

### 13-1102. Duty of specialist.

\_\_\_\_\_ (*name of defendant*), who held [himself] [herself] out as a specialist in \_\_\_\_\_ (*area of specialty*), having undertaken to [treat] [operate on] [make diagnosis of] [care for] a patient in this specialized field, is under the duty to possess and apply the knowledge and to use the skill and care ordinarily used by reasonably well-qualified specialists practicing under similar circumstances, giving due consideration to the locality involved. A doctor who fails to do so is negligent.

[The degree of knowledge, skill, and care required of a specialist is usually higher than that required of a non-specialist, but it is never lower. Specialists are responsible for a certain base of knowledge in common with general practitioners, as well as additional knowledge in the field of their specialty.]

[The only way in which you may decide whether the doctor in this case possessed and applied the knowledge and used the skill and care which the law required of [him] [her] is from evidence presented in this trial by doctors testifying as expert witnesses. In deciding this question, you must not use any personal knowledge of any of the jurors.]

#### USE NOTES

This is the standard of care instruction applicable to a specialist. UJI 13-1101 NMRA sets forth the duty of a non-specialist general practitioner. The name of the defendant should be inserted in the first blank in the first paragraph. The area of specialty should be inserted in the second blank in the first paragraph. Bracketed language should be chosen as appropriate. The bracketed middle paragraph should be omitted unless the court determines that the issues in the case require that the jury be instructed regarding a medical specialist's responsibility for basic general knowledge in areas outside the specific area of specialty. 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.

[As amended, effective January 1, 1987; November 1, 1991; August 15, 1997; approved, effective February 24, 1998.]