

JURY INSTRUCTIONS

General

1. The sole issue in this case is whether the plaintiff was injured or damaged by the negligence of the defendant. On this issue, the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, that the defendant was negligent and that such negligence was a proximate cause of the plaintiff's injury.
2. The greater weight of the evidence does not refer to the quantity of the evidence but to the convincing force of the evidence. It means that you must be persuaded, considering all the evidence, that the necessary facts are more likely to exist than not. If you are so persuaded, it would be your duty to answer the issue in favor of the party with the burden of proof. If you are not so persuaded, it would be your duty to answer the issue against the party with the burden of proof.
3. You are the sole judges of the credibility of the witnesses. You must decide for yourselves whether to believe the testimony of any witness. You may believe all, or any part, or none of that testimony. In determining whether to believe any witness you should use the same tests of truthfulness which you apply in your everyday lives including the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which the witness testifies; the manner and appearance of the witness; any interest, bias, or partiality the witness may have; the apparent understanding and fairness of the witness; whether the testimony of the witness is sensible and reasonable; and whether the testimony of the witness is consistent with other believable evidence in the case.
4. Expert witnesses have testified in this case. You are the sole judges of the credibility of expert witnesses and the weight to be given the testimony of expert witnesses. Consider the testimony of any expert witnesses using the same tests you are to use with any other witness. In addition to those tests, consider any evidence about the witness' training, qualifications, and experience or the lack thereof; the reasons, if any, given for the opinion; whether or not the opinion is supported by the facts that you find from the evidence; whether or not the opinion is reasonable; and whether or not it is consistent with the other believable evidence. You should consider the opinion of an expert witness, but you are not bound by it.
5. You are also the sole judges of the weight to be given to any evidence. If you believe that certain evidence is believable, you must determine the importance of the evidence in the light of all other believable evidence in the case.

Medical Negligence

In diagnosing (plaintiff)'s condition, (doctor) was required to use the degree of care, skill, and judgment which a reasonable doctor practicing internal medicine would exercise in

the same or similar circumstances, having due regard for the state of medical science at the time. A doctor who fails to conform to this standard is negligent. The burden is on (plaintiff) to prove that (doctor) was negligent.

You have heard testimony during this trial from doctors who have testified as expert witnesses. The reason for this is because the degree of care, skill, and judgment which a reasonable doctor would exercise is not a matter within the common knowledge of laypersons. This standard is within the special knowledge of experts in the field of medicine and can only be established by the testimony of experts. You, therefore, may not speculate or guess what the standard of care, skill, and judgment is in deciding this case, but rather must attempt to determine it from the expert testimony that you heard during this trial.

A person's negligence is a cause of the plaintiff's death if the negligence was a substantial factor in producing the death. This question does not ask about "the cause" but rather "a cause." If you conclude from the evidence that the death was caused jointly by (doctor)'s negligence and also the natural progression of (plaintiff)'s condition, then you should find that the (doctor)'s negligence was a cause of the (plaintiff)'s death.

Informed Consent

A doctor has the duty to provide his or her patient with information necessary to enable the patient to make an informed decision about treatment options. If the doctor fails to perform this duty, he or she is negligent.

To meet this duty to inform his or her patient, the doctor must provide the patient with the information a reasonable person in the patient's position would regard as significant when deciding to accept or reject a medical treatment. In answering this question, you should determine what a reasonable person in the patient's position would want to know in consenting to or rejecting a medical treatment.

If (doctor) offers to you an explanation as to why he or she did not provide information to (plaintiff), and if this explanation satisfies you that a reasonable person in (plaintiff)'s position would not have wanted to know that information, then (doctor) was not negligent.