

Jury Instructions

1.01 Preliminary Cautionary Instructions

[1] Now that the evidence has concluded, I will instruct you as to the law and your duties.

[2] The law regarding this case is contained in the instructions I will give to you. You must consider the Court's instructions as a whole, not picking out some instructions and disregarding others.

[3] It is your duty to resolve this case by determining the facts based on the evidence and following the law given in the instructions. Your verdict must not be based upon speculation, prejudice, or sympathy. Each party, whether a corporation or an individual, should receive your same fair consideration. My rulings, remarks or instructions do not indicate any opinion as to the facts.

[4] You will decide what facts have been proven. Facts may be proven by evidence or reasonable inferences drawn from the evidence. Evidence consists of the testimony of witnesses and of exhibits admitted by the court. You should consider all the evidence without regard to which party produced it. You may use common sense gained from your experiences in life, in evaluating what you see and hear during trial.

[5] You are the only judges of the credibility of the witnesses. You will decide the weight to be given to the testimony of each of them. In evaluating the credibility of a witness, you may consider that witness' ability and opportunity to observe, memory, manner, interest, bias, qualifications, experience, and any previous inconsistent statement or act by the witness concerning an issue important to the case.

[6] You should not do any independent investigation or research on any subject relating to the case. What you may have seen or heard outside the courtroom is not evidence. This includes any press, radio, or television programs and it also includes any information available on the Internet. Such programs, reports, and information are not evidence and your verdict must not be influenced in any way by such material.

[7] For example, you must not use the Internet, including Google, Wikipedia, or any other sources that you might use every day, to search for any information about the case, or the law which applies to the case, or the people involved in the case, including the parties, witnesses, lawyers, and judge.

[8] During the course of the trial, do not discuss this case with anyone--not even your own families or friends, and also not even among yourselves-until at the end of the trial when you have retired to the jury room to deliberate on your verdict. Even though this is hard to do, it will be a violation of these instructions and your oath if you discuss the case with anyone else.

[9] You must not provide any information about the case to anyone by any means at all, and this includes posting information about the case, or your thoughts about it, on any device or Internet site, including blogs, chat-rooms, or any social-networking websites, such as Twitter, Facebook or any other means.

[10] You cannot use any electronic devices or services to communicate about this case, and this includes cell-phones, smart-phones, lap-tops, the Internet, and any other tools of

technology. The use of any such devices or services in connection with your duties is prohibited.

[11] The reason for these instructions is that your verdict must be based only on the evidence presented in this courtroom and the law I will provide to you in my instructions. It would be unfair to the parties and a violation of your oath to base your decision on information from outside this courtroom. You should feel free to remind each other that your verdict is to be based only on the evidence admitted in court and that you cannot use information from any other sources. If you become aware of any violation of these instructions, it is your legal duty to report this to me immediately.

[12] Disobeying these instructions could cause a mistrial, meaning all of our efforts have been wasted and we would have to start over again with a new trial. If you violate these instructions you could be found in contempt of court.

[13] Pay close attention to the testimony as it is given. At the end of the trial you must make your decision based on what you recall of the evidence. You will not receive a written transcript of the testimony when you retire to the jury room.

[14] An opening statement is what an attorney expects the evidence will be. A closing argument is given at the conclusion of the case and is a summary of what an attorney contends the evidence has shown. If any statement or argument of an attorney is not supported by the law or the evidence, you should disregard that statement or argument.

Given ??

Refused

Modified

Withdrawn

[I.P.I. No. 1.01](#)

Rush Copley's Instruction No. 1

2.01 Evaluation of Deposition or Prior Testimony

The testimony of Timothy Sanborn, M.D., Gary Schaer, M.D., and Lisa Shoger, R.N., was presented by the reading of their testimony. You should give this testimony the same consideration you would give it had the witness personally appeared in court.

Given

Refused

Modified

Withdrawn

[I.P.I. No. 2.01](#)

Rush Copley's Instruction No. 2

3.02 Witness Who Has Been Interviewed By Attorney

An attorney is allowed, if the witness agrees, to talk to a witness to learn what testimony will be given. Such an interview, by itself, does not affect the credibility of the witness.

Given ??

