

IOWA DISTRICT COURT FOR POLK COUNTY

SANDRA M. HASS, Personal
Representative of the ESTATE OF KEITH
E. HASS,

Plaintiff,

vs.

FAWAD S. ZAFAR, M.D.; FAWAD S.
ZAFAR, M.D., P.C.; and AUDUBON
COUNTY MEMORIAL HOSPITALS AND
CLINICS.,

Defendants.

CASE NO. LACL145009

**PROPOSED JURY INSTRUCTIONS
OF DEFENDANTS
FAWAD S. ZAFAR, M.D. and FAWAD S.
ZAFAR, M.D., P.C.**

Defendants Fawad S. Zafar, M.D. and Fawad S. Zafar, M.D., P.C. submit the following Statement of the Case, Proposed Jury Instructions and Verdict Form. Evidence will be submitted at trial. Defendants reserve the right to offer additional and/or modified instructions as needed.

By



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CERTIFICATE OF SERVICE

I certify that on March 1, 2021, I electronically filed the foregoing document with the Clerk of Court using the ECF filing system, which will send notification of such filing to all parties. Parties may access this filing through the Court's system.

By /s/ Patricia A. Gannon

**ATTORNEYS FOR DEFENDANTS FAWAD S.
ZAFAR, M.D. and FAWAD S. ZAFAR, M.D., P.C.**

INSTRUCTION NO. _____

STATEMENT OF THE CASE

This is an alleged medical negligence case for damages. Plaintiff alleges that Defendant Fawad Zafar, M.D. was negligent in his care and treatment of Keith Hass and that this alleged negligence caused injuries to the plaintiff. Plaintiff also alleges that defendant Audubon County Memorial Hospital was negligent and that this negligence caused injuries to the plaintiff.

Plaintiffs further allege that defendant Fawad S. Zafar, M.D., P.C. is responsible for the alleged negligence of its employee, Dr. Zafar.

Defendants Fawad S. Zafar, M.D., Fawad S. Zafar, M.D., P.C. and Audubon County Memorial Hospital deny they were negligent in any respect and deny that their alleged negligence caused any injuries to the plaintiff.

This brief statement of the case is not evidence and is only a general outline of the case which is not intended to influence you either way.

INSTRUCTION NO. ____

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, MySpace, LinkedIn, YouTube, Twitter, 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 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.]

It is important that we have your full and undivided attention during this trial.

Authority

Iowa Civ. Jury Instructions 100.23

INSTRUCTION NO. _____

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. 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, common sense, and these instructions.

Authority

Iowa Civ. Jury Instructions 100.2

INSTRUCTION NO. ____

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.

The term "burden of proof" means the obligation resting upon a party to prove the truth of an allegation made by the party which is denied by the opposing party. When the burden rests upon a party to establish any particular fact or proposition by a greater weight or preponderance of the evidence, it is meant that the evidence introduced to support that fact or proposition and entitle such party to a finding in their favor, should produce the stronger impression upon the mind and be more convincing when weighed against the evidence introduced in opposition to it.

Authority

Iowa Civ. Jury Instructions 100.3

Mabrier v. A.M. Servicing Corporation of Raytown, 161 N.W.2d 180 (1968)

INSTRUCTION NO. _____

You shall base your verdict only upon the evidence in 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, matters which judicial notice was taken, etc.)

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

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.

Authority

Iowa Civ. Jury Instructions 100.4

INSTRUCTION NO. _____

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

Authority

Iowa Civ. Jury Instructions 100.5

INSTRUCTION NO. _____

During this trial, you have heard the word “interrogatory.” An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the question had been asked and answered here in court.

Authority

Iowa Civ. Jury Instructions 100.6

INSTRUCTION NO. ____

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.

Authority

Iowa Civ. Jury Instructions 100.9

INSTRUCTION NO. _____

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

Authority:

ICJI 400.2
Iowa Code Section 668.3(3)

INSTRUCTION NO. _____

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

Authority

Estate of Hagedorn ex rel Hagedorn v. Peterson, 690 N.W.2d 84 (Iowa 2004) (quoting language in proposed instruction above, used in a malpractice case, not addressing its merits).

