

IN THE IOWA DISTRICT COURT FOR DAVIS COUNTY

AMY SELVY MILLER,)	
)	
Plaintiff,)	
)	NO. LALA 012701
vs.)	
)	JURY INSTRUCTIONS AND
DR. JOHN HARRINGTON,)	VERDICT FORM
)	
Defendant.)	

Members of the Jury: This is a medical malpractice case. Plaintiff Amy Selvy Miller has sued Defendant Dr. John Harrington. Plaintiff alleges that Dr. Harrington was negligent in the care and treatment of Plaintiff and, as a result of this alleged negligence, Plaintiff suffered damages. The alleged negligence involves an appendectomy on Plaintiff Miller on December 11, 2018.

Defendant denies that Dr. Harrington was negligent or that his actions caused any damage.

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.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. It is common to have hidden or implicit thoughts that help us form our opinions. You are making very important decisions in this case. You must evaluate the evidence carefully. You must avoid decisions based on things such as generalizations, gut feelings, prejudices, fears, sympathies, stereotypes, or inward or outward 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

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 (e.g. answers to interrogatories, matters which judicial notice was taken, and 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 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.
5. Your notes.

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

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.

INSTRUCTION NO. 8

You are to determine the standard of care (the degree of skill, care, and learning required), any failure to meet the standard of care, and causation from the opinions of the physicians who have testified as to these subjects.

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. There may be two or more recognized alternative courses of action which have been recognized by the medical profession as being within the standard of care.

INSTRUCTION NO. 9

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

INSTRUCTION NO. 10

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

INSTRUCTION NO. 11

"Negligence" means failure to use ordinary care. Ordinary care is the care which a reasonably careful person would use under similar circumstances. "Negligence" is doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

INSTRUCTION NO. 12

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

INSTRUCTION NO. 13

Plaintiff claims that Dr. Harrington was negligent.

In order to prevail on this claim, Plaintiff 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. Harrington under circumstances similar to those presented in this case;
2. Dr. Harrington was negligent by failing to meet the standard of care in one or more of the following ways:
 - (a) In failing to properly secure the appendix stump, causing an appendiceal stump leak.
 - (b) In failing to convert to an open procedure.
3. Dr. Harrington's negligence 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, she is entitled to damages in some amount.

INSTRUCTION NO. 14

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

- (a) Past medical expenses of Amy Selvy Miller (may not exceed \$12,000);
- (b) Economic losses of Amy Selvy Miller due to the negligence (lost sick time may not exceed \$4,957.20);
- (c) Pain and suffering of Amy Selvy Miller from December 11, 2018, to the present date;
- (d) Present value of future pain and suffering from the date of the trial for her life expectancy;
- (e) Past loss of function of body and mind from December 11, 2018 to the present;
- (f) Present value of future loss of function of body and mind;

The amount you assess for past and future 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. 15

In the context of this case, “economic damages” include, but are not necessarily limited to, the cost of reasonable and necessary medical care.

“Noneconomic damages” include damages arising from pain, suffering, inconvenience, physical impairment, mental anguish, emotional pain and suffering, or any other nonpecuniary damages.

INSTRUCTION NO. 16

The reasonable cost of necessary hospital charges, doctor charges, prescriptions, other medical services from the date of injury until the present date.

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

INSTRUCTION NO. 17

Physical and mental pain and suffering from the date of injury on December 11, 2018, to the present date.

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. 18

Any damages which you award for the past medical care 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 or her immediate family.

INSTRUCTION NO. 19

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Amy Selvy Miller is 31.79. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Amy Selvy Miller's health, habits, occupation, and lifestyle, when deciding issues of future damages. Amy is currently 51 years of age.

INSTRUCTION NO. 20

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

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. 22

Upon retiring you shall select a head juror. 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

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

You may not communicate about this case before reaching your verdict. This includes via cell phone and electronic media such as text messages, email, electronic messaging applications, and any social media platform including but not limited to Facebook, LinkedIn, YouTube, Twitter, TikTok, Instagram, Snapchat, and any other social media applications you may use.

Do not do any research or make any investigation about this case on your own. Do not use internet or application-based maps or programs, or any other application, program, or device to search for or 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. 25

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 re-reading them. If, however, any of you feel it necessary to ask any question, you must do so in writing and deliver the question to the court attendant.

I cannot communicate with you without first discussing your question and potential answer with the parties and lawyers. This process naturally takes time and deliberation before I can respond. When I respond, it will be in writing, and the head juror must read the response to the jury. Keep the written question and response and return it with the verdict.

The court attendant 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. 26

I am giving you one verdict form with 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 form must be signed by your head juror.

After deliberating for six hours from 8:00 o'clock A.m. 8-22-23 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.

DATED AUGUST 21, 2023.



DANIEL P. WILSON
JUDGE, EIGHTH JUDICIAL DISTRICT