

IN THE IOWA DISTRICT COURT IN AND FOR MUSCATINE COUNTY

JUSTIN LOPER, Plaintiff, v. BRADLEY BARK, D.C. AND BARK CHIROPRACTIC & REHAB CLINIC, LLC. Defendant.	Case No. LACV 025753 JURY INSTRUCTIONS
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STATEMENT OF THE CASE

Members of the Jury: This case involves claims of chiropractic negligence. Plaintiff, Justin Loper, alleges that Dr. Bark breached the standard of care for chiropractors during his care and treatment of Plaintiff. Plaintiff further claims as result of this alleged negligence, Plaintiff has been damaged.

Defendants deny that Dr. Bark was negligent in any respect and denies that his care caused any damage to Mr. Loper. The parties agree that Dr. Bark and Bark Chiropractic & Rehab Clinic should be treated as a single entity. When I refer to Bark Chiropractic, I am referring to the individual chiropractor and his chiropractic clinic.

Dr. Porter has been dismissed from the case which was not a result of a settlement. No decisions concerning Dr. Porter are before the jury.

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 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.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices or emotions.

INSTRUCTION NO. 2

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. 3

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

INSTRUCTION NO. 4

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. 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, 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

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. 7

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. 8

You have heard evidence claiming Justin Loper 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 Justin Loper had made it under oath during the trial.

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

INSTRUCTION NO. 9

Plaintiff claims that Dr. Bark was negligent.

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

1. The standard of care, that is, the degree of skill, care and learning ordinarily possessed and exercised by chiropractors similar to Dr. Bark under circumstances similar to those presented in this case;
2. Dr. Bark was negligent by failing to meet the standard of care.
3. Dr. Bark's negligence, if any, was a cause of Plaintiff's damages.
4. The amount of damage.

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

INSTRUCTION NO. 10

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

A violation of this duty is negligence.

INSTRUCTION NO. 11

You are to determine the standard of care, i.e. the degree of skill, care, and learning required of a chiropractor only from the opinions of the chiropractors 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 chiropractors 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 injury only from the opinions of the chiropractors and other experts who have testified in this case.

INSTRUCTION NO. 12

A chiropractor's conduct must be viewed in light of the circumstances existing at the time of diagnosis and treatment and not retrospectively. If a chiropractor exercised a reasonable degree of care and skill under the circumstances as they existed, though not as seen in perfect hindsight, then the chiropractor is not liable for malpractice.

INSTRUCTION NO. 13

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

INSTRUCTION NO. 14

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

INSTRUCTION NO. 15

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

INSTRUCTION NO. 16

If you find that Plaintiff is entitled to recover, you shall consider the following items:

1. Loss of Full Mind and Body – Past
2. Loss of Full Mind and Body – Future
3. Physical and Mental Pain and Suffering – Past
4. Physical and Mental Pain and Suffering – Future

The amount you assess for physical and mental pain and suffering and loss of function of the mind and body 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.

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

INSTRUCTION NO. 17

“Loss of Full Mind and Body – Past” is the loss of function of the mind and/or body from the date of injury to the present time. 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.

INSTRUCTION NO. 18

“Loss of Full Mind and Body – Future” is the present value of future loss of function of the mind and/or body.

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 the plaintiff for future losses.

INSTRUCTION NO. 19

“Physical and Mental Pain and Suffering – Past” is 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.

INSTRUCTION NO. 20

“Physical and Mental Pain and Suffering – Future” is the present value of future physical and mental pain and suffering.

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 the plaintiff for future losses.

INSTRUCTION NO. 21

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Justin Loper is 36 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Justin Loper's health, habits, occupation, and lifestyle, when deciding issues of future damages.

INSTRUCTION NO. 22

The fact that a 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. 23

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. 24

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.

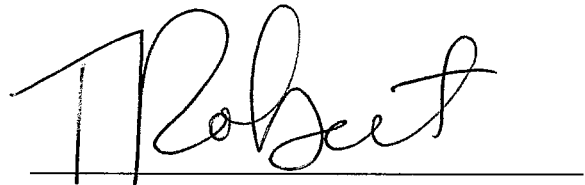
INSTRUCTION NO. 25

I am giving you one verdict form and 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 10:23 a.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.

Signed this 29th day of September, 2023 at 10:23 a.m.

A handwritten signature in black ink, appearing to read "T Roberts", written over a horizontal line.

Tamra J. Roberts, District Court Judge
7th Judicial District of Iowa