

IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS

KC Plaintiff)				
)			
Plaintiff,)			
)			
v.)	Case No.: 06 CV 1383		
)			
Defendant Doctor)				
)			
Defendant.)			

PLAINTIFF’S PROPOSED JURY INSTRUCTIONS

Plaintiff submits to the Court the following proposed jury instructions:

- Instruction No. _____ PIK 102.01 Consideration and Application of Instructions
- Instruction No. _____ PIK 102.02 Evidence Defined
- Instruction No. _____ PIK 102.03 Objections to Evidence
- Instruction No. _____ PIK 102.04 Statements and Arguments of Counsel
- Instruction No. _____ PIK 102.07 Judge’s Opinion
- Instruction No. _____ PIK 102.05 Sympathy for or Against a Party
- Instruction No. _____ PIK 102.10 Meaning of Burden of Proof
- Instruction No. _____ PIK 102.20 Credibility of Witnesses
- Instruction No. _____ PIK 102.23 Witness Testifying Falsely
- Instruction No. _____ PIK 106.01 Issues and Burden of Proof – Plaintiff’s Claim –
Defendant’s Defense

- Instruction No. _____ PIK 123.01 Duty of Health Care Provider
- Instruction No. _____ PIK 123.10 Health Care Provider’s Standard of Care –
Expert Testimony

- Instruction No. _____ PIK 123.12 Duty of Medical Specialist
- Instruction No. _____ PIK 171.02 Types of Damages Allowed – Personal Injury
- Instruction No. _____ PIK 171.06 Loss or Impairment of Services
- Instruction No. _____ PIK 171.43 Aggravation of Preexisting Condition
- Instruction No. _____ PIK 171.45 Mortality Table-Life Expectancy
- Instruction No. _____ PIK 181.03 Conclusion – Special Verdict
- Instruction No. _____ PIK 181.04 Verdict Form

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ATTORNEY FOR PLAINTIFF

INSTRUCTION NO. _____

Members of the Jury: It is your duty as jurors to follow the law as I shall state it to you. You should construe each instruction in the light of and in harmony with the other instructions, and you should apply the instructions as a whole to the evidence.

INSTRUCTION NO. _____

You should consider and weigh everything admitted into evidence. This includes testimony of witnesses, admissions or stipulations of the parties, and any admitted exhibits. You must disregard any testimony or exhibit which I did not admit into evidence.

INSTRUCTION NO. _____

At times during the trial the Court passes upon objections to the admission of certain things into evidence. Questions relating to the admissibility of evidence are solely questions of law for the Court and you must not concern yourselves with the reasons for its rulings. In your consideration of the case you must draw no inferences from these rulings and you must consider only the evidence which is admitted by the court.

INSTRUCTION NO. _____

Statements, arguments, and remarks of counsel are intended to help you in understanding the evidence and in applying the law, but they are not evidence. If any statements are made that are not supported by evidence, they should be disregarded.

INSTRUCTION NO. _____

Neither in these instructions nor in any ruling, action, or remark that I have made during the course of this trial have I intended to suggest how I would resolve any of the issues of this case.

INSTRUCTION NO. _____

You must weigh and consider this case without favoritism for or prejudice against any party. Sympathy should not enter into your deliberations.

INSTRUCTION NO. _____

Burden of proof means burden of persuasion. A party who has the burden of proof must persuade you that her claim is more probably true than not true. In determining whether she has met this burden you will consider all the evidence, whether produced by the plaintiff or defendant.

INSTRUCTION NO. _____

It is for you to determine the weight and credit to be given the testimony of each witness. You have a right to use common knowledge and experience in regard to the matter about which a witness has testified.

INSTRUCTION NO. _____

If you find that any witness has willfully testified falsely concerning any material matter, you have a right to distrust the testimony of that witness in other matters, and you may reject all or part of the testimony of that witness, or you may give it such weight as you think it deserves. You should not reject any testimony without cause.

INSTRUCTION NO. _____

The plaintiff claims that she was injured due to the fault of the defendant Dr. Defendant,
M.D.

1. In failing to properly identify plaintiff's health history on or about October 4, 2005; or
2. In failing to diagnose plaintiff's health history and determine that she was not a candidate for adenosine on October 4, 2005; or
3. In improperly diagnosing adenosine to plaintiff on or about October 4, 2005; or
4. In improperly managing the respiratory failure on October 4, 2005.

The plaintiff has the burden to prove that it is more probably true than not true that she sustained injuries caused by any of the claimed negligent acts or omissions of the defendant. When more than one negligent act or omission is alleged against a defendant agreement as to which specific act or omission is not required.

