 27, 1999.]