

JURY INSTRUCTION NO. 1
INTRODUCTION

Members of the jury, you have heard the evidence and the arguments of counsel. It is now the duty of the court to instruct you on the law that applies to this case. The court and jury have separate functions. You decide the disputed facts, and I give the instructions of law. It is your sworn duty to accept these instructions and to apply the law as I give it to you. You are not permitted to change the law or to apply your own idea of what you think the law should be.

Authority:
Ohio Jury Instructions §311.01.

JURY INSTRUCTION NO. 2
BURDEN OF PROOF

The person who claims that certain facts exist must prove them by a preponderance of the evidence. This duty is known as the burden of proof.

The burden of proof is on the Plaintiff to prove the facts necessary by a preponderance of the evidence.

JURY INSTRUCTION NO. 3
PREPONDERANCE OF EVIDENCE

Preponderance of the evidence is the greater weight of the evidence; that is, evidence that you believe because it outweighs in your mind the evidence opposed to it. A preponderance means evidence that is more probable, more persuasive, or of greater probative value. You must weigh the quality of the evidence. Quality may or may not be identical with quantity or the greater the number of witnesses.

In deciding whether an issue has been proved by a preponderance of the evidence, you should consider all of the evidence, regardless of who produced it.

If the weight of the evidence is equally balanced, the party who has the burden of proof has not established such issue by a preponderance of the evidence.

JURY INSTRUCTION NO. 4
EVIDENCE

Evidence is all the testimony received from the witnesses including depositions, the exhibits admitted during the trial, and any facts that the court requires you to accept as true.

You may consider both direct and circumstantial evidence. You must decide from all the direct and circumstantial evidence, taken together, whether the party who has the burden of proof has met that burden.

Direct evidence is the testimony given by a witness who has seen or heard the facts about which the witness testifies. It includes exhibits admitted into evidence during the trial and stipulations that you were instructed to accept as fact.

Circumstantial evidence is the proof of facts or circumstances by direct evidence from which you may reasonably infer other related or connected facts that naturally and logically follow according to the common experience of people.

JURY INSTRUCTION NO. 5
INFERENCE

To infer, or to make an inference, is to reach a reasonable conclusion of fact that you may, but are not required to, make from other facts that you find have been established by direct evidence. You may infer a fact only from other facts that have been proved by the greater weight of the evidence. Whether an inference is made rests entirely with you.

Authority:
Ohio Jury Instructions §305.01 (5)

JURY INSTRUCTION NO. 6
EVIDENCE EXCLUDES

The evidence does not include the pleadings or any statement of counsel made during the trial, unless such statement is an admission or agreement admitting certain facts. The opening statements and the closing arguments of counsel are designed to assist you. They are not evidence.

Statements and answers ordered stricken, or to which the court sustained an objection, or that you were instructed to disregard, are not evidence and must be treated as though you never heard them.

You must not guess why the court sustained the objection to any question or what the answer to that question might have been. You must not consider as evidence any suggestion included in a question that was not answered.

JURY INSTRUCTION NO. 7
CREDIBILITY

You are the judges of the facts, the credibility or believability of the witnesses, and the weight of the evidence.

To determine the greater weight of the evidence, you must consider the credibility or believability of the witnesses. You will use the tests of truthfulness that you use in your daily lives.

These tests include the appearance of each witness upon the stand; the witness' manner of testifying; the reasonableness of the testimony; the opportunity the witness had to see, hear and know the things about which the witness testified; and the witness' accuracy of memory, frankness or lack of it, intelligence, interest, and bias, if any, together with all the facts and circumstances surrounding the testimony. Use these tests and assign to each witness' testimony such weight as you think proper.

You are not required to believe the testimony of any witness simply because the witness was under oath. You may believe or disbelieve all or any part of the testimony of any witness. It is your duty to determine what testimony to believe and what testimony not to believe. The testimony of one witness if believed by you is sufficient to prove any disputed fact.

JURY INSTRUCTION NO. 8
DEPOSITIONS

Some testimony was presented by video deposition or deposition transcript. You are to consider this evidence according to the same tests that you apply to other testimony.

If statements in a deposition differ from the testimony given by the same witness in the court room, you may consider the statements to test the credibility of such witness.

JURY INSTRUCTION NO. 9
EXPERT WITNESS AND HYPOTHETICAL QUESTION

Normally, a witness may not express an opinion. However, one who follows a profession may express his or her opinion because of his or her education, knowledge, and experience. Such testimony is admitted for whatever assistance it may provide to help you to arrive at a just verdict.

Questions have been asked in which expert witnesses were permitted to assume that certain facts were true and to give an opinion based upon that assumption. You must decide whether the assumed facts on which the experts based their opinions are true. If any assumed fact was not established by the greater weight of the evidence, you will decide the effect of that failure on the value of the opinions of the experts.

