

The application of the locality rule in texas research paper

[Law](#), [Criminal Justice](#)



Definition of terms

Locality Rule- This is the law used to measure health care providers and their omissions or actions on the threshold of how other similar professional in the field practicing in the same community act under the same circumstance of the case.

Standard of Care- This is the average degree of care, diligence and skill practiced by members of the in same profession, who are in the same locality in accordance with the current or modern state of medical and surgical science.

Medical customs-Procedures and methods used by physicians that are acknowledged and acceptable by members of the medical profession

Introduction

The cardinal objective of health care laws is to safeguard patients from substandard medical treatment and care from their doctors. If they receive substandard treatment the law provides for redress through compensation.

The general rule in such cases is that the standard of care of the medical attention provided should be the legally accepted treatment in that field.

During training medical practitioners are taught to base their threshold on national standards. However, numerous local authorities and state governments have set acceptable standards of medical malpractice. It is worth noting that the threshold stipulated by various state governments in areas of their jurisdiction can be a significant hindrance to medical progress. The locality rule, therefore, can act as a double edged sword. On one hand it

can act as a safeguard against malpractice by medical practitioners by stipulating local procedures and methods that are acknowledged and accepted. On the other hand, it can cause uncertainty on the part of the practitioner when he finds himself in a position to choose between local practices or evidence based standards of care.

When a medical practitioner undertakes to treat a patient, he is assumed to have consented to adhere to a legal duty to abide by the locally stipulated procedures and methods. Customarily, the standard of care, throughout the medical field' is that which a competent medical professional in the same field would have undertaken in the circumstances of the case. This means that there are no hard and fast rules. However, various states in the US have moved away from the norm. The state of Texas is no exception. Medical lawsuits are decided on the basis of local customs. Ideally medical expert witness from fellow colleagues in the same specialty is regarded as relevant and admissible evidence in the suit. In Texas the average number of expert witness is about 5 per trial on a case of medical malpractice. The principle purpose of the jury inter alia is to ascertain whether the methods and procedures applied by the defendant were consistent or inconsistent with establish medical customs in the locality. The expert witnesses are expected to also give their professional opinion on how they would have carried out the treatment. The plaintiff's attorney can also ask them whether they consider the defendant's actions proper or improper.

Justifications

The application of the locality rule in the medical field is critical. It became popular in 1880s. Nowadays it has been discredited by various courts of law. Nevertheless, a significant number of states and courts still adhere to the letter and spirit of this vital point of law. The rule is based on a fundamental principle of law known as equity. It is contrary to the principle of equity to expect that a doctor from the rural areas of the country would have the same experience, knowledge and expertise as his counterpart in developed cities. If these two practitioners were to be placed on the same standards of care, then justice would be defeated. In the strict adherence of the rule is to be implemented, a patient would have the onus of prove to demonstrate that the practitioner provided substandard treatment that what would ordinarily be provided in his community. Expert witnesses should also be from the vicinity. The cardinal justification, therefore, for the rule is that of fairness to the practitioner and the plaintiff.

Literature review

The locality rule has been used in various ways in courts of law. Plaintiff in medical suits may use it to show substandard care while the defendants may use it as a complete defence of their actions or omissions that constitute a fact in issue. In the case of *Barham v Hawk* (2005), for example, the rule was used by the defence to discredit and exclude evidence by a testimony of an expert witness who was not privy to the local standards of care. The courts can also come in handy to determine what the standard of care should be rather who is competent to give expert witness on the admissibility of the

rule. The consistent use of the rule in the state of Texas has not been without consequences. It has had adverse implications on many medical practitioners. The rule no longer serves its intended purpose of protecting physicians, but it imposes legal duties and obligations that must be met for one to have an absolute defence. This means that a physicians must not only be alive to any recent advances in his field, but must also be aware to the threshold of standard of care in his locality. It is argued that it is immaterial whether the local standards are considered substandard by the medical profession or at the national level. In Texas there is a presumption of the law enacted in stature that all medical practitioners are expected to know the standard of care in the state. This seems to be informed by the common law doctrine that states 'ignorance of the law is no defence'. This stems from the fact that measures to ensure that all concern parties are aware of the law are not provided for in the law.

