WSSHA Spring Health Law Conference Case Law Update

May 1, 2026

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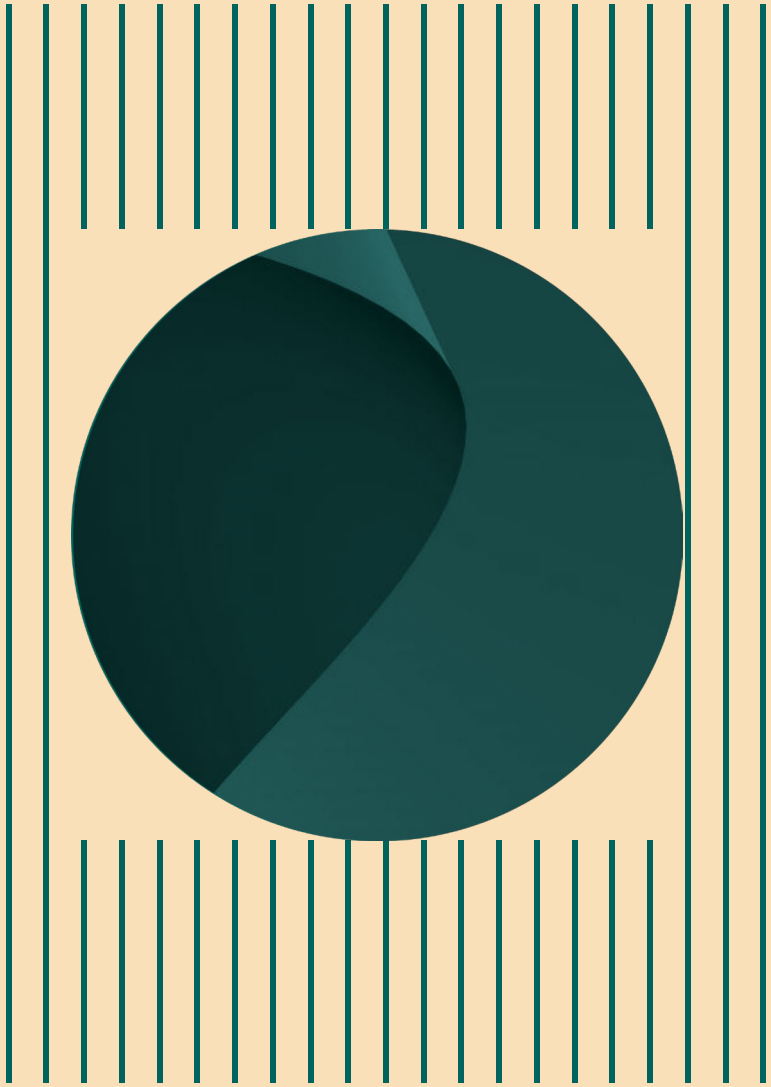
When reputation matters

Agenda

Medical Malpractice Case Law Update

Licensing Matters Update

Medical Malpractice Case Law Update



Exercise of Judgment Jury Instruction

Beard v. The Evergreen Clinic, PLLC

2026 WL 693088 (Wash. Mar. 12, 2026)

Washington Supreme Court

Exercise of Judgment Jury Instruction
Beard v. The Everett Clinic, PLLC

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Medical Facts

- Patient with history of lupus presented to the Everett Clinic with and chills
- Clinic physician ordered lab tests and a chest x-ray, which showed an abnormality in the lung
- As a precaution for pneumonia based on the imaging results, the patient was prescribed a course of antibiotics and instructed to return for follow up imaging

2026 WL 693088 (Wash. Mar. 12, 2026)

Exercise of Judgment Jury Instruction
Beard v. The Everett Clinic, PLLC

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Medical Facts Continued

- Patient met with her rheumatologist with reports of fever and joint pain. Physician ordered additional labs.
- The next day, patient reported worsening symptoms, including blood in her stool. Physician referred patient to a gastroenterologist but did not voice her concern for infection.
- Three weeks later, patient returned to the physician with increasingly worsened symptoms and was sent to the emergency department.
- Patient was discovered to have a bowel perforation and underwent emergency surgery, ultimately passing away.

