

IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

D.F., by Her Next Friend, Vandy Merrick,

Plaintiff,

vs.

CARA DREW, MD and SIOUXLAND  
MEDICAL EDUCATION FOUNDATION,  
INC.,

Defendants.

DOCKET NO. LACV189769<sup>23</sup>

JUN 26 10:41

**FINAL JURY INSTRUCTIONS**

Members of the Jury:

This is a civil case. Plaintiff Vandy Merrick is the mother and Duvanni Freemont is her minor child. She has brought this case on behalf of her minor child against Dr. Cara Drew and her employer, Siouxland Medical Education Foundation, Inc.

The parties agree that for the purposes of these instructions, Dr. Cara Drew and Siouxland Medical Education Foundation, Inc. should be treated as one party.

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. 1

My duty is to tell you what the law is. Your duty is to accept and apply the 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 you these instructions is not important.

Your duty is to decide all fact questions.

Do not be influenced by any personal likes or dislikes, 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. 2

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

Evidence is:

1. Testimony in person.
2. Exhibits received by the Court.

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. Objections and rulings on objections.
3. Testimony I have told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

INSTRUCTION NO. 3

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, including, but not limited to:

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. 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 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. 6

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. 7

You have heard evidence claiming a witness made statements before this trial while under oath which were inconsistent with what the witness said at 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 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

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 a reasonable patient's decision to consent to the procedure.

Material information includes the risks of and alternatives to the procedure or treatment.

Situations may exist which relieve the defendant of the duty to disclose a material risk. These include: Situations in which the risk is so obvious as to justify a presumption on the part of the physician that the patient has knowledge of the risk.

INSTRUCTION NO. 9

Plaintiff claims that Defendant Cara Drew, M.D. failed to obtain an informed consent from Vandy Merrick before proceeding with a vaginal delivery of Duvanni Freemont.

With respect to Plaintiff's informed consent claim, Plaintiff must prove all of the following propositions:

1. The existence of material information concerning proceeding with a vaginal delivery.
2. Material information concerning vaginal delivery was unknown to Vandy Merrick.
3. Cara Drew, M.D. failed to disclose material information concerning vaginal delivery to Vandy Merrick.
4. Disclosure of material information concerning the vaginal delivery would have led a reasonable patient in Vandy Merrick's position to choose a cesarean section.
5. The failure to obtain an informed consent was a cause of Duvanni Freemont's damage.
6. The nature and amount of damage.

If Plaintiff has failed to prove any of these propositions, your answer to Question No. 1 on the Verdict Form shall be "no".

If the defendant has proven that the risk concerning vaginal delivery was so obvious as to justify a presumption on the part of the physician that the Vandy Merrick had knowledge of the risk, your answer to Question No. 1 on the Verdict Form shall be "no".

If Plaintiff has proved all of the propositions, then Plaintiff is entitled to damages in some amount.

INSTRUCTION NO. 19

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

INSTRUCTION NO. 11

If you find that Duvanni Freemont is entitled to recover damages from any of the Defendants, you shall consider the following items of damage:

1. Physical and Mental pain and suffering 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.

2. The present value of future mental pain and suffering.
3. Loss of function of the body from the date of injury to the present time.

Loss of function of the body is the inability of a particular part of the body to function in a normal manner.

4. The present value of future loss of function of the body.

The amount you assess for physical and mental pain and suffering in the past or 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 the Defendants 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.

INSTRUCTION NO. 12

Future damages for economic loss 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 the plaintiff for future losses.

INSTRUCTION NO. 13

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Duvanni Freemont is 75.3 additional years.

The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about an individual's health, habits, occupation, and lifestyle, when deciding issues of future damages.

INSTRUCTION NO. 14

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. 15

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



INSTRUCTION NO. 16

Occasionally, after a jury retires to the jury room, the members have questions. I have prepared the instructions after carefully considering this case with the attorneys. I have tried to use language that is generally understandable. Usually, questions about instructions can be answered by carefully rereading them. If, however, any of you feel it is necessary to ask a question, you must do so in writing and deliver the question to the jury attendant.

I cannot communicate with you without first discussing your question and potential answers with the parties and attorneys. This process naturally takes time and deliberation before I can respond. When I respond, it will be in writing, and the foreperson must read the response to the jury. Keep the written question and response and return it to open court with the Verdict.

The jury attendant who has been working with me on this case is in the same position as I am. She will be taking an oath not to communicate with you except to ask if you have reached a verdict. Please do not put her on the spot by asking her questions about the case.

INSTRUCTION NO. 17

You may not communicate about this case before reaching your verdict. This includes via cell phone and electronic media such as text messages, email, Facebook, LinkedIn, YouTube, Twitter, TikTok, Instagram, Snapchat etc. Do not do any research or make any investigation about this case on your own. Do not use 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 will be tried on 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. Failure to follow these instructions may result in the case having to be retried and could result in you being held in contempt and punished.

INSTRUCTION NO. 18

When you begin deliberation, you should select a foreperson. He or she shall see that your deliberations are carried on in an orderly manner, that the issues are fully and freely discussed, and that every 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 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. 19

I AM GIVING YOU 3 special verdict 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 interrogatories must be signed by your foreman or forewoman. TD

After deliberating for six hours from 3:53 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 interrogatories must be signed by all seven jurors who agree.

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

Dated this 23 day of June, 2023.

  
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Judge, 3rd Judicial District of Iowa