Refused _____

Modified _____

Withdrawn _____

[I.P.I. No. 3.02](#)

Rush Copley's Instruction No. 3

3.03 Insurance/Benefits

Whether a party is insured or not insured has no bearing on any issue that you must 4 decide. You must refrain from any inference, speculation, or discussion about insurance. If you find for the plaintiff, you shall not speculate about or consider any possible sources of benefits the plaintiff may have received or might receive. After you have returned your verdict, the court will make whatever adjustments are necessary in this regard.

Given ??

Refused _____

Modified _____

Withdrawn _____

[I.P.I. No. 3.03](#)

Rush Copley's Instruction No. 4

3.04 Circumstantial Evidence

A fact or a group of facts, may, based on logic and common sense, lead you to a 4 conclusion as to other facts. This is known as circumstantial evidence. A fact may be proved by circumstantial evidence. For example, if you are in a building and a person enters who is wet and is holding an umbrella, you might conclude that it was raining outside. Circumstantial evidence 9 is entitled to the same consideration as any other type of evidence.

Given ??

Refused _____

Modified _____

Withdrawn _____

[I.P.I. No. 3.04](#)

Rush Copley's Instruction No. 5

3.08 Opinion Testimony

You have heard a witness give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way you judge the testimony from any other witness. The fact that such person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all of the other evidence in the case.

Given ??

Refused _____

Modified _____

Withdrawn _____

[I.P.I. No. 3.08](#)

Rush Copley's Instruction No. 6

12.05 Negligence-Intervention of Outside Agency

If you decide that any of the defendants were negligent and that their negligence was a proximate cause of injury to the plaintiff, it is not a defense that something else may also have been a cause of the injury.

However, if you decide that the sole proximate cause of injury to the plaintiff was something other than the conduct of the defendants, then your verdict should be for the defendants.

Given

Refused

Modified

Withdrawn

[I.P.I. No. 12.05](#)

Rush Copley's Instruction No. 7

15.01 Proximate Cause--Definition

When I use the expression "proximate cause," I mean a cause that, in the natural or ordinary course of events, produced the plaintiff's injury.

Given _____

Refused X

Modified _____

Withdrawn _____

[I.P.I. No. 15.01](#)

Rush Copley's Instruction No. 8

20.01 Issues Made by the Pleadings--Negligence--One or More Defendants

[1] The plaintiff claims that Harold Akens was injured and sustained damage, and that the 4 defendants were negligent in one or more of the following respects:

That the nursing staff failed to properly communicate with Dr. Sayeed.

[2] The plaintiff further claims that one or more of the foregoing was a proximate cause of Harold Akens' injuries. 8

[3] The defendants deny that they did any of the things claimed by the plaintiff, deny that they were negligent and deny that any claimed act or omission on the part of the defendants was a proximate cause of the plaintiff's claimed injuries.

[4] The defendants further deny that the plaintiff was injured or sustained damages to the extent claimed.

Given _____

Refused _____

Modified _____

Withdrawn _____

[I.P.I. No. 20.01](#)

Rush Copley's Instruction No. 9

21.01 Meaning of Burden of Proof

When I say that a party has the burden of proof on any proposition, or use the expression "if you find," or "if you decide," I mean you must be persuaded, considering all the evidence in

the case, that the proposition on which he has the burden of proof is more probably true than not true.

Given ??

Refused _____

Modified _____

Withdrawn _____

[I.P.I. No. 21.01](#)

Rush Copley's Instruction No. 10

B21.02.01 Burden of Proof on the Issues of Negligence - One Plaintiff and Two or More Defendants

The plaintiff has the burden of proving each of the following propositions as to each defendant: 2

4 First, that the defendant acted or failed to act in one of the ways claimed by the plaintiff as stated to you in these instructions and that in so acting, or failing to act, the defendant was negligent;

Second, that the plaintiff was injured;

Third, that the negligence of the defendant was a proximate cause of the injury to the plaintiff.

You are to consider these propositions as to each defendant separately.

If you find from your consideration of all the evidence that any of these propositions has not been proved as to any one or all of the defendants, then your verdict shall be for that or those defendants. On the other hand, if you find from your consideration of all the evidence that all of these propositions have been proved as to any one or all of the defendants, then your verdict shall be for the plaintiff as to that or all those defendants.