2026 WL 693088 (Wash. Mar. 12, 2026)

Exercise of Judgment Jury Instruction
Beard v. The Everett Clinic, PLLC

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Procedural History

- Patient's husband brought medical malpractice claims against the rheumatologist and clinic. Plaintiff's theory of negligence alleged that the physician failed to follow the standard of care by not urgently referring the patient to an infectious disease specialist, not ordering repeat imaging, and not voicing concerns of infection.

- The trial court approved the WPI 105.08 ("Exercise of Judgement") jury instruction, The jury returned a defense verdict, finding that the physician met the standard of care.

- Plaintiff appealed, arguing that the use of such instruction was improper as insufficient evidence was presented.

- The appellate court affirmed the trial court's ruling and the appeal continued to the Supreme Court.

2026 WL 693088 (Wash. Mar. 12, 2026)

Exercise of Judgment Jury Instruction
Beard v. The Everett Clinic, PLLC

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WPI 105.08

A physician is not liable for selecting one of two or more alternative [courses of treatment][diagnoses], if, in arriving at the judgment to [follow the particular course of treatment] [make the particular diagnosis], the physician exercised reasonable care and skill within the standard of care the physician was obliged to follow

2026 WL 693088 (Wash. Mar. 12, 2026)

Exercise of Judgment Jury Instruction
Beard v. The Everett Clinic, PLLC

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Issue

- Plaintiff contested the propriety of WPI 105.08.
- **What evidence is required for a trial court to give the exercise in judgement jury instruction?**

2026 WL 693088 (Wash. Mar. 12, 2026)

Exercise of Judgment Jury Instruction
Beard v. The Everett Clinic, PLLC

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Holdings

- The Court applied the two-pronged approach in *Fergen* that *WPI* 105.08 is justified when evidence exists to show (1) the physician made a choice among alternative courses of treatment and (2) the physician exercised reasonable care and skill consistent with the applicable standard of care in formulating their judgment.
- The second prong can be satisfied without specific testimony regarding the diagnostic process but can be inferred through process evidence of the physician's actions, considered information, and experience.
- The second prong also requires sufficient evidence to allow a jury to find that the standard of care was followed in formulating the physician's judgement. Conflicting expert testimony as to the applicable standard of care does not extinguish the use of this instruction.

