BACKGROUND

A standard of care provision in a client contract is a danger point in that it has the potential to create an increased and uninsured liability exposure. In fact, many clients use such provisions in an attempt to significantly elevate the obligations and level of performance for the design professional. When they do, the key is to avoid words that may inflate the standard and thereby open the door for greater liability exposure. Most often, such heightened responsibility and exposure comes through the introduction of words such as “best”, “highest”, “top percentile”, “fiduciary” or the like. Not only do such hyperboles dramatically increase the chances that some element of your services will not meet the elevated contractual standard, but such increased liability may not be covered under professional liability insurance which is generally limited to the standard of care as defined by law.

SAMPLE CONTRACT CLAUSE

In providing services under this Agreement, Consultant shall perform, consistent with but limited to, that degree of skill and care ordinarily used by other reputable members of Consultant’s profession, practicing in the same or similar locality and under similar circumstances. Nothing in this Agreement shall be interpreted to require Consultant to meet any higher standard of care, and this paragraph shall control over any such contrary provision.