Given

Refused

Modified

Withdrawn

[I.P.I. No. B21.02.01](#) (modified)

Rush Copley's Instruction No. 11

31.04 Measure of Damages--Wrongful Death -- Adult Decedent -- Widow and/or Lineal Next of Kin Surviving

If you decide for the plaintiff on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate Robin Akens, Jamie Akens, and Jennifer Akens Deming for the pecuniary loss proved by the evidence to have resulted to Robin Akens, Jamie Akens, and Jennifer Akens Deming from the death of the decedent. "Pecuniary loss" may include loss of money, benefits, goods, services, and society.

Where a decedent leaves lineal next of kin, the law recognizes a presumption that the lineal next of kin has sustained some pecuniary loss by reason of the death. The weight to be given this presumption is for you to decide from the evidence in this case.

In determining pecuniary loss, you may consider what the evidence shows concerning the following:

1. What money, benefits, goods, and services the decedent customarily contributed in the past;
2. What money, benefits, goods, and services the decedent was likely to have contributed in the future;
3. Decedent's personal expenses
4. His age;
5. His sex;MAY 2 2 2012
6. His health;
7. His habits of industry, sobriety, and thrift;
8. His occupational abilities;
9. The relationship between the Jamie Akens and Jennifer Akens Deming and Harold Akens.
10. The marital relationship that existed between Robin Akens and Harold Akens.

Given _____

Refused _____

Modified _____

Withdrawn _____

J.P.I. No. 31.04

Rush Copley's Instruction No. 12

31.07 Measure of Damages - Wrongful Death--Factors Excluded

In determining "pecuniary loss" you may not consider the following

1. ??
2. The grief or sorrow of the next of kin??
3. ??

Given

Refused

Modified

Withdrawn

[I.P.I. No. 31.07](#)

Rush Copley's Instruction No. 13

31.10 Damages- Survival Action

If you decide for the plaintiff on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate the estate for any of the following elements of damages proved by the evidence to have resulted from the negligence of the defendants during the period between the time of the decedent's injuries and the time of his death, taking into consideration the nature, extent, and duration of the injury:

Pain and suffering

Whether any of these elements of damages has been proved by the evidence is for you to determine.

Given _____

Refused _____

Modified _____

Withdrawn X

[I.P.I. No. 31.10](#)

Rush Copley's Instruction No. 14

31.11 Damages- Loss of Society -- Definition

When I use the term “society” in these instructions, I mean the mutual benefits that each family member receives from the other's continued existence, including love, affection, care, attention, companionship, comfort, guidance, and protection.

Given ??

Refused _____

Modified _____

Withdrawn _____

[I.P.I. No. 31.11](#)

Rush Copley's Instruction No. 15

31.13 Mortality Tables as Evidence of Damages--Wrongful Death Case

If you find for the plaintiff, then in assessing damages you may consider how long Robin Akens, Jamie Akens, and Jennifer Akens Deming will be likely to sustain pecuniary losses as a result of Harold Akens' death, considering how long Harold Akens was likely to have lived and how long Robin Akens, Jamie Akens, and Jennifer Akens Deming are likely to live.

According to a table of mortality in evidence, the life expectancy of a [male] person aged _____ years is _____ years. That of a [female] person aged _____ years is _____ years [and that of a (male) person aged _____ years is _____ years].

These figures are not conclusive. They are the average life expectancies of persons who have reached those ages. They may be considered by you in connection with other evidence relating to the probable life expectancies of the decedent and [his widow] [and] [his next of kin] including evidence of the decedent's occupation, health, habits and activities, bearing in mind that some persons live longer and some persons live less than the average.

In calculating the amount of these pecuniary losses consisting of money, benefits, goods or services, you must determine their present cash value. “Present cash value” means the sum of money needed now which, together with what that sum may reasonably be expected to earn in the future, will equal the amounts of those pecuniary losses at the times in the future when they will be sustained.

Damages for loss of society are not reduced to present cash value.

