

IOWA DISTRICT COURT IN AND FOR LINN COUNTY

BERNNADETTE CECENA, individually
and as Parent and Next Friend of M.B.,JR.,

Plaintiff,

vs.

LINDSY ALONS, M.D. and CEDAR
RAPIDS OB GYN SPECIALISTS, P.C.

Defendants.

LAW NO. LACV092925

**STATEMENT OF THE CASE AND
INSTRUCTIONS OF THE COURT**

FILED
CLERK OF DISTRICT COURT

2023 MAR -2 PM 2:28

LINN COUNTY, IOWA

INSTRUCTION NO. 1

Members of the Jury: In this case, Plaintiff Bernnadette Cecena, individually, and as Parent and Next Friend of M.B., Jr., has brought an action against Dr. Lindsay Alons and Cedar Rapids OB Gyn Specialists, P.C., for damages she claims were caused by the care and treatment she received from Dr. Alons.

Dr. Alons denies that her care and treatment of Ms. Cecena was in any way improper or that her care and treatment caused any damage to Plaintiff.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

INSTRUCTION NO. 2

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. Because you are making very important decisions in this case, you are to evaluate the evidence carefully and avoid decisions based on generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

INSTRUCTION NO. 3

Defendants Dr. Lindsay Alons and Cedar Rapids OB Gyn Specialists, P.C., are to be treated as a single party for the purpose of determining Dr. Alons' negligence, if any, in this matter. When I refer to Dr. Alons in these instructions, I am referring to both Defendant Dr. Lindsay Alons and Cedar Rapids OB Gyn Specialists, P.C.

INSTRUCTION NO. 4

Whenever a party must prove something, they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

INSTRUCTION NO. 5

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted.

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Statements made at sidebar conferences intended to be outside your presence.
3. Objections and rulings on objections.
4. Any testimony I told you to disregard.
5. Anything you saw or heard about this case outside the courtroom.

INSTRUCTION NO. 6

Certain testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

INSTRUCTION NO. 7

You have heard evidence claiming that the parties made statements before this trial while under oath and/or while not under oath.

If you find such a statement was made, you may regard the statement as evidence in this case the same as if the party had made it under oath during the trial.

If you find such a statement was made and was inconsistent with a party's testimony during the trial you may also use the statement as a basis for disregarding all or any part of that party's testimony during the trial but you are not required to do so. You should not disregard a party's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

INSTRUCTION NO. 8

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

INSTRUCTION NO. 9

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

INSTRUCTION NO. 10

Experts were asked to assume certain facts were true and to give opinions based on those assumptions. These are called hypothetical questions. If any fact assumed in a question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

INSTRUCTION NO. 11

The plaintiff claims the defendant failed to obtain an informed consent from the plaintiff before performing a robotically assisted total laparoscopic hysterectomy with bilateral salpingo-oophorectomy.

The plaintiff must prove all of the following propositions:

1. The existence of material information concerning the robotically assisted total laparoscopic hysterectomy with bilateral salpingo-oophorectomy,
2. Material information concerning the robotically assisted total laparoscopic hysterectomy with bilateral salpingo-oophorectomy was unknown to the plaintiff.
3. The defendant failed to disclose material information concerning the robotically assisted total laparoscopic hysterectomy with bilateral salpingo-oophorectomy to the plaintiff.
4. Disclosure of material information concerning the robotically assisted total laparoscopic hysterectomy with bilateral salpingo-oophorectomy would have led a reasonable patient in plaintiff's position to choose a different course of treatment,
5. The failure to obtain an informed consent was a cause of plaintiff's damage.
6. The nature and amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

INSTRUCTION NO. 12

A physician is required to obtain an informed consent from a patient prior to performing any procedure upon the patient. To obtain an informed consent, a physician must disclose to the patient all known material information concerning the robotically assisted total laparoscopic hysterectomy with bilateral salpingo-oophorectomy that would be significant to a reasonable patient's decision to consent to the procedure. Material information includes the risks of the treatment, alternatives to the treatment, and consequences of failing to have the procedure or treatment.