The rule has also several weaknesses and challenges. It is not clear how a physician who treats people in various states is supposed to carry out his duties. The question is whether he is supposed to adhere to the local standards or is he expected to trust his judgment in administering treatment to his patients. It is also a tall order for patients to prove that a physician did not abide by the locality rule. Furthermore, it has been argued that sometimes substandard medical practices can be set by scrumptious practitioners as the local standards and customs. In areas where there are only a few experts in the field it is extremely difficult to realize the standard practise. Moreover, in a small community the other medical practitioners may not be ready and willing to contradict their colleague.

Data collection

This paper analyzes data from courts and academic writing about the relations between standard of care and the locality rule. In the case of Hood v Phillips, the Texas Supreme Court ruled that a medical professional who undertakes methods or procedures which are a prudent and reasonable physician would have undertaken under the circumstances should not be subjected to the locality rule. This ruling is critical as it makes it clear that only persons who acted imprudently would be subjected to the locality rule. The court further held that the reasonable man rule should be prioritized. This means that a physician should only be held liable for negligence or malpractice if he subscribes to methods that a prudent and reasonable member of the medical profession would not undertake under similar circumstances.

A critical issue noted by the courts of law in Texas is a conspiracy of silence. This is situation where physicians refuse to testify against each other. Therefore, courts have in time adopted the national standards of care as a fallback to the locality rule that relies heavily on the evidence adduced through testimony of expert witnesses. In fact, urban areas physician see the rule as a subsidy of upcountry medics. It is also a recognized fact among physicians that while others prefer certain procedures, others are comfortable in different ones. However, the end result is always the same. This implies, therefore, that expert witness testimony may be flawed as it is based generally on the preferred mode of a particular physician. In the case of Wilson v Scott(TX), the presiding judge held that the onus of prove lies on the plaintiff to prove by way of expert evidence what medical profession of

the same school of thought ought to have undertaken as the requisite procedures. The case concerned lack of disclosure by a physician to his patient. The question before the court was whether that was a prudent or imprudent and reasonable or unreasonable thing to do for the physician by the same members of his profession in the community. In the case of *Peterson v Shields (TX)* despite the trial judge applying the locality to rule, the court of appeal that the rule should not be applied on cases that disclosure of risks involved is the fact in issue. The appellant court stressed that the reasonable man rule replaced the locality rule in such circumstances.

The reasonable rule requires inter alia that a medical professional provide average diligence, skill and care to the patient. The legal obligation is, however, ordinarily that of minimal sound management of the case. The physician will not be held accountable as long as he can adduce evidence he rendered competent care however minimal to the patient that he provides. In the case of *Hall v. Hilbun*, the court held that each physician has a non-delegable duty of care to his patient. The doctrine of minimal competence in the same specialty was also extensively discussed. However, the court insisted that with regards to medical facilities, equipment and services, the locality rule should reign supreme to the national standard of care and that of the reasonable professional in the same circumstances. In the case of *Bowles v. Bourdon*, the presiding judge ruled that it is imperative that the court and the jury rely on the expert witness's testimony to come up with a fair and just ruling. A physician who is the defendant has no case to answer if the plaintiff cannot prove that other physicians would have acted differently.

It is not enough to show the court that both medical professionals think differently and thus would have acted differently. It is, however, mandatory to prove that their methods or procedure would have resulted in a positive way thus benefiting the plaintiff (patient). A witness was held to be competent to testify in the case of *Hart v Van Zandt* (TX) as he had the same training, education and experience as the defendant despite him having a current different occupation.

Conclusion

The locality rule is a sound piece of law. It originated in times when there was a vast disparity between physicians in the urban cities and upcountry rural hospital. Therefore, despite a uniform policy of medical standards, the law deemed it just and fair to lower the expectations of patients in rural areas in comparison to their counterparts in cities. However, to ensure governance of medical practice in rural areas, the rule emerged to ensure that patients received the requisite attention, care and diligence under the circumstances. However, in modern Texas, the rural areas and the urban areas have the same supply of information. This has informed the courts' decisions to abandon the rule in this state and rely on the reasonableness of a professional in the same specialty under the same circumstances. To enable the growth of the medical profession, it is vital that evidence-based and research-based procedures should be encouraged. It is also extremely cardinal that all states seek to align their procedures and standard of care to the national standards.

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