East v. United States, 745 F. Supp. 1142, 1149 (D. Md. 1990) ("If a physician exercised a reasonable degree of care and skill under the circumstances as they existed, though not as seen in perfect hindsight, then the physician is not liable for malpractice.")

Boyce v. United States, 942 F. Supp. 1220, 1225–26 (E.D. Mo. 1996) (determination of negligence "must be made in light of the conditions as they existed prior to the treatment, not in the 20/20 vision of hindsight.")

Douzart v. Jones, 528 So. 2d 602, 603 (La. Ct. App. 1988) (physician is not to be "evaluated with the benefit of hindsight.")

INSTRUCTION NO. _____

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.

Authority

Iowa Civ. Jury Instructions 1600.3 Negligence—Duty Of Specialist.
McGulpin v. Bessmer, 43 N.W.2d 121, 128 (Iowa 1950)

INSTRUCTION NO. _____

You must determine the standard of professional learning, skill and care required by Dr. Zafar only from the opinions of the physicians who have testified as expert witnesses as to such standard.

Authority

Wilson v. Corbin, 41 N.W.2d 702, 705 (1950)

Bryant v. Rankin, 332 F. Supp 319, 322 (S.D. Iowa 1971)

Perin v. Hayne, 210 N.W. 2d 609, 613 (Iowa 1973)

Buckroyd v. Bunten, 237 N.W.2d 808, 811 (Iowa 1976)

Meirick by Meirick v. Weinmeister, 461 N.W.2d 348, 350 (Iowa App. 1990)

Kennis v. Mercy Hosp. Med. Ctr., 491 N.W.2d 161, 165 (Iowa 1992)

INSTRUCTION NO. ____

In May 2017, Dr. Zafar was an employee of Fawad S. Zafar, M.D. PC. Accordingly, for purposes of these instructions, you are to treat Dr. Zafar as one and the same with Fawad S. Zafar, M.D. PC.

To the extent that any actor is an agent of Audubon County Memorial Hospital, you are to treat that actor and Audubon County Memorial Hospital as one and the same for purposes of these instructions. To the extent you find that any actor is not an agent of Audubon County Memorial Hospital, you are not to treat that actor and Audubon County Memorial Hospital as one and the same.

INSTRUCTION NO. _____

Plaintiffs claim that Defendant Dr. Zafar is liable for alleged medical negligence. Medical negligence is explained to you in Instruction No. _____.

In order to prevail on this claim, Plaintiffs 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. Zafar under circumstances similar to those presented in this case;
2. Dr. Zafar was negligent by failing to meet the standard of care in one of the following ways:
 - a. failing to timely notify Keith Hass of radiology findings of May 16, 2017 and refer him for timely diagnosis and treatment; and
 - b. failing to diagnose and treat in a timely manner Keith Hass' lung cancer.
3. Dr. Zafar's negligence, if any, was a cause of the death of Keith Hass and Plaintiff's damages.
4. The alleged negligence was within the scope of Defendant's liability.
5. The nature and extent of damages.

If Plaintiffs has failed to prove all of these propositions, then Plaintiffs are not entitled to recover damages against Dr. Zafar or Fawad S. Zafar, M.D. P.C. and your verdict will be in favor of Dr. Zafar and Fawad S. Zafar, M.D. P.C. If Plaintiffs have proved all of these propositions, they are entitled to damages from Dr. Zafar and Fawad S. Zafar, M.D. P.C. in some amount.

Authority:

ICJI 700.1 (Modified)

INSTRUCTION NO. _____

Plaintiffs claim that Defendant Audubon County Memorial Hospital is liable for alleged medical negligence. Medical negligence is explained to you in Instruction No. ____.

As to Defendant Audubon County Memorial Hospital, Plaintiff must prove all of the following propositions:

1. Defendant Audubon County Memorial Hospital was negligent in one or more of the following ways:

i. . . .

