

IN THE IOWA DISTRICT COURT FOR CERRO GORDO COUNTY

SUSAN BENSON,)	
)	Case No. LACV073309
Plaintiff,)	
vs.)	
)	
EDWARD S. HENRICH,)	INSTRUCTIONS TO THE JURY
)	
Defendant.)	

Members of the Jury, the Court gives you the following instructions:

Instruction No. 1

Plaintiff, Susan Benson, claims that Defendant, Edward S. Henrich, D.P.M., was negligent in the medical care he provided her. Ms. Benson also claims that Dr. Henrich failed to communicate to her sufficient information for her to give informed consent to surgery. Ms. Benson claims that the actions of Dr. Henrich have caused her injuries and damages.

Dr. Henrich denies he was negligent in the medical care he provided Ms. Benson. Dr. Henrich denies that he failed to provide Plaintiff with sufficient information for her to give informed consent to surgery. Dr. Henrich also denies that his actions caused any of the injuries or damages claimed by Ms. Benson. Dr. Henrich claims that some part, if not all, of the injuries or damages suffered by Ms. Benson were caused by the actions of Jean and Darren McGann.

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.

Throughout these instructions, I will refer to Susan Benson as "Plaintiff" or "Ms. Benson," and I will refer to Edward S. Henrich, D.P.M., as "Defendant" or "Dr. Henrich."

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

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. 4

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 (e.g., answers to interrogatories, etc.).

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 pretrial 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. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside this courtroom.

Instruction No. 5

Certain testimony has been received into evidence by playing a videotaped recording of a deposition. A deposition is testimony taken under oath before the trial and preserved either in writing or as a videotaped recording. Consider deposition testimony the same as if it had been given in court.

Instruction No. 6

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 witness' 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 witness' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,
3. The witness' interest in the trial, their motive, candor, bias and prejudice.

Instruction No. 7A

You have heard evidence claiming Plaintiff and Defendant each made statements before this trial while under oath and 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 she or he had made it under oath during the trial. If you find such a statement was made and was inconsistent with the testimony of that party during the trial you may also use the statement as a basis for disregarding all or any part of the testimony of that party during the trial but you are not required to do so. You should not disregard the testimony of Plaintiff or Defendant during the trial if other credible evidence supports it or if you believe it for any other reason.

Instruction No. 7B

You have heard evidence claiming certain witnesses made statements before this trial while under oath which were inconsistent with what he said in this trial. If you find these statements were made and were inconsistent, then you may consider them as part of the evidence, just as if they had been made at this trial. You may also use these statements to help you decide if you believe the witness. You may disregard all or any part of the testimony of that witness if you find the statements were made and were inconsistent with the testimony given at trial, but you are not required to do so. Do not disregard the trial testimony if other evidence you believe supports it, or if you believe it for any other reason.

Instruction No. 8

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. 9

An expert witness was asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

Instruction No. 10

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. 11

In these instructions I will be using the term "fault". Fault means one or more acts or omissions towards the person of the actor or of another which constitutes negligence.

Instruction No. 12

When used in these instructions with respect to Defendant, the terms "negligent" or "negligence" mean the failure of Dr. Henrich to satisfy or comply with the applicable standard of care.

Instruction No. 13

Physicians who hold themselves out as specialists must use the degree of skill, care and learning ordinarily possessed and exercised by specialists in similar circumstances, not merely the average skill and care of a general practitioner. A violation of this duty is negligence.

Instruction No. 14

The mere fact that one party was injured does not mean another party was negligent or at fault.

Instruction No. 15

To recover damages on her claim in this case that Defendant was negligent in the medical care he provided, Plaintiff must prove all of the following propositions:

1. Defendant was negligent in:
 - (A) Misdiagnosing the condition of Plaintiff; OR
 - (B) Performing an unnecessary surgery.
2. The negligence was a cause of damage to Plaintiff.
3. The amount of damages.

If Plaintiff has failed to prove any of these three propositions, she is not entitled to recover damages from Defendant for the specifications of negligence listed above. If Plaintiff has proven all of these three propositions, she is entitled to damages from Defendant in some amount. In either event, you also shall consider the claim of Plaintiff that Defendant failed to obtain her informed consent before performing surgery as explained in Instruction Nos. 17 and 18.

Instruction No. 16

The conduct or negligence of a person is a cause of damage when the damage would not have happened except for the conduct or negligence. There may be more than one cause of an injury or damage.

Instruction No. 17

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 procedure that would be significant to the decision of a reasonable patient to consent to the procedure. Material information includes the risks of, alternatives to, and consequences of failing to have the procedure.

The failure of a physician to obtain an informed consent from a patient prior to performing a procedure is negligence.