Questions have been asked of the expert witnesses after they had disclosed the underlying facts or data. It is for you, the jury, to decide if such facts or data on which they based their opinions are true, and you will decide the weight to give such evidence.

As with other witnesses, on you alone rests the duty of deciding what weight to give to the testimony of the experts. In deciding its weight, consider their skill, experience, knowledge, veracity, familiarity with the facts of this case, and the usual rules for testing credibility or believability and deciding the weight to give to the testimony.

JURY INSTRUCTION NO. 10
NEGLIGENCE

Negligence is a failure to use reasonable care. Every person is required to use reasonable care to avoid injuring another person.

Reasonable care is the care that a reasonably careful person would use under the same or similar circumstances.

JURY INSTRUCTION NO. 11
STANDARD OF CARE

The Plaintiff, Rory Thomas, as surviving parent of Sloane Thomas, deceased, claims that Dr. Arya Davis negligently caused injury and death to Sloane Thomas. Before you can find for the Plaintiff, you must find by the greater weight of the evidence that Dr. Davis was negligent and that the negligence was a proximate cause of injury and death to Sloane Thomas.

The existence of a physician-patient relationship places on the physician the duty to act as a physician of reasonable skill, care, and diligence under like or similar conditions or circumstances. This is known as the standard of care. The standard of care is to do those things that a reasonably careful physician would do and to refrain from doing those things that a reasonably careful physician would not do. The required standard of care is the same throughout the United States. If you find by the greater weight of the evidence that Dr. Davis failed to meet the standard of care, then you must find that she was negligent.

A specialist is a physician who holds himself or herself out as specially trained, skilled, and qualified in a particular branch of medicine. Dr. Davis holds herself out as an orthopedic surgeon. The standard of care for a surgeon in the practice of a specialty is that of a reasonable specialist practicing medicine exercising reasonable skill, care, and diligence under like and similar circumstances, regardless of where he or she practices. A specialist in any branch has the same standard of care as all other specialists in that branch. If you find by the greater weight of the evidence that Dr. Davis failed to meet the established standard of care for an orthopedic surgeon, then you must find that she was negligent.

Authority:

Ohio Jury Instructions § 417.01 (1-2)

Ohio Jury Instructions § 417.03 (1-2)

JURY INSTRUCTION NO. 12
DIFFERENT METHODS

Although some other surgeon might have used a method of treatment different from that used by the Defendant, this circumstance will not by itself prove that the Defendant was negligent. You shall decide whether the treatment used by the Defendant was in accordance with the required standard of care.

Authority:
Ohio Jury Instructions § 417.01 (3)

JURY INSTRUCTION NO. 13
CUSTOMARY METHODS

The customary or routine method of treatment may be considered by you along with all of the other facts and circumstances in evidence. Although a particular method may be customary, usual, or routine, this circumstance will not by itself prove that method to be within the standard of care. You must decide whether the method of treatment used by the Defendant was in accordance with the required standard of care.

Authority:
Ohio Jury Instructions § 417.01 (4)

JURY INSTRUCTION NO. 14
FORESEEABILITY

Medical professionals are expected to recognize certain symptoms of illness and injury and are expected to be aware of the associated risk of harm during the course of treatment. They are expected to be aware of the harm that a medical professional of ordinary skill, care, and diligence would foresee under the same or similar circumstances. Medical professionals, however, are not expected to guard against a risk of harm that a medical professional of ordinary skill, care, and diligence would not foresee.

Authority:
Ohio Jury Instructions § 417.03(8)

JURY INSTRUCTION NO. 15
BAD RESULT

The fact that Dr. Davis' treatment did not fulfill the patient's expectations does not by itself prove that she was negligent.

JURY INSTRUCTION NO. 16
NEGLIGENCE AND CAUSATION; SEPARATE AND DISTINCT

Negligence and proximate cause are separate and distinct issues. The Plaintiff must prove that Dr. Davis' negligence proximately caused or contributed to cause the injury. If you find that Dr. Davis, you must also decide whether such negligence proximately caused injury.

Authority:
Ohio Jury Instructions §311.11

JURY INSTRUCTION NO. 17
PROXIMATE CAUSE

A party who seeks to recover for injury must prove not only that the other party was negligent, but also that such negligence was a proximate cause of the injury.

Proximate cause is an act or failure to act that in the natural and continuous sequence directly produced the injury and without which the injury would not have occurred.

There may be more than one proximate cause. When the negligent act, or failure to act, of one person combines with the negligence of another to produce the injury and wrongful death, the negligence of each is a cause. It is not necessary that the negligence occur at the same time, nor that there be common purpose or action.