INSTRUCTION NO. 13

A consent in writing to any medical or surgical procedure or course of procedures in patient care which meets the requirements of this section shall create a presumption that informed consent was given. A consent in writing meets the requirements of this section if it:

1. Sets forth in general terms the nature and purpose of the procedure or procedures, together with the known risks, if any, of death, brain damage, quadriplegia, paraplegia, the loss or loss of function of any organ or limb, or disfiguring scars associated with such procedure or procedures, with the probability of each such risk if reasonably determinable.

2. Acknowledges that the disclosure of that information has been made and that all questions asked about the procedure or procedures have been answered in a satisfactory manner.

3. Is signed by the patient for whom the procedure is to be performed.

INSTRUCTION NO. 14

If you find Bernnadette Cecena had pelvic floor dysfunction before this incident, and this condition was aggravated by this incident causing further suffering, then she is entitled to recover damages caused by the aggravation. She is not entitled to recover for any physical ailment or disability which existed before this incident or for any injuries or damages which she now has which were not caused by the defendant's actions.

INSTRUCTION NO. 15

Cedar Rapids OB Gyn Specialists, P.C., is a corporation. The fact that a plaintiff or defendant is a corporation should not affect your decision. All persons are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

INSTRUCTION NO. 16

Plaintiff claims Defendant was negligent. In order to prevail on this claim, Plaintiff must prove all of the following propositions:

1. Lindsay Alons, M.D., was negligent in one or more of the following ways:
 - a.) Failing to exhaust medical management options for Bernnadette Cecena prior to proceeding with Cecena's robotically assisted total laparoscopic hysterectomy with bilateral salpingo-oophorectomy;
 - b.) Failing to fully communicate to Bernnadette Cecena the risks of a robotically assisted total laparoscopic hysterectomy with bilateral salpingo-oophorectomy as opposed to a vaginal or open hysterectomy;
 - c.) In injuring Plaintiff's left ureter during the robotically assisted total laparoscopic hysterectomy with bilateral salpingo-oophorectomy;
 - d.) Failing to perform a cystoscopy upon completion of the robotically assisted total laparoscopic hysterectomy with bilateral salpingo-oophorectomy on November 6, 2017.
2. The negligence was a cause of the damage to the Plaintiff,
3. The amount of damage.

If the Plaintiff has failed to prove any of these propositions, the Plaintiff is not entitled to damages. If the Plaintiff has proved all of these propositions, the Plaintiff is entitled to damages in some amount.

INSTRUCTION NO. 17

Physicians who hold themselves out as gynecologists must use the degree of skill, care and learning ordinarily possessed and exercised by gynecologists in similar circumstances.

A violation of this duty is negligence.

INSTRUCTION NO. 18

You are to determine the standard of care, i.e. the degree of skill, care, and learning required only from the opinions of the medical providers who have testified as to the standard.

You are also to determine the failure to meet the standard of care, if any, only from the opinions of the medical providers who have testified as to such a failure or lack thereof.

Furthermore, you are to determine whether the alleged failure to meet the standard of care, if any, was the cause of Plaintiff's injuries only from the opinions of the medical providers who have testified as experts in this case.

INSTRUCTION NO. 19

The mere fact that a party has suffered injury does not mean another party was negligent or at fault.

INSTRUCTION NO. 20

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct.

INSTRUCTION NO. 21

If you find Bernnadette Cecena is entitled to recover damages, you shall consider the following items:

- Loss of full mind and body – past & future: Loss of function of the mind and/or body from the date of injury to the present time and the present value of future loss of function of the mind and/or body. Loss of mind and/or body is the inability of a particular part of the mind and/or body to function in a normal manner.
- Physical and mental pain and suffering- past & future: Physical and mental pain and suffering and disfigurement from the date of injury to the present time and the present value of future physical and mental pain and suffering. Physical pain and suffering may include, but is not limited to, bodily suffering, discomfort and scarring. Mental pain and suffering may include, but is not limited to mental anguish or loss of enjoyment of life.

The amount you assess for loss of full body and mind (past and future) and physical and mental pain and suffering (past and future) cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by a party as proved by the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. Similarly, damages awarded to one party shall not be included in any amount awarded to another party.