2. The alleged negligence was a cause of damage to Plaintiffs.
3. The alleged negligence was within the scope of Defendant's liability.
4. The nature and extent of damages.

If Plaintiffs have failed to prove all of these propositions, Plaintiffs are not entitled to damages and your verdict will be in favor of Defendants.

Authority

Iowa Civ. Jury Instructions 700.1

INSTRUCTION NO. _

The law does not require absolute accuracy of a doctor, either in his or her practice or in his or her judgment. It does not hold him or her to the standard of infallibility. Nor does it require of him or her the utmost degree of skill and learning known only to a few in his or her profession, but only that degree of knowledge and skill ordinarily possessed by members of the profession similarly situated and in like situations.

Authority

Wall v. Stout, 311 S.E.2d 571, 578 (N.C. 1984) (affirming trial court's use of instruction with above language)

Bryant v. Rankin, 332 F.Supp. 319, 323 (S.D. Iowa 1971), aff'd 468 F.2d 510 (8th Cir. 1972) (Iowa law) ("If Dr. Rankin erred it was an error of judgment for which there is no recovery allowed.")

Black v. Gundersen Clinic, Ltd., 448 N.W.2d 247, 250 (Wisc. Ct. App. 1989) ("Perfection is a standard to which no profession can possibly adhere. Doctors are required to exercise reasonable care; they are not required to be perfect.")

Douzart v. Jones, 528 So.2d 602, 603 (La. App. 1988) ("neither a general practitioner nor a specialist is held to a standard of perfection . . .").

Cornell v. Ohio State Univ. Hosp., 521 N.E.2d 857, 860 (Ohio Ct. of Claims 1987) ("The physician is not required to possess the highest degree of knowledge or skill . . .").

Utzler v. Medical Center Hosp. of Vermont, 540 A.2d 652, 653 (Vt. 1987) (A physician "is not required to be infallible.")

INSTRUCTION NO. ____

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.

Authority

Iowa Civ. Jury Instructions 100.11

INSTRUCTION NO. ____

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's education and experience, the reasons given for the opinion, and all the other evidence in the case.

Authority

Iowa Civ. Jury Instructions 100.12

INSTRUCTION NO. _____

The conduct of a party is a factual cause of harm when the harm would not have occurred absent the conduct.

If multiple acts occur, each of which alone would have been a factual cause of the physical harm at the same time in the absence of the other acts, each act is regarded as a factual cause of the harm.

Authority:

Iowa Civ. Jury Instruction 700.3

Royal Indemnity Co. v. Factory Mut. Ins. Co., 786 N.W.2d 839, 849-850 (Iowa 2010)

Thompson v. Kaczinski, 774 N.W.2d 829, 836-39 (Iowa 2009)

Restatement (Third) of Torts: Liability for Physical and Emotional Harm § 26, 27

INSTRUCTION NO. _____

You must decide whether the claimed harm to plaintiffs is within the scope of defendant's liability. Plaintiffs' claimed harm is within the scope of a defendant's liability if that harm arises from the same general types of danger that the defendant should have taken reasonable steps to avoid.

If a defendant's conduct constitutes only a trivial contribution to Plaintiffs' claimed harms, then any injury caused by such conduct is outside the scope of that defendant's liability.

Authority:

ICJI 700.3A (Modified)

Royal Indemnity Co. v. Factory Mut. Ins. Co., 786 N.W.2d 839, 849-850 (Iowa 2010)

Thompson v. Kaczinski, 774 N.W.2d 829, 39 (Iowa 2009)

Restatement (Third) of Torts: Liability for Physical and Emotional Harm § 29, 30, 36 & model instruction No. 2 (modified, at page 517)

INSTRUCTION NO. _____

The mere fact that an accident occurred or a party was injured does not mean a party was negligent.

Authority

Iowa Civ. Jury Instructions 700.8

Novak Heating & Air Conditioning v. Carrier Corp., 622 N.W.2d 495, 497 (Iowa 2001)

Armbruster v. Gray, 282 N.W. 342, 344 (Iowa 1938)

Smith v. Koslow, 757 N.W.2d 677, 681 (Iowa 2008)

INSTRUCTION NO. _____

An employer is liable for the negligent acts of an employee if the acts are done in the scope of the employment.

