

DEFINING
STANDARD OF CARE

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 - Chair Robert W. Thompson, ASCE Fellow (Denver, CO)
 - Consensus Guidelines for Defining Standard of Care

STANDARD OF CARE

- **Why Is It Important?**
- **Common Definition**
- **Standard of Practice vs Standard of Care**
- **Bad Outcomes vs Negligence**
- **Venial Sins and Mortal Sins**
- **Non-Compliant Construction**

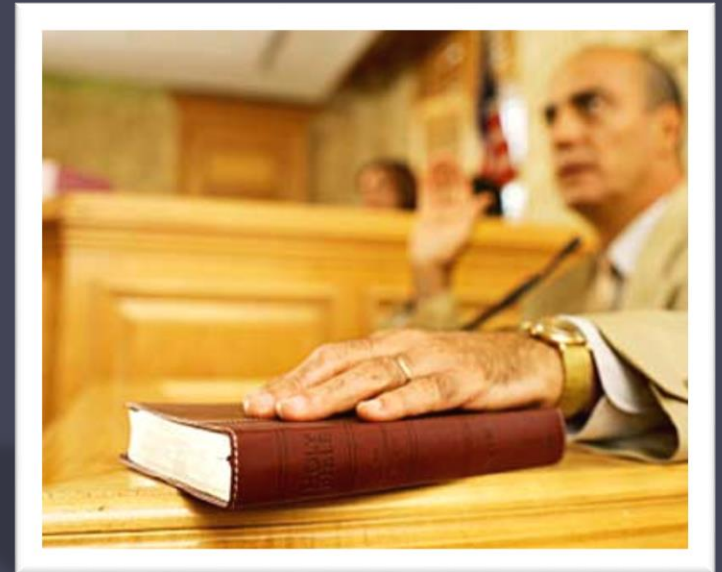
WHY IS IT SO IMPORTANT?

- Legal consequences
- Triggers assertion of negligence
- Triggers professional liability (E & O)
- No shades of grey



WHY IS IT SO IMPORTANT?

- **Serious business**
- **Who better to hold us accountable?**
- **No joy in concluding negligence**