2026 WL 693088 (Wash. Mar. 12, 2026)

Exercise of Judgment Jury Instruction
Beard v. The Everett Clinic, PLLC

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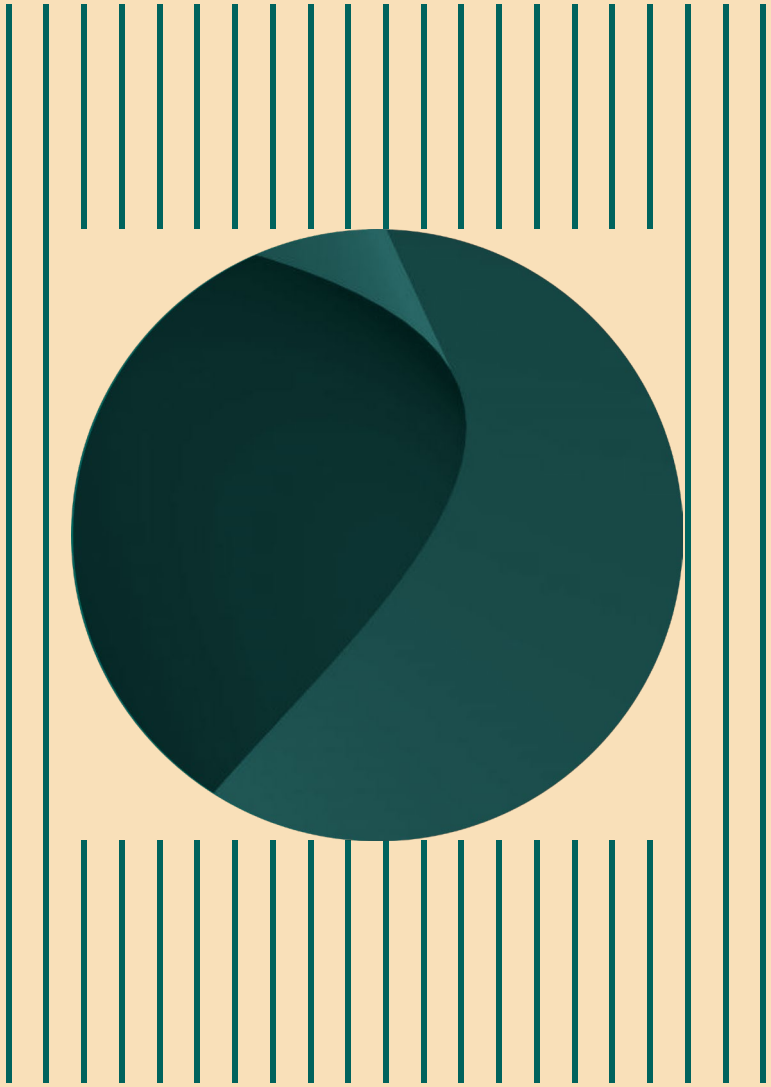
Implications

- The *Beard* Court affirmed *Fergen*, further demonstrating the relatively low bar for instruction to be given.
- Plaintiffs will continue to challenge the propriety of 105.08, an extremely powerful jury instruction.
- Concurring opinions reveal the tenuous nature of the instruction.

2026 WL 693088 (Wash. Mar. 12, 2026)



Out-of-State Expert Qualifications at Summary Judgment Stage

Campanelli v. PeaceHealth Southwest Medical Center

34 Wn. App. 2d 24 (Mar. 24, 2025) Div 1

Out-of-State Expert Qualifications at Summary Judgment Stage
Campanelli v. PeaceHealth Southwest Medical Center

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Medical Facts

- Patient underwent scheduled lumbar laminectomy surgery at PeaceHealth for severe back pain
- Patient suffered post-surgical opioid overdose from taking pain medicine she brought from home despite being told to take it back home
- Code blue called, patient was placed in restraints in the ICU, pumped with charcoal, and placed on Narcan drip

34 Wn. App. 2d 24 (2025), Div 1

Out-of-State Expert Qualifications at Summary Judgment Stage
Campanelli v. PeaceHealth Southwest Medical Center

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Procedural History

- Patient brought privacy claims, medical negligence claim, and common law negligence claim against PeaceHealth, an RN, and neurosurgeon

- Neurosurgeon moved for summary judgement, arguing that Plaintiff offered no expert testimony to establish the relevant medical standard of care
  - Plaintiff responded with an opinion from an out-of-state neurosurgeon

34 Wn. App. 2d 24 (2025), Div 1

Out-of-State Expert Qualifications at Summary Judgment Stage
Campanelli v. PeaceHealth Southwest Medical Center

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Issue

- To qualify as an expert, an out-of-state expert must demonstrate familiarity with Washington's standard of care.
- **What does it take for an out-of-state expert to demonstrate familiarity for the plaintiff to survive summary judgment motion?**

34 Wn. App. 2d 24 (2025), Div 1

Out-of-State Expert Qualifications at Summary Judgment Stage
Campanelli v. PeaceHealth Southwest Medical Center

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Holding

Because the court could **infer** that the expert knew the standard of care for neurosurgeons in Washington is the same as the national standard of care based on his extensive training, education, and experience detailed in his declaration, the out-of-state expert was qualified to opine on Washington's standard of care.

