8.15

8.15 OTHER PROFESSIONAL MALPRACTICE – DUTY OF PROFESSIONAL OTHER THAN HEALTH CARE PROVIDER OR ATTORNEY

I will now define for you the negligence of a professional such as the defendant.

A [insert trade or profession] is negligent if [he] [she] [it] fails to exercise that degree of skill that a reasonably prudent, skilled, and qualified [insert trade or profession] would exercise under the circumstances.

If you do not find that the defendant was negligent, you must return a verdict for the defendant. If you do find that the defendant was negligent, you must also decide whether the defendant’s negligence was a legal cause of the plaintiff’s harm. I will now instruct you on legal cause.

 **Use Note**

This instruction should be used instead of Instruction 8.03 in cases involving claims of negligence in the performance of professional services other than professional legal and health care services. It assumes there is no dispute that the defendant was engaged in a skilled trade or profession.

Instruction 3.06 (Legal Cause) should be given after this instruction.

 **Comment**

This instruction is adapted from the one specifically approved in John’s Heating Service v. Lamb, 46 P.3d 1024, 1038 (Alaska 2002), which applied it to a claim for negligent furnace repair and noted that it was equally applicable to “trades persons including machinists, electricians, and plumbers.” For the application of professional negligence standards to other professionals, see, e.g., Hutton v. Realty Executives, Inc., 14 P.3d 977, 979-81 (Alaska 2000) (real estate agents); Breck v. Moore, 910 P.2d 599, 603-04 (Alaska 1996) (title insurance company); Johnson & Higgins of Alaska, Inc. v. Blomfield, 907 P.2d 1371, 1374 (Alaska 1995) (insurance agent).

Expert testimony establishing the standard of care will generally be required in professional malpractice actions, except ‘in non-technical situations where negligence is evident to lay people.’” Johnson & Higgins, 907 P.2d at 1374, quoting Kendall v. State, 693 P.2d 953, 955 (Alaska 1984). Cf. John’s Heating Service v. Lamb, 46 P.3d at 1038.