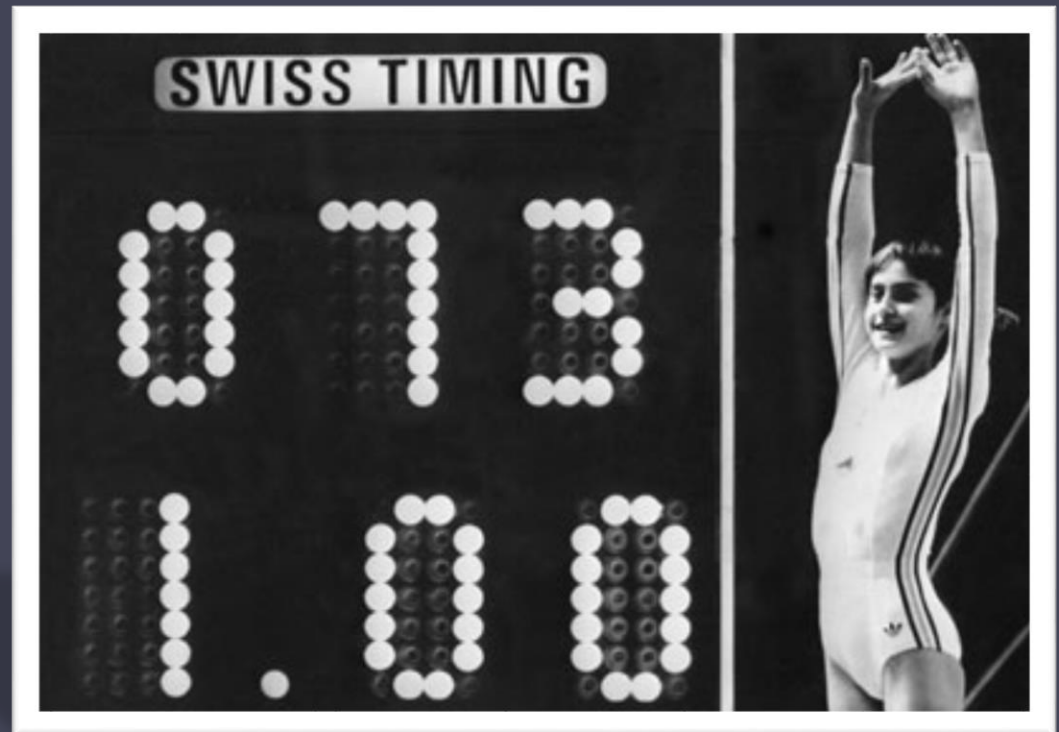
COMMON DEFINITION

Standard of care is that level of care normally practiced by a reasonable and prudent professional¹ under similar circumstances during the same time frame.

¹ engineer, architect, doctor, lawyer, etc.

GENERAL RULE OF LAW

It is not perfection.



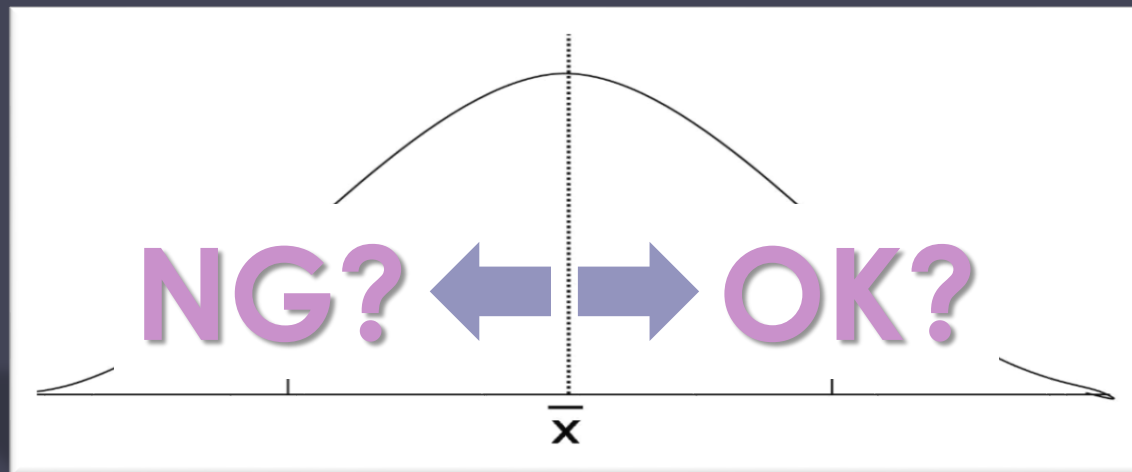
GENERAL RULE OF LAW

It is not defined by
what your practice is



GENERAL RULE OF LAW

It is not that of the most highly skilled, nor is it even that of the average member of the profession or trade, since those who have less than median or average skill may still be competent and qualified.



COMMON DEFINITION

*Standard of care is that level of care normally practiced by a reasonable and prudent professional **under similar circumstances** during the same time frame.*

