

IN THE IOWA DISTRICT COURT FOR STORY COUNTY

WILLIAM DUT and AGUW GUM, as Parents, Guardians, and Legal Representatives of Plaintiff, T.D., Plaintiffs, v. BETH SOULLI and McFARLAND CLINIC, P.C. Defendants.	CASE NO. LACV052675 JURY INSTRUCTIONS
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STATEMENT OF THE CASE

Members of the jury, in this case, the Plaintiffs William Dut and Aguw Gum, as parents, guardians, and legal representatives of Taek Dut, allege Defendant Dr. Beth Soulli breached the standard of care in the delivery of Taek Dut and that said breach was the proximate cause of Taek Dut's claimed injuries.

Defendants Dr. Soulli and her employer, McFarland Clinic, deny the allegations made by Plaintiffs and assert that the care and treatment provided by Dr. Beth Soulli was appropriate and met the standard of care.

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

INSTRUCTION NO. 1

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.

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

INSTRUCTION NO. 2

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. 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 (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.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only these 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, question 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. 5

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. 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, 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

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 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 opinions.

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. 9

The fact that the Defendant McFarland Clinic, P.C. 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. 10

You have heard evidence claiming a party 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 the party had made it under oath during the trial.

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

INSTRUCTION NO. 11

In order to recover on their claims, the Plaintiffs must prove all of these following propositions:

1. Dr. Beth Soulli was at fault in one or more of the following ways:
 - a. Telling Ms. Gum to "push stronger" after the shoulder dystocia was diagnosed;
 - b. Using posterior axillary traction to deliver Taek Dut;
 - c. Failing to spend more time than 1 minute 58 seconds performing maneuvers.
2. That said breach of the standard of care was the cause of Taek Dut's claimed damages.
3. The nature and extent of damages.

If the Plaintiffs have failed to prove any of the propositions, the Plaintiffs are not entitled to damages and your verdict will be in favor of Defendants Dr. Beth Soulli and McFarland Clinic, P.C. If the Plaintiffs have proved all of these propositions, the Plaintiffs are entitled to recover damages in some amount.

INSTRUCTION NO. 12

Physicians and health care providers 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

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

INSTRUCTION NO. 14

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.

INSTRUCTION NO. 15

You must determine the standard of professional skill, care and learning required of Dr. Beth Soulli 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 the Plaintiff Taek Dut's injuries only from the opinions of the medical professionals who have testified in this case.

INSTRUCTION NO. 16

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. 17

If you find the Plaintiffs are entitled to recover damages, it is your duty to determine the amount. In doing so you shall consider the following items:

1. Loss of function of 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.
2. The present value of future loss of function of the body.
3. Physical pain and suffering from the date of injury to the present time.
4. The present value of future physical pain and suffering.

The amount you assess for loss of function of the body and physical pain and suffering 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 Dr. Beth Soulli 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. 18

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 Plaintiffs for future losses.

INSTRUCTION NO. 19

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Taek Dut is 72.78 years. The statistics from a Standard mortality Table are not conclusive. You may use this information, together with all the other evidence, about Taek Dut's health, habits, occupation, and lifestyle, when deciding issues of future damages.

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 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.

INSTRUCTION NO. 21

Upon retiring you shall select a foreman or forewoman. It will be his or her duty to see that discussion is carried on in an orderly fashion, that 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 you are judges – judges of facts. Your sole interest is to find truth and do justice.

INSTRUCTION NO. 22

I am giving you a verdict form 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 deliberations for six hours from 4 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.



Amy M. Moore
District Court Judge