Implication

- It's now easier to survive summary judgment on the out-of-state expert issue so long as the expert states their experience, training, and credentials from which the court can infer their familiarity with WA standard of care.
- It would still be helpful for the out-of-state expert to state that they are familiar with WA standard and how they are familiar with it.

34 Wn. App. 2d 24 (2025), Div 1

Gross Negligence Expert Requirements and Voluntary Dismissal Timing

Peterhans v. UW
34 Wn. App. 2d 745 (Jun. 30, 2025)
Div 1

Gross Negligence Expert Requirements and Voluntary Dismissal Timing
Peterhans v. UW

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Medical Facts

- Psychiatric patient received treatment at Harborview under Involuntary Treatment Act (RCW 71.05).
- Patient's guardian asked the discharging psychiatrist to keep the patient at Harborview until the guardian could fly in. But the psychiatrist refused.
- Patient jumped from his fifth-floor apartment window and suffered permanent brain injury.

34 Wn. App. 2d 745 (2025), Div 1

Gross Negligence Expert Requirements and Voluntary Dismissal Timing
Peterhans v. UW

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Procedural History

- Patient's guardian sued UW, arguing that the discharging psychiatrist caused patient's injury.
- Defendant UW moved for summary judgment arguing that the plaintiff could not establish liability.
- After the oral hearing for MSJ but before the court's written ruling, the plaintiff filed a motion for voluntary dismissal, and trial court entered an order dismissing the case without prejudice.
- The next day, the plaintiff refiled her complaint, which was assigned to a different judge.
- Defendant UW moved again for summary judgment, arguing that Plaintiff could not voluntarily dismiss the case after it had been submitted to the court for SJ decision
- UW's SJ was granted

34 Wn. App. 2d 745 (2025), Div 1

Gross Negligence Expert Requirements and Voluntary Dismissal Timing
Peterhans v. UW

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Issue 1: Can a party move to voluntarily dismiss a case after the summary judgment hearing had begun but before the trial court announces its decision?

- No.
- Otherwise, claimants could unilaterally dismiss an action after the SJ hearing whenever the court expresses some skepticism about their claims and engage in improper judge shopping, wasting private and judicial resources.

34 Wn. App. 2d 745 (2025), Div 1

Gross Negligence Expert Requirements and Voluntary Dismissal Timing
Peterhans v. UW

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Issue 2: Did the plaintiff create genuine issues of material fact regarding gross negligence as required by Involuntary Treatment Act?

- No.
- Involuntary Treatment Act provides immunity from civil and criminal liability for providing care under the statute except for bad faith and gross negligence.
- To survive SJ in a gross negligence case, a plaintiff must provide substantial evidence of serious negligence.
    - But the plaintiff's expert did not indicate what a reasonable physician should have done other than delay the patient's discharge or analyze any relevant actions that the psychiatrist took.

34 Wn. App. 2d 745 (2025), Div 1

Gross Negligence Expert Requirements and Voluntary Dismissal Timing
Peterhans v. UW

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Implications

- Plaintiffs cannot move to voluntarily dismiss a case between SJ oral argument and court's ruling.
- For cases involving specialized statutory provisions, such as Involuntary Treatment Act, standard boilerplate expert declarations that opine only on what a provider should not have done are legally insufficient.
    - The expert opinion must engage in the analysis required by the statute

34 Wn. App. 2d 745 (2025), Div 1

ARNPs as Qualified Experts for Causation

James v. King County
(unpublished)
34 Wn. App. 2d 1032,
2025 WL 1220736
(Apr. 28, 2025)
Div 1

ARNPs as Qualified Experts for Causation
James v. King County (unpublished)

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Medical Facts

- Patient underwent spinal surgery and had a follow-up appointment with an ARNP at EvergreenHealth.
- Later, patient was treated for an infection.