Authority:
Ohio Jury Instructions §405.01 (1-2)
Ohio Jury Instructions §207.19

JURY INSTRUCTION NO. 18
RESPONDEAT SUPERIOR

An employer is liable for the negligent acts of its employees acting within the scope of employment.

In this case, the parties have stipulated that Dr. Davis was an employee of Utopia University Sports Medicine Center working within the scope of her employment at the time she rendered the care and treatment at issue in this case. Therefore, Utopia University Sports Medicine Center is responsible for any injuries you find were proximately caused by Dr. Davis' negligence.

JURY INSTRUCTION NO. 19
CONCLUSION

If you find that the Plaintiff proved each part of her claims by the greater weight of the evidence against Defendant, then you must find for the Plaintiff. You must then decide what damages, if any, were caused by Defendant's conduct. If you find that the Plaintiff failed to prove any part of her claims by the greater weight of the evidence, then your verdict must be for Defendant.

Authority:
Ohio Jury Instructions §313.01

JURY INSTRUCTION NO. 20
DAMAGES: PERSONAL INJURY

If you find for the Plaintiff, you will decide by the greater weight of the evidence an amount of money that will reasonably compensate the Plaintiff for the actual injury proximately and directly caused by Defendant's negligence. In deciding this amount, you will consider Sloane Thomas' economic loss and noneconomic loss, if any, proximately and directly caused by the actual injury.

"Economic loss" means any of the following types of financial harm:

(A) all expenditures for medical care or treatment, rehabilitation services, or other care, treatment, services, products, or accommodations incurred as a result of Sloane Thomas' injury before his death; and

(B) any other expenditure incurred as a result of Sloane Thomas' injury before his death other than attorney's fees incurred by the Plaintiff.

In deciding the reasonable value of medical, hospital, or other related care, treatment, services, products, or accommodations, you shall consider all of the evidence submitted. Both the original bill and the amount accepted as full payment may be considered along with all other evidence to decide the reasonable value.

"Noneconomic loss" means harm other than economic loss that results from the injury, including, but not limited to, pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; disfigurement; mental anguish; and any other intangible loss.

JURY INSTRUCTION NO. 21
DAMAGES: WRONGFUL DEATH

If you find for the Plaintiff, you will decide what sum of money will compensate the next of kin of Sloane Thomas for the injury and loss to them resulting from his wrongful death.

When deciding damages suffered by reason of the wrongful death, you may consider the following:

(A) loss of services of Sloane Thomas;

(B) loss of the society of Sloane Thomas, including loss of companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education suffered by the surviving spouse;

(C) the mental anguish incurred by the surviving next of kin.

In addition to an award of compensatory damages, you may make an award for the reasonable funeral and burial expenses, if the Plaintiff has established these expenses by the greater weight of the evidence.

JURY INSTRUCTION NO. 22
MATHEMATICAL FORMULA

You cannot consider as evidence the suggestion of counsel that you use a unit value or mathematical formula to compensate for pain and suffering. There is no recognized unit value for pain and suffering. Deciding compensation for pain and suffering is solely your responsibility.

JURY INSTRUCTION NO. 23
QUOTIENT VERDICT

If you find for the Plaintiff, you may not agree in advance to accept an average figure as the amount of your verdict. If a figure is reached by obtaining an average, such amount is not a proper verdict unless each juror thereafter individually exercises his or her judgment and decides whether or not he or she will accept such amount. At least six members of the jury must individually accept the amount before it can be a fair and just verdict.

Authority:
Ohio Jury Instructions § 315.41

JURY INSTRUCTION NO. 24
LIFE EXPECTANCY

If you find Plaintiff's death was the proximate cause of the negligence of the Defendant, you may consider how long the Plaintiff was likely to live.

The evidence of the life expectancy of people 19 years of age is an estimate of the average remaining length of lives of all persons in this country based on a limited number of persons at that age. It is an incomplete figure and does not indicate the future life-span of any individual. Such evidence is not conclusive; however you may consider it along with all the other evidence.

If you find for the Plaintiff, you may consider what the probable normal length of the life of the decedent would have been.

You may consider the life expectancy table estimate of Sloane Thomas' remaining life expectancy at the time of his death as an additional 55 years, or to age 75, together with other evidence.

JURY INSTRUCTION NO. 25
INTRODUCTORY CLOSING INSTRUCTION

The court has given you the instructions on the law applicable to this case. I will now instruct you on how to conduct your deliberations and prepare your verdicts.