Given _____

Refused _____

Modified _____

Withdrawn X

[I.P.I. No. 31.13](#)

Rush Copley's Instruction No. 16

36.01 In Absence of Liability--No Occasion to Consider Damages E

If you decide for a defendant on the question of liability, you will have no occasion to consider the question of damages as to that defendant.

Given Refused

Modified

Withdrawn

[I.P.I. No. 36.01](#)

Rush Copley's Instruction No. 17

41.03 Two or More Defendants

The rights of the defendants Dr. Jaweed Sayeed, and Rush Copley **Medical** Center, Inc. are separate and distinct. Each is entitled to a fair consideration of their own defense. Each defendant's case must be governed by the instructions applicable to that case.

Given

Refused

Modified

Withdrawn

[I.P.I. No. 41.03](#)

Rush Copley's Instruction No. 18

B45.03 Instruction on Use of Verdict Forms--Negligence Only-Single Plaintiff and Multiple Defendants

When you retire to the jury room you will first select a foreperson. He or she will preside during your deliberations.

Your verdict must be unanimous, and your answers to the special interrogatories must be unanimous.

Forms of verdicts and special interrogatories are supplied with these instructions. After you have reached your verdict, fill in and sign the appropriate verdict form and both special interrogatories and return them to the court. Your verdict and special interrogatories must be signed by each of you. You should not write or mark upon this or any of the other instructions given to you by the court.

The parties in this case are:

Plaintiff: Robin G. Akens, as Special Administrator of the Estate of Harold C. Akens, deceased,
and MAY 2 2 2012 Robin G. Akens, Individually

Defendants: Rush-Copley **Medical** Center, Inc. and Jaweed Sayeed, M.D.

If you find for the plaintiff and against one or more of the defendants, then you should use Verdict Form A.

If you find in favor of all defendants, then you should use Verdict Form B.

Given

Refused

Modified

Withdrawn

[I.P.I. No. B45.03](#)

Rush Copley's Instruction No. 19

**B45.03.A Verdict Form A--Single Plaintiff and Claimed Multiple Tortfeasors--
Comparative Negligence--Verdict for Plaintiff Against Some But Not All of Defendants**

VERDICT FORM A

We, the jury, find for Robin G. Akens, as Special Administrator of the Estate of Harold C. Akens, deceased, and Robin G. Akens, individually and against the following defendant or defendants:

Rush-Copley **Medical** Center, Inc. Yes No
Jaweed Sayeed, M.D. Yes No

We further find the following:

First: We find that the total amount of damages suffered by Robin G. Akens, as Special Administrator of the Estate of Harold C. Akens, deceased, and Robin G. Akens, individually as a proximate result of the occurrence in question is \$_____, itemized as follows:

The reasonable expense of past **medical** and **medically** related expenses:

PLAINTIFF'S TOTAL DAMAGES:

Second: Assuming that 100% represents the total combined legal responsibility of all persons or entities that proximately caused Harold Akens' death, we find the percentage of legal responsibility attributable to each as follows:

a) Rush-Copley **Medical** Center, Inc. _____ %
b) Jaweed Sayeed, M.D. _____ %
TOTAL 100%

(Instructions to Jury: If you find that any party listed on the verdict form was not legally responsible in a way that proximately caused plaintiff's injury, you should enter a 4 zero (0)% as to that party.)

Given _____

Refused _____

Modified _____

Withdrawn _____

IN Number: B45.03A2

Rush Copley's Instruction Number: 20

B45.03.B Verdict Form B--Single Plaintiff and Multiple Defendants

VERDICT FORM B 2

We, the jury, find for all of the defendants and against the plaintiff.

FOREPERSON

Given ??

Refused _____

Modified _____

Withdrawn _____

IPI Number: B45.03.B

Rush Copley's Instruction Number 21

50.10 Agent or Independent Contractor

The question has been raised whether at the time of the occurrence Dr. Sayeed was the agent of the defendant Rush Copley **Medical** Center or was an independent contractor. An agent is a person who by agreement with another, called the principal, represents the principal in dealings with third persons or transacts some other business, manages some affair, or does some service for the principal, with or without compensation. The agreement may be oral or written, express or implied. [The term "agent" is broader than either "servant" or "employee." A servant or employee is an agent, but one may be an agent although he is neither servant nor employee.]