Authority

Bethards v. Shivvers, Inc., 355 N.W.2d 39 (Iowa 1984)

Graham v. Worthington, 146 N.W.2d 626 (Iowa 1966)

INSTRUCTION NO. _____

The fact that Defendants Audubon County Memorial Hospital and Fawad S. Zafar, M.D. PC. are corporations 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. ____

If you find that plaintiff has failed to prove the third proposition of her claim for negligence against Dr. Zafar as set forth in Instruction No. ____, you must then consider plaintiff's alternative claim for lost chance of survival. If you find that plaintiff has proven her claim of negligence as set forth in Instruction No. ____, you should not consider plaintiff's alternative claim for lost chance of survival.

The plaintiff claims that the defendant Dr. Zafar caused Keith Hass to lose a chance of survival. The plaintiff must prove all of the following propositions:

1. Dr. Zafar was negligent as set forth in Instruction No. ____:
2. Dr. Zafar's negligence caused a loss of a chance of survival.
3. The amount of damage.

If plaintiff has failed to prove any of these propositions, plaintiff is not entitled to damages against Dr. Zafar. If plaintiff has proved all of these propositions, plaintiff is entitled to damages in some amount against Dr. Zafar.

Authority

Iowa Civil Jury Instruction No. 1600.16 - Lost Chance of Survival - Essentials for Recovery – Death (modified).

INSTRUCTION NO. _____

Lost chance of survival means a reduction in the chance to survive the underlying disease because Keith Hass failed to receive an earlier diagnosis or treatment.

With regard to the second proposition of Instruction No. _____, plaintiff must prove that Dr. Zafar's negligence, if any, caused a loss of a chance of survival. To prove a loss of a chance of survival, plaintiff must show, by a preponderance of the evidence, that there is a causal connection between Dr. Zafar's negligence, if any, and the loss of a chance to survive the harm.

Authority

Iowa Civil Jury Instruction No. 1600.17 - Lost Chance of Survival – Causation – Death (non-substantive modifications)

INSTRUCTION NO. _____

If you find that plaintiff has failed to prove the second proposition of her claim for negligence against Audubon County Memorial Hospital as set forth in Instruction No. _____, you must then consider plaintiff's alternative claim for lost chance of survival. If you find that plaintiff has proven her claim of negligence as set forth in Instruction No. _____, you should not consider plaintiff's alternative claim for lost chance of survival.

The plaintiff claims that the defendant Audubon County Memorial Hospital caused Keith Hass to lose a chance of survival. The plaintiff must prove all of the following propositions:

1. Audubon County Memorial Hospital was negligent as set forth in Instruction No. ____:
2. Audubon County Memorial Hospital's negligence caused a loss of a chance of survival.
3. The amount of damage.

If plaintiff has failed to prove any of these propositions, plaintiff is not entitled to damages against Audubon County Memorial Hospital. If plaintiff has proved all of these propositions, plaintiff is entitled to damages in some amount against Audubon County Memorial Hospital.

Authority

Iowa Civil Jury Instruction No. 1600.16 - Lost Chance of Survival - Essentials for Recovery – Death (modified).

INSTRUCTION NO. _____

Lost chance of survival means a reduction in the chance to survive the underlying disease because Keith Hass failed to receive an earlier diagnosis or treatment.

With regard to the second proposition of Instruction No. _____, plaintiff must prove that Audubon County Memorial Hospital's negligence, if any, caused a loss of a chance of survival. To prove a loss of a chance of survival, plaintiff must show, by a preponderance of the evidence, that there is a causal connection between Audubon County Memorial Hospital's negligence, if any, and the loss of a chance to survive the harm.

Authority

Iowa Civil Jury Instruction No. 1600.17 - Lost Chance of Survival – Causation – Death (non-substantive modifications)

INSTRUCTION NO. _____

You should determine the value of the harm suffered by plaintiff in accordance with Instructions No. ____ through ____ (traditional damages instructions).