When you go to the jury room, your first function will be to select one of your members to serve as a foreperson. The person you select to preside over your deliberations does not have any greater power, nor does that person's vote have any more importance, than others. The foreperson serves the purpose of helping to conduct your deliberations in an orderly manner and to give each of you the opportunity to express your opinion. One additional duty of the foreperson is to see to it that the verdict forms and any exhibits are returned to the court after you have reached a verdict.

You will be given written questions called interrogatories. You must answer them in writing, starting with the first question. You must carefully follow the directions about how to proceed, because the directions will tell you which questions to answer and whether to sign the verdict form for Plaintiff or for Defendant.

A question is answered when at least six of the jurors agree. All who agree must sign. If six jurors cannot agree on an answer, you will be instructed to report to the court. I will now read the interrogatories.

I will now read the verdict forms. In order to conclude this case, it is necessary that at least six members of the jury agree upon the verdict. The members of the jury agreeing upon the verdict must sign their names in ink to the agreed-upon verdict form.

You are warned not to discuss the status of your deliberations with anyone outside of the jury room, nor are you to discuss your verdict with anyone other than your fellow jurors until it

has been returned to the court.

When you have reached and signed a verdict, you will summon the bailiff who will return you to the courtroom at which time your verdict will be announced.

Authorities:

Ohio Jury Instructions §317.01

Ohio Jury Instruction §417.19(1)

JURY INSTRUCTION NO. 26
CLOSING REMARKS

The court cannot embody all the law in any single part of these instructions. In considering one portion, you must consider it in the light of and in harmony with all the instructions.

The court has instructed you on all the law necessary for your deliberations. Whether certain instructions are applicable may depend upon the conclusions you reach on the facts by a greater weight of the evidence. If you have an impression that the court has indicated how any disputed fact should be decided, you must put aside such an impression because that decision must be made by you, based solely upon the facts presented to you in this courtroom.

Circumstances in the case may arouse sympathy for one party or the other. Sympathy is a common human emotion. The law does not expect you to be free of such normal reactions. However, the law and your oath as jurors require you to disregard sympathy and not to permit it to influence your verdict.

You must not be influenced by any consideration of sympathy or prejudice. It is your duty to weigh the evidence, to decide the disputed questions of fact, to apply the instructions of law to your findings, and to render your verdict accordingly. Your duty as jurors is to arrive at a fair and just verdict.

Your initial conduct upon commencing deliberations is important. It is not wise to express immediately a determination or to insist upon a certain verdict. Having so expressed yourself, your sense of pride may be aroused, and you may hesitate to give up your position even if shown that it is not correct.

Consult with one another in the jury room, and deliberate with a view to reaching an agreement if you can do so without disturbing your individual judgment. Each of you must

decide this case for yourself. You should do so, however, only after a discussion of the case with the other jurors. Do not hesitate to change an opinion if convinced that it is wrong. However, you should not surrender your considered opinions in order to be congenial or to reach a verdict solely because of the opinion of other jurors.

JURY INSTRUCTION NO. 27
ALTERNATE JURORS

A Juror selected as an alternate is not permitted to participate in the jury's deliberations unless one of the other jurors is unable to complete his or her service due to illness or other misfortune. It will not be necessary for the alternates to render further service in this case.

Even though you will not be required to render further service in this case, the court must restrict you from discussing the case with anyone or revealing to anyone how you would have voted. After the jury has returned its verdict and it is announced in court, you are released from this restriction and at that time you may, if you wish, discuss the case.

I want to acknowledge the valuable service rendered by the alternates and express my thanks as well as the thanks of the community.

JURY INSTRUCTION NO. 28
FINAL CLOSING INSTRUCTIONS

I will give you the exhibits and the verdict forms. The foreperson will retain possession of these records, including the verdict forms, and return them to the courtroom when you have reached a verdict. Until your verdict is announced in open court, you are not to disclose to anyone the status of your deliberations or the nature of your verdict.

When you begin your deliberations, first select a foreperson. When six or more jurors agree upon the verdict, you will complete and sign the verdict forms in ink and advise the bailiff. You will then return to the courtroom at which time your verdict will be announced.

If you have a question, the question should be written down and given to the bailiff. The bailiff will deliver the question to the court and I will respond. The question should not reflect the status of your deliberations.

Deliberations may take place only when all jurors are in the jury deliberation room together and with no one else present. Should any juror leave the room, all deliberations must cease until all jurors are together. During your deliberations no juror is permitted to disclose to anyone the status of your deliberations or the nature of your verdict. This order must be strictly obeyed. During recesses you may not discuss the case with anyone, even other jurors. After your verdict is returned and announced in court, you may discuss the case with anyone but you are not required to do so.

You will now retire to begin deliberations. If you have any questions about administrative matters such as breaks or meals, you should ask the bailiff.

Authority:
Ohio Jury Instructions §317.07