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

INSTRUCTION NO. 22

If you find that Plaintiff Bernnadette Cecena, on behalf of M.B., Jr., is entitled to recover damages, you shall consider loss of parental consortium.

"Parental consortium" is the relationship between parent and child and the right of the child to the benefits of companionship, comfort, guidance, affection and aid of the parent in every parental relationship, general usefulness, industry and attention within the family. It does not include the loss of financial support from the injured parent, nor mental anguish caused by the parent's injury.

A child is not entitled to damages for loss of parental consortium unless the parent's injury has caused a significant disruption or diminution of the parent-child relationship.

Damages for loss of parental consortium are limited in time to the shorter of the child's or parent's normal life expectancy.

In determining the present value of the services Bernnadette Cecena would have provided as a parent, you may consider:

1. The circumstances of her life.
2. Her age at the time of her injury.
3. Her health, strength, character, life expectancy.
4. Her capacities, abilities and efficiencies in performing duties as a parent.
5. Her skills and abilities in providing instruction, guidance, advice and assistance to her children.
6. The children's respective needs.
7. All other facts and circumstances bearing on the present value of services.

INSTRUCTION NO. 23

Future damages must be reduced to present value. "Present value" is a sum of money paid now in advance which, together with interest earned at a reasonable rate of return, will compensate Plaintiff for future losses.

INSTRUCTION NO. 24

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Bernnadette Cecena is 39.0 additional years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Bernnadette Cecena's health, habits, occupation, and lifestyle, when deciding issues of future damages.

INSTRUCTION NO. 25

In arriving at an item of damage or percentage of fault, you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage or a percentage of fault, and agreeing in advance that the average of those estimates shall be your item of damage or percentage of fault.

INSTRUCTION NO. 26

I have not by these instructions, or by any ruling I have made, or by any act I have done, or by anything I have said during the trial, intended or attempted to give any opinion as to what the facts are, what the proof is, nor what your verdict should be.

INSTRUCTION NO. 27

Upon retiring you shall select a foreman or forewoman. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but are judges - judges of the facts. Your sole interest is to find the truth and do justice.

INSTRUCTION NO. 28

You may not communicate with anyone other than your fellow jurors about this case before reaching your verdict. This includes prohibition of communication by cell phones, and electronic media such as text messages, Facebook, LinkedIn, YouTube, Twitter, email, etc.

Do not do any research or make any investigation about this case on your own. Do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge. This includes using the Internet to research events or people referenced in the trial.

This case must be decided upon evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by these rules.

INSTRUCTION NO. 29

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room and they will be destroyed.

INSTRUCTION NO. 30

Occasionally, after a jury retires to the jury room, the members have questions. I have prepared the instructions after carefully considering the model instructions with the parties and lawyers. The instructions attempt to use language which is generally understandable. Usually, your questions about the instructions can be answered by carefully re-reading them. If, however, you feel it necessary to ask a question, you must do so in writing, and I must respond in writing. I cannot communicate with you without first discussing your question and potential answer with the parties and the lawyers.

The court attendants who have been working with you on this case take an oath not to communicate with you about the substance of the case. They cannot speak to you except to ask if you have agreed upon a verdict and to manage the logistics of your service. Please do not put them on the spot by asking any questions about the instructions or the evidence.

Deliberations outside of normal court hours may require some arrangements to be made by the court staff to accommodate your request. If you wish to deliberate beyond 4:30 p.m., please notify the court attendants in writing how long you would like to work and how early you would like to reconvene outside of normal court hours.


Finally, if you need to notify anyone about the time you will be deliberating, please notify them before entering the jury room. Please have your cell phones turned off at all times while in the jury room.

INSTRUCTION NO. 31

I am giving you one verdict form with questions. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict and answers to questions must be signed by your foreman or forewoman.

After deliberating for six hours from 3:30 o'clock p.m. excluding meals or recesses outside your jury room, then it is necessary that only (seven) of you agree upon the answers to the questions. In that case, the verdict and questions must be signed by all (seven) jurors who agree.

When you have agreed upon the verdict and answers to questions and appropriately signed it, tell the Court Attendant.



Sean W. McPartland
District Judge