SIMILAR CIRCUMSTANCES

- **Contract**
- **Type of design**
- **Budget?**
- **Locality**

LOCALITY



LOCALITY

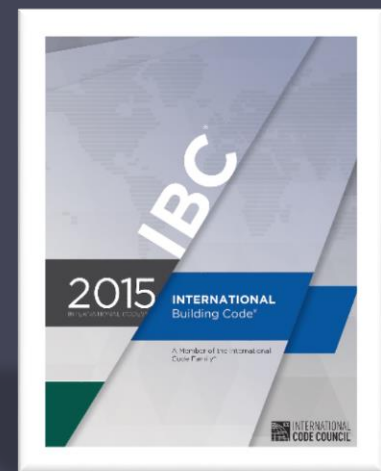
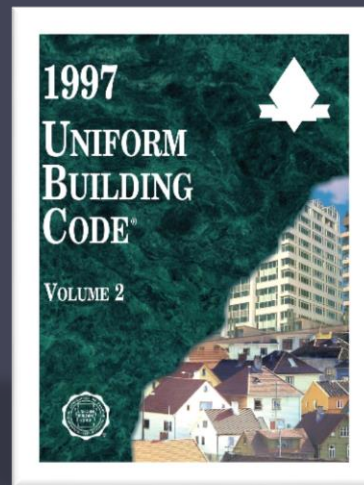
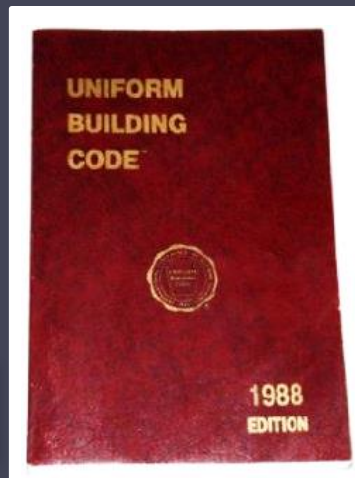
- **Climate**
- **Seismicity**
- **Geological conditions**
- **“Local” practice**

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DURING THE SAME TIME FRAME

- Practices evolve over time
- Technology evolves
- Codes change
- Body of knowledge increases with time



STANDARD OF PRACTICE VS STANDARD OF CARE

What is the difference?



TOAD



FROG

STANDARD OF PRACTICE

- *Standard of practice*
 - *what the profession typically does in a given circumstance and time frame.*
- *Standards of practice in the profession generally establish the standard of care to members practicing in that profession.*

STANDARD OF PRACTICE VS STANDARD OF CARE

There are rare exceptions.

If there is competent expert evidence that the standard of practice creates an undue risk of harm then the standard of practice is not necessarily conclusive of the standard of care.

*Example: Quintana v. United Blood Services,
827 P.2d 509 (Colo. 1992).*

BAD OUTCOMES vs NEGLIGENCE

“Those who hire engineers are not justified in expecting infallibility, but they can expect reasonable care and confidence. They purchase services not insurance.”

- Dr. Fu Hua Chen
Honorary Member
ASCE (1912 -1999)



BAD OUTCOMES VS NEGLIGENCE

- Unless an engineer expressly agrees, he or she does not guarantee or promise success simply by providing professional services.
- An unsuccessful outcome does not by itself mean that an engineer or other design professional was negligent.
- Plaintiff must establish that the professional breached their duty and that this breach caused damage.

BAD OUTCOMES VS NEGLIGENCE

- **Examples:**
 - Doctor has a patient die
 - Roof collapse due to snow loads that greatly exceed design values in code
 - Fire truck drives onto and damages parking deck only designed for passenger cars
 - Lawyer loses a case

VENIAL SINS AND MORTAL SINS

- SOC \neq Perfection
- All structural designs, drawings, and specifications have “errors”
- At what point does the number of small errors constitute falling below the SOC?
- Is one major error sufficient to conclude negligence?



VENIAL SINS AND MORTAL SINS



“EXCEEDING” THE SOC

“Someone has said that an engineer is one who can do with \$1 what any fool can do with \$2.”

- S.W. Hume, *Municipal Journal*, May 3, 1917.



NON-COMPLIANT CONSTRUCTION

Jury Instruction: If construction of the building deviated in a material way from Engineer's plans, specifications, or recommendations, then Engineer is not liable for the resulting damage if that damage occurred as a result of the deviation.

Balcom Industries, Inc. v. Nelson (CO 1969)

NON-COMPLIANT CONSTRUCTION



NON-COMPLIANT CONSTRUCTION

- *Does the Standard of Care question apply to contractors?*
- *Their responsibilities relate to compliance with plans and specs plus good workmanship.*
- *A duty to make sure work is sufficiently free from defects and deficiencies, such that it meets the requirements of the Contract documents.*

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QUESTIONS? COMMENTS?