Instruction No. 18

To recover damages on her claim in this case that Defendant failed to obtain an informed consent from her before performing his first surgery, Plaintiff must prove all of the following propositions:

1. The existence of material information concerning the surgery.
2. This material information concerning the surgery was unknown to Plaintiff.
3. Defendant failed to disclose this material information to Plaintiff.
4. Disclosure of this material information concerning the surgery would have led a reasonable patient in the position of Plaintiff to reject the surgery or choose a different course of treatment.
5. The failure of Defendant to obtain an informed consent was a cause of damage to Plaintiff.
6. The nature and amount of damage.

If Plaintiff has failed to prove any of these propositions, she is not entitled to recover damages on her claim that Defendant failed to obtain an informed consent from her. If Plaintiff has proved all of these propositions, then she is entitled to damages in some amount.

Instruction No. 19

If you find Plaintiff is entitled to recover damages, it is your duty to determine the amount. In doing so, you should consider the following items:

1. Loss of function of the body for Plaintiff from the date of injury to the present time. Loss of body is the inability of a particular part of the body to function in a normal manner.
2. The present value of future loss of function of the body for Plaintiff. Loss of function of the body has already been explained to you in this instruction.
3. Physical and mental pain and suffering for Plaintiff from the date of injury to the present time. Physical pain and suffering may include but is not limited to bodily suffering or discomfort. Mental pain and suffering may include but is not limited to mental anguish or loss of enjoyment of life.
4. The present value of future physical and mental pain and suffering for Plaintiff. Physical and mental pain and suffering have already been explained to you in this instruction.

The amount you assess for loss of function of the body in the past and future and for physical and mental pain and suffering in the 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 amounts caused by Defendant and by Jean and Darren McGann 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.

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

Instruction No. 20

To establish his claim that that some part, if not all, of the injuries or damages suffered by Plaintiff were caused by the actions of Jean and Darren McGann, Defendant must prove both of the following propositions:

1. Jean and Darren McGann were at fault. In order to prove fault, Defendant must prove:

(A) The McGanns failed to exercise reasonable care for the safety of Plaintiff while she was painting in their home on July 18, 2020; AND

(B) Plaintiff fell from a ladder as a result,

2. The fault of the McGanns was a cause of damage to Plaintiff.

If Dr. Henrich has failed to prove either of these propositions, you cannot assign any percentage of fault to Jean and Darren McGann. If Defendant has proved both of these propositions, then you must assign a percentage of fault against Jean and Darren McGann and include the fault of the McGanns in the total percentage of fault found by you in answering the questions on the verdict form.

Instruction No. 21

Damages may be the fault of more than one person. In comparing their fault, you should consider all of the surrounding circumstances as shown by the evidence, together with the conduct of Dr. Henrich, the conduct of the McGanns, and the extent of the causal relation between their conduct and the damages claimed. You should then determine what percentage, if any, the fault of Defendant and the fault of the McGanns contributed to the damages.

Instruction No. 22

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. 23

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Plaintiff is 23.27 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence about the health, habits, occupation, and lifestyle of Plaintiff, when deciding issues of future damages.

Instruction No. 24

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

Instruction No. 25

You may not communicate about this case with anyone other than your fellow jurors before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, InstaGram, LinkedIn, YouTube, Twitter, other social media, email, etc. Do not do any research or make any investigation about this case on your own. Do not visit or view any place discussed in this case, and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony. Also, 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 on the 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 and you will have done an injustice. It is very important that you abide by these rules. Failure to follow these instructions may result in the case having to be retried.

Instruction No. 26

Upon retiring you shall select a foreperson. 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.

You may review the exhibits that have been admitted into evidence and should consider the exhibits along with all the other evidence to assist you in reaching your verdict. Do not tamper with, alter, or write on the exhibits. The exhibits must be returned after you have agreed upon the verdict in the same condition as they are in now.

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. 27

Occasionally, jurors want to communicate with or ask a question of the Court after they begin their deliberations. Before you attempt to do so, please keep the following considerations in mind:

1. Words not defined in these instructions should be given their ordinary meaning.
2. There will be no additional evidence presented and you will not be given a written transcript or summary of the testimony of any witness.

If you still wish to communicate with or ask a question of the Court, your foreperson must write down your comment or question on a clean sheet of paper and give it to the court attendant. You are not to inform anyone, including the Court, how many jurors are voting for or against either party on any issue until you return your verdict.

Once the Court receives your comment or question from the court attendant, it must contact the attorneys for both parties and conduct a hearing outside the presence of the jury. After that, the Court will provide you with a written response to your comment or question.

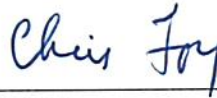
Instruction No. 28

The verdict form I am giving you contains seven 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 to the answers to the questions, the verdict must be signed by your foreperson.

After deliberating for six hours, 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 must be signed by all seven jurors who agree.

When you have agreed upon the verdict and appropriately signed it, tell the court attendant, Ms. Hansen.

Dated: June 12, 2025.



Chris Foy
Judge, Second Judicial District of Iowa