To determine the percentage of lost chance to avoid the harm, caused by Dr. Zafar or Audubon County Memorial Hospital, you must determine the difference between Keith Hass' chance of avoiding the harm in the absence of any negligence on the part of Dr. Zafar or Audubon County Memorial Hospital and Keith Hass' chance of avoiding the harm following any negligence on the part of Dr. Zafar or Audubon County Memorial Hospital which you have found.

Authority

Iowa Civil Jury Instruction No. 1600.18 (non-substantive modifications)

INSTRUCTION NO. _____

If you find from the evidence that the condition of which Keith Hass suffered was caused or occasioned by or from any cause or causes over which Defendants had no control, or for which it is not responsible, your verdict must be in favor of Defendants.

If you find that it cannot be determined by a preponderance of the evidence whether the condition of which Keith Hass suffered was or was not caused by a negligent act alleged on the part of Defendants, or by anything over which it had no control, your verdict shall be in favor of Defendants. You are not to indulge in conjecture or speculation as to the cause of Keith Hass's condition in this case.

Authority

Bryant v. Rankin, 332 F.Supp. 319 (N.D. Iowa 1971)
Lagerpusch v. Lindley, 115 N.W.2d 207 (Iowa 1962)

INSTRUCTION NO. _____

If you have decided Plaintiffs are entitled to be compensated for injury and loss, you are instructed that a Plaintiff may not recover for economic losses more than once.

For that reason, the actual economic losses that have been incurred or will be incurred in the future, including the cost of reasonable and necessary care, rehabilitative services and custodial care, and lost income, must not be included in your award to the extent that those economic losses were or will be replaced or paid for by health insurance, or by governmental, employment or service benefit programs including Social Security disability and workers' compensation benefits.

Authority

Iowa Code 147.136

INSTRUCTION NO. _____

"Spousal consortium" is the fellowship of a husband and wife and the right of each to the benefits of company, cooperation, affection, the aid of the other in every marital relationship, general usefulness, industry and attention within the home and family. It does not include loss of financial support from the injured spouse, nor mental anguish caused by the spouse's death.

Damages for spousal consortium are limited in time to the shorter of the spouse's or (decedent)'s normal life expectancy. “

If you find Sandra Hass is entitled to recover damages for loss of spousal consortium, it is your duty to determine the amount. In determining the value for loss of spousal consortium you may consider:

1. The circumstances of spouse's life.
2. Their age at the time of injury.
3. Their health, strength, character and life expectancy and that of the spouse.
4. The spouse's capabilities and efficiencies in performing the duties as a spouse.
5. The spouse's skills and abilities in providing instructions, guidance, advice and assistance.
6. The spouse's respective needs.
7. All other facts and circumstances bearing on the issue.

The amount you assess for loss of spousal consortium 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 amount caused by the Defendant 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. Similarly, damages awarded to one party shall not be included in any amount awarded to another party.

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

Authority

Iowa Civ. Jury Instruction 200.31

INSTRUCTION NO. _____

The present value of the services which Keith Hass would have performed for his children, but for his death. This is also known as loss of parental consortium.

"Parental consortium" is the relationship between parent and child and the right of the child to the benefits of companionship, comfort, guidance, affection and aid of the parent in every parental relationship, general usefulness, industry and attention within the family. It does not include the loss of financial support from the injured parent, nor mental anguish caused by the parent's death.

A child is not entitled to damages for loss of parental consortium unless the parent's death has caused a significant disruption or diminution of the parent-child relationship.

Damages for loss of parental consortium are limited in time to the shorter of the child's or Keith Hass' normal life expectancy.

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

Authority

Iowa Civil Jury Instruction 200.20 (non substantive modifications).

INSTRUCTION NO. _____

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 loss.

Authority

Iowa Civ. Jury Instruction 200.35

INSTRUCTION NO. ____

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 impression 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.

Authority:

Iowa R. Civ. P. 1.926 (1).

I.C.J.I. 100.21.