Procedural History

- Patient sued Evergreen, claiming that the ARNP failed to diagnose and treat the infection.
- When Evergreen moved for summary judgment, the plaintiff offered causation opinion by an ARNP expert.
- Trial court granted EvergreenHealth's summary judgment motion and dismissed the plaintiff's claims.

34 Wn. App. 2d 1032, 2025 WL 1220736

ARNPs as Qualified Experts for Causation
James v. King County (unpublished)

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Holding

- "It is the scope of a witness's knowledge and not artificial classification by professional title that governs the threshold question of admissibility of expert medical testimony in a malpractice case."
- Plaintiff needed only establish the ARNP expert's "familiarity with the procedure or medical problem at issue"--in this case, routine post-operative care.
    - Plaintiff did not need to establish ARNP expert had specialized training or experience in all of the various potentially relevant disciplines (e.g., infectious disease, orthopedic surgery, pathology)

34 Wn. App. 2d 1032, 2025 WL 1220736

ARNPs as Qualified Experts for Causation
James v. King County (unpublished)

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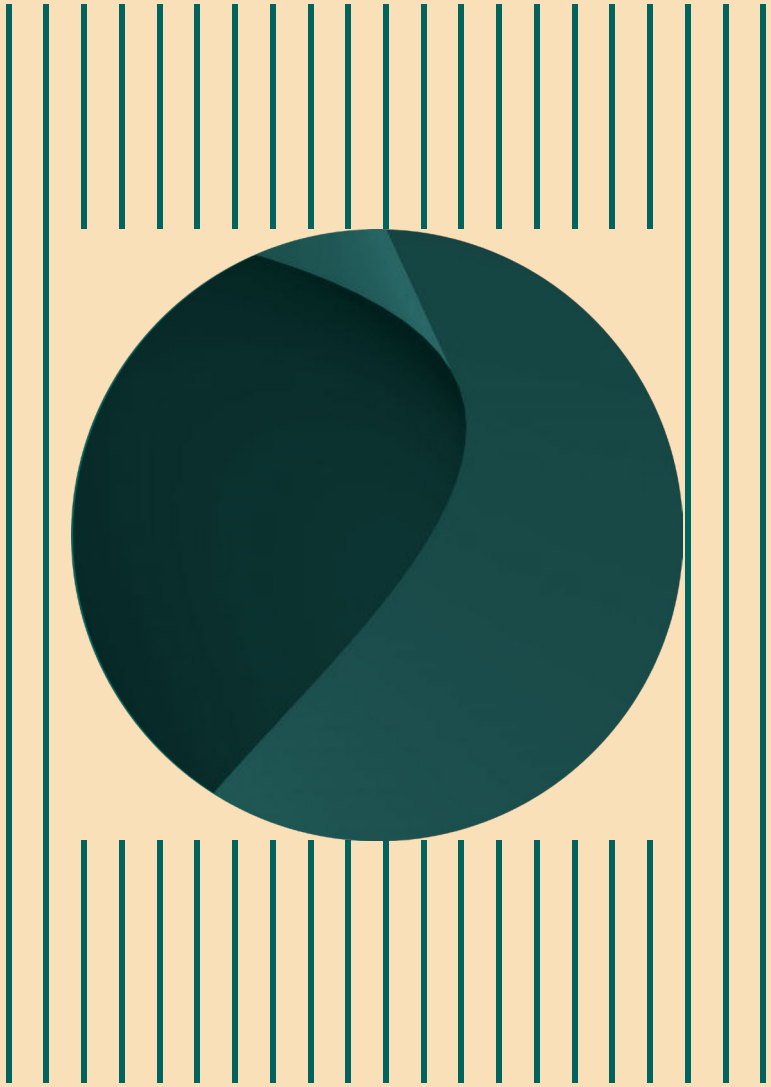
Implications

- Expert's scope of knowledge and experience are more important than expert's professional classification to assess whether they qualify as an expert.
- Nurse experts with relevant experience can opine on causation, as well as standard of care.

