

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

ANTHONY LEO,

Plaintiff,

vs.

LYNN NELSON, M.D. and DES
MOINES ORTHOPEDIC SURGEONS,
P.C. d/b/a DMOS,

Defendants.

CASE NO.: LACL147070

JURY INSTRUCTIONS
AND VERDICT FORMS

STATEMENT OF THE CASE

Members of the Jury:

This case involves medical care provided by Defendant Lynn Nelson, M.D., an employee of Defendant Des Moines Orthopedic Surgeons, P.C. d/b/a DMOS, during the care and treatment he provided to Anthony Leo. Plaintiff Anthony Leo claims that Lynn Nelson, M.D. was negligent in the care and treatment he provided to Anthony Leo and that his alleged negligence has caused injuries to Anthony Leo.

Defendant Lynn Nelson, M.D. denies he was negligent and denies he caused any injury to Anthony Leo.

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

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INSTRUCTION NO. 1

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. 2

Defendant Lynn Nelson, M.D., was an employee of Defendant Des Moines Orthopedic Surgeons, P.C. d/b/a DMOS during the time at issue. The Defendants are to be treated as a single party for the purposes of these instructions. When I refer to Defendant Lynn Nelson, M.D., in these instructions, I am also referring to Defendant Des Moines Orthopedic Surgeons, P.C. d/b/a DMOS.

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 which I advise you is evidence.

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 told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

INSTRUCTION NO. 5

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 reconcile those conflicts, 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. 6

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

INSTRUCTION NO. 7

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. 8

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 effects the value of the opinion.

INSTRUCTION NO. 9

Surgeons 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. 10

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct. Alternatively, if the harm would have occurred regardless of the alleged conduct the party is not a cause in fact of the harm.

INSTRUCTION NO. 11

The mere fact that a party was injured does not mean a party was negligent.

INSTRUCTION NO. 12

You must determine the standard of professional skill, care and learning required of the medical professional in this case only from the opinions of the medical professionals who have testified as expert witnesses as to such standard.

You are also to determine the failure to meet the standard of care, if any, only from the opinions of the medical professionals who have testified as to such 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 experts who have testified in this case.

INSTRUCTION NO. 13

Physicians may disagree in good faith upon what would be the proper treatment or diagnosis of a medical condition in a given situation. It is for the physician to use his or her professional judgment to select which recognized method of treatment to use in a given situation. If you determine that there were two or more recognized alternative courses of action which have been recognized by the medical profession as proper methods of treatment and Dr. Nelson, in the exercise of his best judgment, elected one of these proper alternatives, then Dr. Nelson was not negligent.

INSTRUCTION NO. 14

Plaintiff claims that Lynn Nelson, M.D. was negligent. In order for Plaintiff to recover damages from Defendants for negligence, the burden is upon Plaintiff to establish by a preponderance of the evidence all of the following propositions:

1. Defendant Lynn Nelson, M.D. was negligent in his post-surgical care of Anthony Leo by failing to order a post operative MRI;
2. The negligence was a cause of injury; and
3. The amount of damages.

If Plaintiff has failed to prove any of the propositions, Plaintiff is not entitled to damages for negligence. If the Plaintiff has proven all of the foregoing propositions, Plaintiff is entitled to damages in some amount from the Defendants.

INSTRUCTION NO. 15

If you find Plaintiff Anthony Leo is entitled to recover damages, you shall consider the following items:

1. Physical and Mental Pain and Suffering – Past. Physical and mental pain and suffering from the date of injury to the present time.
2. Physical and Mental Pain and Suffering – Future. The present value of future physical and mental pain and suffering.
3. Medical Expenses – Past. The reasonable cost of necessary hospital charges, doctor charges, prescriptions, and other medical services from the date of injury to the present time.
4. Loss of Function - Past. Loss of function of the mind and body from the date of injury to the present time.
5. Loss of Function - Future. The present value of future loss of function of the mind and body.
6. Loss of Earnings - Past. The reasonable value of lost wages from the date of injury to the present time.
7. Loss of Earnings - Future. The present value of loss of future earning capacity.

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.

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

In determining the reasonable cost of necessary past hospital charges, doctor charges, prescriptions, and other medical services, you may consider the amount actually paid as evidence of what is reasonable and proper for such medical expense.

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

Loss of future earning capacity is the reduction in value of the power to earn, not the difference in earnings received before and after an injury. There is no requirement such loss need be measured in a vacuum: ordinarily considered are plaintiff's poor health, education and opportunity for education, age, intelligence, industriousness, manner of living, or other personal characteristics which affect ability to secure business or earn money.

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 verdict form questions.

INSTRUCTION NO. 16

Any damages which you award for loss of earned income incurred in the past or to be incurred in the future will be reduced by the Court for any such losses which you find have been or will be replaced or paid by insurance, or by governmental, employment, or service benefit programs, or from any other source except the assets of the Plaintiff or of the members of the Plaintiff's immediate family. The Defendants have the burden to prove these benefits have been paid or will be available to the Plaintiff.

INSTRUCTION NO. 17

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 or return, will compensate the Plaintiff for future losses.

INSTRUCTION NO. 18

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Plaintiff Anthony Leo is 16.3 years.

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

INSTRUCTION NO. 19

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. 20

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. 21

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 Judicial Assistant.

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 Judicial Assistant who has been working with me on this case is in the same position as I am. She has taken an oath not to communicate with you except to ask if you have reached a verdict. Please do not ask her to violate that oath by asking her questions about the case.

INSTRUCTION NO. 22

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.

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. 23

I am giving you one verdict form containing three (3) questions. During the first six (6) hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict must be signed by your foreperson.

After deliberating for six (6) hours from 12:25 o'clock P.m. excluding meals or recesses outside your jury room, then it is necessary that only seven (7) of you agree upon the answers to the questions. In that case, the verdict must be signed by all seven (7) jurors who agree.

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

Dated this 18th day of September, 2023.



Paul D. Scott, JUDGE
Fifth Judicial District of Iowa

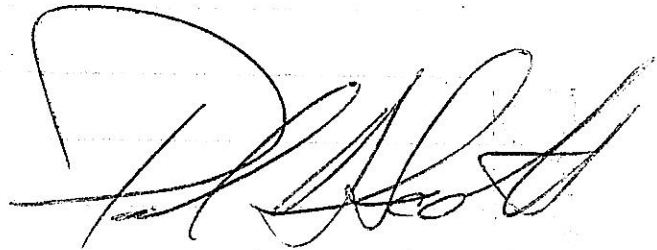
Maddie,

We the jury would like clarification on the file location of the X-rays (plainfilm) of during Dr. Leo's surgery from Dr. Nelson and the X-ray on the Feb. 9th follow up visit. We cannot locate those images.

2:40

Thank you,

The actual images, radiologic images, are demonstrative exhibits and, therefore, are not available to you.



Thank you
Danielle Brown

9/18/2023

2:57 P.M.