INSTRUCTION NO. _____

In performing professional services for a patient, a physician has a duty to use that degree of learning and skill ordinarily possessed and used by members of that profession and of that school of medicine and under like circumstances. In the application of this skill and learning the physician should also use ordinary care and diligence. A violation of this duty is negligence.

INSTRUCTION NO. _____

In determining whether a physician used the learning, skill, and conduct required, you are not permitted to arbitrarily set a standard of your own or determine this question from your personal knowledge. On questions of medical or scientific nature concerning the standard of care of a physician only those qualified as experts are permitted to testify. The standard of care is established by members of the same profession. It follows, therefore, that the only way you may properly find that standard is through evidence presented by physician expert witness.

The above rule is limited to those matters clearly within the field of medical science. If what was done or not done in the treatment of a patient is within the common everyday knowledge of persons generally, such facts may be established from the general circumstances as shown by the evidence, which evidence may include testimony by persons other than experts.

INSTRUCTION NO. _____

A physician who holds himself out to be a specialist in a particular field of medicine has a duty to use his skill and knowledge as a specialist in a manner consistent with the special degree of skill and knowledge ordinarily possessed by other specialists in the same field of expertise at the time of the diagnosis. A violation of this duty is negligence.

A physician is at fault when he is negligent and that negligence caused or contributed to cause the injury or damages for which the claim is made.

INSTRUCTION NO. _____

In determining the amount of damages sustained by the plaintiff, you should allow the amount of money which will reasonably compensate plaintiff for plaintiff's injuries and losses resulting from the occurrence in question including any of the following shown by the evidence:

(1) **MEDICAL EXPENSES.** This type of damage includes the reasonable expenses of necessary medical care, hospitalization and treatment received by reason of plaintiff's injuries to date and those which plaintiff is reasonably expected to receive in the future reduced to present value.

(2) **ECONOMIC LOSS.** This type of damage includes loss of time or income and losses other than medical expenses incurred by reason of plaintiff's injuries to date and those which plaintiff is reasonably expected to receive in the future reduced to present value.

(3) **NONECONOMIC LOSS.** This type of damage includes pain, suffering, disabilities, disfigurement, and any accompanying mental anguish suffered by reason of plaintiff's injuries to date (and those plaintiff is reasonably expected to suffer in the future).

You will be given a verdict form in which you must itemize the amounts of damages awarded in this case.

INSTRUCTION NO. _____

In arriving at the amount of recovery, you should consider the loss or impairment of plaintiff's ability to perform services in the household and in the discharge of her domestic duties.

**PIK 171.06 [Modified] by
Wolfgang v. Mid-America Motorsports, Inc., 237 Kan. 410.**

INSTRUCTION NO. _____

According to life expectancy tables, a person of plaintiff's age has a remaining life expectancy of 22 years.

This figure is to assist you in determining the probable life expectancy of plaintiff as it bears on her future losses and damages. It is not conclusive proof of her life expectancy, and you are not bound by it. It is only an estimate based on average experience. You may find that plaintiff probably will live a longer or shorter period than that given in these tables. This figure should be considered by you along with evidence of the health, physical condition, habits, occupation, and other circumstances bearing upon her life expectancy.

INSTRUCTION NO. _____

Plaintiff is not entitled to recover for any physical ailment, defect, or disability that existed prior to the occurrence. However, if the plaintiff had a preexisting physical ailment, defect or disability and you find this condition was aggravated or made active causing increased suffering or disability, then the plaintiff is entitled to recover for such increased suffering and disability.

INSTRUCTION NO. _____

When you retire to the jury room you will first select one of your members to preside over your deliberations, speak for the jury in court, and sign the verdict upon which you agree.

Turn off your cell phones and do not use them to take incoming calls or make outgoing calls during your deliberations.

In this case your verdict will be returned in the form of written answers to special written questions submitted by the court. Your answers will constitute your verdict.

Your answer to each question must be by the agreement of ten or more jurors. Your verdict must be founded entirely upon the evidence admitted and the law as given in these instructions.

Date

District Judge

VERDICT

We, the jury, impaneled and sworn in the above entitled case, upon our oaths, do make the following answers to the questions propounded by the court:

1. Do you find defendant Dr. Defendant. to be at fault?

Yes _____ No _____

[Proceed to the remaining question only if you answered “yes” to question 1.]

What damages do you find were sustained by plaintiff?

- A. Noneconomic loss to date \$ _____
- B. Future noneconomic loss \$ _____
- C. Medical expenses to date \$ _____
- D. Future medical expenses \$ _____
- E. Economic loss to date \$ _____
- F. Future economic loss \$ _____

TOTAL DAMAGES \$ _____

Agreement on each of the above questions was by ten or more jurors?

Yes _____ No _____

Presiding Juror