OP-ED: Design Professional Standard of Care in Rapidly Changing Times

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It is not much of an overstatement to say that during the last three months, everything has changed, and things are continuing to change on a daily basis. The COVID-19 pandemic has not only caused economic turmoil in addition to the direct health effects of the virus; it has also caused architects and engineers, as well as building owners, building tenants, and maintenance personnel, to rethink the design criteria for existing and new spaces. These criteria are not merely aesthetic or a reflection of some new management concept, such as the now problematic idea of “open-office workspaces,” but are driven by tangible public health concerns. While design professionals are still in the early, contemplative stage of developing new ideas and standards for safer, healthier designs in light of the virus—a stage that they may be in for the foreseeable future, given the more we learn about the virus, how it is spread, and what design choices are effective in mitigating transmission—
eventually advancements in design become the standard and thus become embedded in the design professionals’ standard of care.

A design professional’s standard of care, which is the level of quality that an architect or engineer’s work must achieve to avoid liability for professional malpractice, is best described by the standard language used in the American Institute of Architect’s contract forms, such as the AIA B101-2017, which states at Section 2.2 that “[t]he Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances.” A design professional’s standard of care is also influenced by the regulations enacted by the professional licensing boards. Directly relevant to designing in the age of COVID-19, the regulations governing architects in Oregon maintain that an “architect or architectural firm shall at all times recognize the primary obligation is to protect the health, safety, and welfare of the public in the practice of architecture.” (OAR 806-020-0020(1).) Thus, by its very nature, the professional standard of care is an ever evolving benchmark and depends on the knowledge and principles applied within the design community at large and at the time a project is being designed, with an emphasis on health and safety.

While the rate of change in the professional standard of care is usually a slow process, new developments and findings in the COVID-19 pandemic are reported daily and have been known to change. For example, during the beginning weeks of the pandemic in the United States, the Centers for Disease Control was not recommending wearing face masks, was very concerned about the transmission of the virus from surfaces, and was making no distinction between indoor or outdoor environments. As a result, architects began exploring the use of surface materials that were easier to clean and showed a reduced viral life-span. While we should not unduly play down the risk from surface transmission, the latest science has shifted dramatically to focus on transmission via airborne droplets resulting from something as simple as talking loudly or singing. This is starting to lead to design professionals rethinking airflow in buildings, erecting physical barriers between workers, and even moving businesses—be it restaurants or hair salons—outside when possible. Conceivably, what may have been an acceptable design practice even a few months ago may not be acceptable now, and what is acceptable now may not be proper just months in the future.

The purpose of this article is not to be alarmist. Many aspects of building design are not affected by the pandemic, and pre-COVID-19 designs should continue to be compliant with the standard of care. However, it is incumbent on design professionals to remain well informed and up-to-date on how the design community at large is reacting and changing designs in response to the virus and the science of how the virus is spread. It is also important, as always, for the design professional to understand the client’s needs, to educate the client when appropriate on the requirements and limitations for designing to minimize COVID-19 transmission, and to make sure that the design professional’s contract clearly spells out these requirements and limitations. For example, it may not be possible to achieve the energy efficiencies or comfort levels the client desires and at the same time provide the necessary increased ventilation to provide a safe environment. Likewise, the same square footage that a year ago would serve the number of people the client needs to accommodate is now woefully inadequate.
Finally, in times of uncertainty such as these, the design professional should make it clear to the client that what is being designed today and fully compliant with the standard of care today may not be sufficient to meet the client’s needs based on what is learned in the future. The professional standard of care does not require design professionals to be clairvoyant, only to design to what is known in the community at the time, but the uncertainty of the times themselves may inform the proper design and be a component of the standard of care. Thus, flexible designs that are able to adapt to quickly changing circumstances may be most appropriate as determined by the standard of care. It may be years before design professionals are able to fully quantify the changes now being dictated in design by COVID-19, but the professional standard of care does not stand still, and design professionals must continue to be attentive to the varying practices in the community in order to stay compliant with the standard.

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