INSTRUCTION NO. _____

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.

Authority

Iowa Civ. Jury Instruction 200.38

Damage Instructions

[As supported by the evidence, instructions consistent with Iowa Civ. Jury
Instructions 200.6–200.40]

INSTRUCTION NO. _____

I am giving you ____ verdict forms [and special interrogatories]. 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.

After deliberating for six hours from _____ o'clock _____.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.

Authority

Iowa Civ. Jury Instruction 300.1

INSTRUCTION NO. _____

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 judges—judges of the facts. Your sole interest is to find the truth and do justice.

Authority

Iowa Civ. Jury Instruction 100.18

IOWA DISTRICT COURT FOR POLK COUNTY

SANDRA M. HASS, Personal
Representative of the ESTATE OF KEITH
E. HASS,

Plaintiff,

vs.

FAWAD S. ZAFAR, M.D.; FAWAD S.
ZAFAR, M.D., P.C.; and AUDUBON
COUNTY MEMORIAL HOSPITALS AND
CLINICS.,

Defendants.

CASE NO. LACL1450098

VERDICT FORM

QUESTION NO. 1: Do you find that Defendant Dr. Zafar was negligent?

Answer "yes" or "no."

ANSWER: _____

(If your answer to Question No. 1 is "no," do not answer Question 2 and do not assign any fault to Dr. Zafar. You should proceed to Question No. 4. If your answer to Question No. 1 is yes, proceed to Question 2.)

QUESTION NO. 2: Do you find the negligence of Dr. Zafar was a cause of damage to the Plaintiff?

Answer "yes" or "no."

ANSWER: _____

(If your answer to Question No. 2 is "no," then proceed to Question No. 3. If your answer to Question No. 2 is yes, proceed to Question No. 5.)

QUESTION NO. 3: Was the negligence of Dr. Zafar the cause of a loss of a chance of survival for Keith Hass?

Answer "yes" or "no."

ANSWER: _____

(If your answer to Question No. 3 is "no," then proceed to Question No. 5 and you shall not assign any fault to Dr. Zafar.)

QUESTION NO. 4: What percentage of lost chance of survival caused by Dr. Zafar, do you find?

Answer "yes" or "no."

ANSWER: _____

(Proceed to Question No. 5)

QUESTION NO. 5: Do you find that Defendant Audubon County Memorial Hospital was negligent?

Answer "yes" or "no."

ANSWER: _____

(If your answer to Question No. 5 is "no," do not answer Question No. 6 and do not assign any fault to Audubon County Memorial Hospital. If your answer to Question No. 5 is yes but your answer to Question No. 6 is no, proceed to Question No. 7.)

QUESTION NO. 7: Was the negligence of Audubon County Memorial Hospital the cause of a loss of a chance of survival for Keith Hass?

Answer "yes" or "no."

ANSWER: _____

(If your answer to Question No. 7 is "no," then proceed to Question No. 9 and you shall not assign any fault to Audubon County Memorial Hospital).

QUESTION NO. 8: What percentage of lost chance of survival caused by Audubon County Memorial Hospital, do you find?

Answer "yes" or "no."

ANSWER: _____

(Proceed to Question No. 9.)

QUESTION NO. 9: What percentage of the total fault do you attribute to each of the Defendants Dr. Zafar and Audubon County Memorial Hospital?

If you previously found that a party was not at fault or did not cause damage to Plaintiffs, then enter "0" after his or her name.

ANSWER

Dr. Zafar %

Audubon County Memorial Hospital %

TOTAL: 100%

QUESTION NO. 10: State the amount of damages sustained by the plaintiff caused by either of the defendants' negligence as to each of the following items of damage. If plaintiff has failed to prove any item of damage or has failed to prove that any item of damage was proximately caused by defendants' negligence, enter 0 for that item.

[Itemized as supported by the evidence].

TOTAL (add the separate items of damage) \$ _____

Foreman or Forewoman*

*To be signed only if verdict is unanimous.

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

**To be signed by the jurors agreeing thereto after six hours (6) or more of deliberation.