34 Wn. App. 2d 1032, 2025 WL 1220736



Medical Battery for Less Extensive Surgery

Schultz v. PeaceHealth/Southwest Washington Reg'l Surgery Ctr.

(unpublished)

34 Wn. App. 2d 1097, 2025 WL 1879225

(Jul. 8, 2025) Div 2

Medical Battery for Less Extensive Surgery
Schultz v. PeaceHealth/Southwest Washington Reg'l Surgery Ctr. (unpublished)

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Medical Facts

- Patient underwent surgery to remove breast implants and surrounding capsule of tissue (capsulectomy)
- After surgery, patient continued to feel severe pain and other symptoms and underwent another surgery by a different surgeon, who found and removed remaining pieces of capsule tissues

Procedural History

- Patient sued the original surgeon and PeaceHealth for medical malpractice and for medical battery, arguing that the original surgeon performed a partial capsulectomy, rather than a full capsulectomy, without her consent

34 Wn. App. 2d 1097, 2025 WL 1879225

Medical Battery for Less Extensive Surgery
Schultz v. PeaceHealth/Southwest Washington Reg'l Surgery Ctr. (unpublished)

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Holding

Plaintiff's medical batter claim failed as a matter of law because her written consent to a more extensive surgery necessarily included a less extensive surgery.

Implication

Patients cannot bring a medical batter claim for a less extensive surgery if they consented to a more extensive version of the same surgery.

34 Wn. App. 2d 1097, 2025 WL 1879225

Licensing Matters Update

Department of Health Complaints and Investigations

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- Can come at any time
- Often not tied to litigation
- Anyone can file
  - Patient
  - Lawyer
  - Family member/friend
- Verdict or settlement may require National Practitioner Data Bank (NPDB) Report, which WMC reviews
- Criminal investigation
- Impact on practice

Washington State Department of HEALTH

INVESTIGATION LETTER

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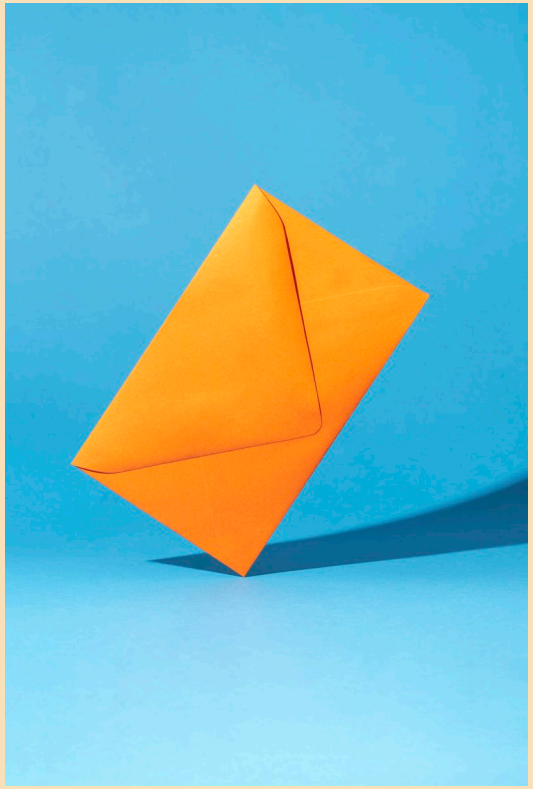
- First letter will inform the provider of a complaint
- Second letter will ask for a statement
  - Do not alter the records
  - Do not reach out to the patient or complainant
- Recommend outside counsel
  - The earlier, the better



Hot Button Issues: Sex and Drugs

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- Patient education (Communication)
- Keep hands in check
- Keep boundaries clear
- Chaperones (Policies in place?)
- Careful with medications and prescriptions
- Documentation

Current Trends

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- **General unhappiness, anger**
- **Distrust**
- **More complaints**
- **Higher levels of frustration**

Thank You

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