

## IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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SANTA CECILIA MCDONALD, by her  
Guardian and Conservator, ROSS LETH,

Plaintiff,

vs.

CENTRAL IOWA HOSPITAL  
CORPORATION d/b/a IOWA METHODIST  
MEDICAL CENTER,

Defendant.

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CASE NO.: LACL153747

JURY INSTRUCTIONS  
AND VERDICT FORMS

## STATEMENT OF THE CASE

Members of the Jury:

This case involves medical care provided by two nurses who are employees of Defendant Iowa Methodist Medical Center. Plaintiff Cecilia McDonald claims that Defendant Iowa Methodist Medical Center, by and through Nurse Patchin and Nurse Conway, was negligent in the care and treatment of Cecilia McDonald and that their alleged negligence has caused injuries to her.

Defendant Iowa Methodist Medical Center denies negligence and denies it caused any injury to Cecilia McDonald.

Doctor Nicholas Wetjen is a released party.

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.

You are instructed as follows:

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

Nurse Patchin and Nurse Conway were employees of Defendant Iowa Methodist Medical Center during the time at issue. They are to be treated as a single party for the purposes of these instructions. When I refer to Nurse Patchin and Nurse Conway in these instructions, I am also referring to Defendant Iowa Methodist Medical Center.

## INSTRUCTION NO. 3

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 considerations by you as any other person.

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 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. 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 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. 7

You have heard evidence claiming the parties made statements before this trial while under oath. If you find such a statement was made, you may regard the statement as evidence in this case the same as if that party had made it under oath during the trial.

If you find such a statement was made and was inconsistent with that 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 that 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 have heard evidence claiming witnesses made statements before this trial while under oath which were inconsistent with what that witness 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 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. 9

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. 10

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. 11

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. 12

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. 13

A nurse must use the degree of skill, care and learning ordinarily possessed and exercised by other nurses in similar circumstances.

A violation of this duty is negligence.

INSTRUCTION NO. 14

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. 15

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



INSTRUCTION NO. 16

You must determine the standard of professional skill, care and learning required of the medical professionals in this case only from the opinions of the medical professionals who have testified as expert witnesses as to such standard. Dr. Kaloostian and Dr. Wetjen are not experts as to the nursing standard of care.

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. 17

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. 18

Damages may be the fault of more than one person. In comparing fault, you should consider all of the surrounding circumstances as shown by the evidence, together with the conduct of Dr. Wetjen and the nurses at Iowa Methodist Medical Center and the extent of the causal relation between their conduct and the damages claim. You should then determine what percentage, if any, each person's fault contributed to the damages.

I will order the Defendant to contribute to the payment of damages awarded, if any, on the basis of the law as applied to the percentages of fault you insert in your answers to the questions at the end of these instructions.

INSTRUCTION NO. 19

Plaintiff claims that Iowa Methodist Medical Center, by and through Nurse Patchin or Nurse Conway, was negligent. In order for Plaintiff to recover damages from Defendant for negligence, the burden is upon Plaintiff to establish by a preponderance of the evidence of the following propositions:

1. Nurse Patchin or Nurse Conway were negligent in the care of Cecilia McDonald by failing to timely notify Dr. Wetjen of changes in the neurological status of Cecilia McDonald.
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 Defendant.

INSTRUCTION NO. 20

Defendant claims that Dr. Wetjen was negligent.

In order to prevail on this claim, Defendant must prove all of the following propositions:

1. The standard of care, i.e., the degree of skill, care and learning ordinarily possessed and exercised by physicians similar to Dr. Wetjen under circumstances similar to those presented in this case;

2. Dr. Wetjen was negligent by failing to meet the standard of care in one or more of the following particulars:

- (a) by failing to personally evaluate Cecilia McDonald on September 4, 2020;
- (b) by failing to surgically address the subdural hematomas on September 4, 2020;
- (c) by failing to surgically address the subdural hematomas on September 5, 2020.

3. Dr. Wetjen's negligence, if any, was a cause of Plaintiff's damages.

4. The amount of damage.

If Defendant has failed to prove any of these propositions, you cannot assign any percentage of fault to Dr. Wetjen. If Defendant has proved all of these propositions, then you will assign a percentage of fault to Dr. Wetjen.

INSTRUCTION NO. 21

If you find Plaintiff Cecilia McDonald 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. Loss of Function - Past. Loss of function of the mind and body from the date of injury to the present time.
4. Loss of Function - Future. The present value of future loss of function of the mind and body.
5. Loss of Earnings - Past. The reasonable value of lost wages from the date of injury to the present time.
6. 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.

Future medical costs include the present value of reasonable and necessary residential assisted living and custodial care, hospital charges, doctor charges, prescriptions, and other medical services.

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. 22

Any damages which you award for the future cost of medical care, rehabilitation services, or custodial care and for past or future loss of earned income may not include any amount which has been or will be replaced or paid by insurance; governmental, employment, or service benefit programs; or any other source except the assets of Plaintiff. The Defendant has the burden to prove these benefits have been paid or will be available to the Plaintiff.



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 or return, will compensate the Plaintiff for future losses.

INSTRUCTION NO. 24

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Plaintiff Cecilia McDonald is 26 years.

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

INSTRUCTION NO. 25

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. 26

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. 27

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. 28

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. 29

I am giving you one verdict form containing six (6) 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 3:15 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 3<sup>rd</sup> day of May, 2024.



Paul D. Scott, JUDGE  
Fifth Judicial District of Iowa