[If you find that one person has the right to control the actions of another at a given time, you may find that the relation of principal and agent exists, even though the right to control may not have been exercised.]

An independent contractor is one who undertakes a specific job where the person who engages him does not have the right [to discharge him] [or] [to direct and control the method and manner of doing the work].

In determining whether at the time of the occurrence Dr. Sayeed was the agent of the defendant Rush Copley **Medical** Center or was an independent contractor, you may also consider the method of payment; the right to discharge; the skill required in the work to be done; who provides tools, materials or equipment; whether the worker's occupation is related to that of the employer; whether the employer deducted for withholding tax; and

_____.

The principal is liable to third persons for the negligence of his agent in the transaction of the business of the principal, if the agent himself is liable. But one who engages an independent contractor is not liable to others for the negligence of the contractor.

Given _____

Refused X

Modified _____

Withdrawn _____

[I.P.I. No. 50.10](#)

Rush Copley's Instruction No. 22

105.01 Professional Negligence--Duty

A nurse must possess and use the knowledge, skill, and care ordinarily used by a reasonably well-qualified nurse. The failure to do something that a reasonably well-qualified

nurse would do, or the doing of something that a reasonably well-qualified nurse would not do, under circumstances similar to those shown by the evidence, is “professional negligence.”

The phrase “deviation from the standard of care” means the same things as “professional negligence”.

The law does not say how a reasonably well-qualified nurse would act under these circumstances. That is for you to decide. In reaching your decision, you must rely upon opinion testimony from qualified witnesses and evidence of professional standards. You must not attempt to determine how a reasonably well-qualified nurse would act from any personal knowledge you may have.

Given _____

Refused X

Modified _____

Withdrawn _____

IPI Number: 105.01

Rush Copley's Instruction Number: 23

105.10 Claims Based on Apparent Agency--Both Principal and Agent Sued--Principal Sued Under Respondeat Superior Only--Medical Malpractice Actions--Reliance on Principal Alleged

Under certain circumstances, the liability of a party may arise from an act or omission of that party's apparent agent.

In the present case, Robin Akens has sued Rush Copley **Medical** Center as the principal and Jaweed Sayeed, M.D. as his apparent agent. Rush Copley **Medical** Center denies that any apparent agency relationship existed.

In order for an apparent agency relationship to have existed, Robi Akens must prove the following:

First, that Rush Copley **Medical** Center held itself out as a provider of **medical** care and that Harold Akens neither knew nor should have known that Jaweed Sayeed, M.D. was not an employee of Rush Copley **Medical** Center.

Second, that Harold Akens did not choose Jaweed Sayeed, M.D. but relied upon Rush Copley **Medical** Center to provide **medical** care

If you find that Jaweed Sayeed, M.D. was the apparent agent of Rush Copley **Medical** Center at the time of the occurrence, and if you find that Jaweed Sayeed, M.D. is liable, then both Rush Copley **Medical** Center and Jaweed Sayeed, M.D. are liable. If you find that Jaweed Sayeed, M.D. is not liable, then neither Rush Copley **Medical** Center nor Jaweed Sayeed, M.D. are liable for the acts of Jaweed Sayeed, M.D.

If you find that Jaweed Sayeed, M.D. is liable, but that he was not the apparent agent of Rush Copley **Medical** Center at the time of the occurrence, then Rush Copley **Medical** Center is not liable for the acts of Jaweed Sayeed, M.D.

Given _____

Refused X

Modified _____

Withdrawn _____

IPI Number: 105.10

Rush Copley's Instruction Number: 24

SPECIAL INTERROGATORY #1 G

Do you find that Harold Akens, knew or should have known that Jaweed Sayeed, M.D. D was not an employee of Rush-Copley **Medical** Center?

Yes No

Foreperson

SPECIAL INTERROGATORY #2

Do you find that any act or omission by Tomi Welshon, RN, Kelli Drudi, RN, Lisa Shoger, RN, Ann John, RN, or Nicole Thompson, RT, agents of Rush-Copley **Medical** Center, was a proximate cause of Harold Akens' injuries or death?

Yes No

Foreperson