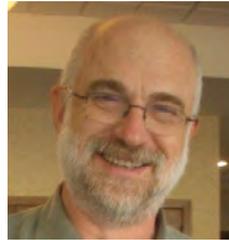




## The “Standard of Care” and Negligence of the Forensic Engineer

**Joshua B. KARDON**  
Structural Engineer  
Joshua B. Kardon + Company  
Berkeley, CA, USA  
*jbkse@jbkse.com*



Joshua B. Kardon received his baccalaureate engineering degree from Rensselaer Polytechnic Institute, and his Masters and PhD degrees in Civil Engineering from UC Berkeley. With over 40 years of structural engineering experience and maintained a structural engineering practice since 1978.

### Summary

In the US, engineers serving as expert witnesses may be asked by any side in a dispute to provide opinion testimony concerning the performance of an engineer defendant. The expert witness may be asked what the “standard of care” of the profession was, and whether the defendant met or failed to meet that level of performance. The expert witness may also be the subject of such an inquiry, if the expert’s services are themselves questioned. This paper presents the concept of the standard of care, and describes how the services of a forensic engineer are measured relative to the standard of care. It also discusses the concept of immunity from negligence afforded to expert witnesses, and the current trend of erosion of that immunity.

**Keywords:** standard of care; professional negligence; expert witness.

### 1. Introduction

In civil litigation in the United States, forensic engineers serving as expert witnesses are occasionally asked to present testimony regarding a practitioner’s professional negligence. This question hinges on the concept of the “standard of care,” which can be thought of as the boundary between negligent and non-negligent error.

In providing forensic engineering services, including assessing another engineer’s performance relative to the standard of care, forensic engineers themselves are held to that same “standard.” This paper presents the concept of the standard of care, and describes how a forensic engineer’s services are measured relative to the standard of care. It also discusses the concept of the immunity from negligence afforded to expert witnesses, and the current trend of erosion of that immunity

### 2. The Standard of Care

Case law [1] [2] in the US allows professionals some leeway with regard to error: there is some level, degree or type of error which a professional may commit without incurring liability, or responsibility to pay for damages arising from that error. However, some errors are of the level, degree or type that the professional may be liable. Those errors are called negligent errors, and the boundary between negligent and non-negligent errors is called the “standard of care.”

#### 2.1 Definition of the Standard of Care

The standard of care has been defined in case law and has been presented in what are known as standard or pattern jury instructions. After a civil lawsuit is argued in court, and the jury is preparing to deliberate on the evidence presented and answer the ultimate question of fact raised by the lawsuit, the court gives the jury a set of instructions they should follow to answer the questions.

##### 2.1.1 Pattern Jury Instructions

Sets of pattern jury instructions have been compiled into reference documents. One such compilation of pattern instruction, the Book of Approved Jury Instructions [3], included the following: