

DEFENDANT'S SPECIALLY REQUESTED CHARGE NO: 1

Ladies and Gentlemen of the Jury, it is your duty as jurors to follow the law as stated in the instructions of the Court, and to apply the rules of law so given to the facts as you find from the evidence in the case.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Neither are you to be concerned with the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in this case.

Justice through trial by jury must depend upon each juror to find the truth as to the facts from the evidence presented to all jurors and to arrive at a verdict by applying the same rules of law as given in the instructions of the Court.

*Refused,
Debra J. Washburn
Judge*

DEFENDANT'S SPECIALLY REQUESTED CHARGE NO. 2

Ladies and Gentlemen of the Jury, you must determine the standard of professional learning, skill and care required of the Defendant only from the opinions of the doctors (including the Defendant) who have testified as expert witnesses as to such standard. You should consider each such opinion and should weigh the qualifications of the witnesses and the reasons given for their opinions. Give each opinion the weight to which you deem it entitled.

You must resolve any conflict in the testimony of the witnesses by weighing each of the opinions expressed against the others, taking into consideration the reasons given for the opinion, the facts relied upon by the witness, his relative credibility, and his special knowledge, skill, experience, training and education.

You are instructed that the Defendant's negligence or lack of skill cannot be presumed or inferred merely because of the institution of this action or from the fact that Plaintiff's intestate subsequently underwent an operation for cancer; such facts, or any of them, are not alone evidence of Defendant's failure to exercise that degree of reasonable skill and care which the law imposes on a doctor in the treatment of a patient. Neither can mere surmise or conjecture that there may have been negligence take the place of proof.

It is well settled that the law entertains in favor of a physician, the presumption that he has discharged his full duty, and to overcome such presumption, the law exacts affirmative proof of

the breach of such duty and that such breach resulted in injury. Negligence, in such cases, is never imputed from mere results, nor can any inference of negligence be indulged against the physician from the results.

Refused
Jessie H. Marshall
Judge

DEFENDANT'S SPECIALLY REQUESTED CHARGE NO. 3

Ladies and Gentlemen of the Jury, to aid you in finding on the issue whether Defendant was guilty of malpractice, you should have in mind a few discriminations. The law does not require of a doctor perfection, nor prophetic insight, nor infallible judgment, nor does not condemn him simply because his efforts prove unsuccessful. The difficulties and uncertainties in the practice of medicine and surgery, the unpredictable variations in response to treatment, are such that no practitioner can guarantee results.

Where there is more than one recognized method of diagnosis or treatment, and no one of them is used exclusively and uniformly by all practitioners of good standing, it is not negligence for a doctor if, in exercising his best judgment, he selects one of the approved methods, which later turns out to be a wrong selection, or one not favored by certain other practitioners.

In short, it is quite possible for a doctor to err in judgment, or to be unsuccessful in his treatment, or to disagree with others of his profession, without being negligent. On the other hand, if a doctor does not possess that degree of learning and skill required of him, it is no defense to a charge of negligence that he did the best he could.

In determining whether Defendant's learning, skill and conduct fulfilled the duties imposed on him by law, as they have been stated to you, you are not permitted to set up arbitrarily a standard of your own. The standard, I remind you, was set by the learning,

skill and care ordinarily possessed and practiced by others of the same profession in good standing, in the same locality and under similar circumstances, and at the same time. It follows, therefore, that the only way you may properly learn that standard is through evidence presented in this trial by physicians and surgeons called as expert witnesses.

Refused
J. J. Madison
Judge

DEFENDANT'S SPECIALLY REQUESTED CHARGE NO: 7

The Court charges you that the law does not require of a physician perfection, prophetic insight, or infallible judgment; it only requires that he possess a reasonable average ability to carry on his professional work and that he exercise reasonable care, skill and judgment in doing this.

*Refused
J. Ferguson, Washburn
Judge*

DEFENDANT'S SPECIALLY REQUESTED CHARGE NO: 5

Ladies and Gentlemen of the Jury, you are instructed that if you find Defendant rendered medical services to Plaintiff's intestate until Defendant was advised by the Plaintiff's intestate that he intended to have all further medical treatment rendered by another doctor, then Defendant had no further obligation to render medical treatment to Plaintiff's intestate, and is not liable for any injuries resulting from Plaintiff's intestate's failure to receive further medical care.

Refused
J. J. Madison
Judge

DEFENDANT'S SPECIALLY REQUESTED CHARGE NO: 6

The Court charges you that by undertaking professional service to a patient, a physician represents that he possesses and it is his duty to possess, only that degree of learning and skill ordinarily possessed by physicians of good standing, practicing in the same locality, under similar circumstances. It is his further duty to use the care ordinarily exercised in like cases by reputable members of his profession practicing in the same locality and under similar circumstances, and to use reasonable diligence and his best judgment in the exercise of his skill and application of learning, in an effort to accomplish the purpose for which he is employed. A Defendant physician must violate one of these duties before he is guilty of malpractice.

Refused
Jeffrey J. Madhuree
judge.

DEFENDANT'S SPECIALLY REQUESTED CHARGE NO: 7

Ladies and Gentlemen of the Jury, the issues to be determined by the jury in this case are these:

(1) Was the Defendant negligent?

If your unanimous answer to that question is "no", then you cannot find for the Plaintiff; but if your unanimous answer is "yes", then you have a second issue to determine, namely:

(2) Was the negligence of the Defendant the proximate cause of any injury or damage to the Plaintiff's intestate:

If your unanimous answer to that question is "no", then you cannot find for the Plaintiff; but if your unanimous answer is "yes", then you have a third question, namely:

(3) Were the claimed injuries suffered by Plaintiff's intestate the sole proximate result of the cancerous condition which Plaintiff's intestate suffered prior to September 10, 1969?

If your unanimous answer to that question is "yes", then I instruct you that you cannot find for the Plaintiff.

Refused
Jeffrey J. Marshall
Judge

DEFENDANT'S SPECIALLY REQUESTED CHARGE NO: 8

Ladies and Gentlemen of the Jury, if you believe from the evidence that the conditions and things of which Plaintiff's intestate complains were caused or occasioned by or from any cause or causes over which the Defendant had no control, or for which he is not responsible, your verdict must be in favor of the Defendant. If you believe that it cannot be determined with reasonable certainty whether the conditions of which Plaintiff's intestate complains, were or were not caused by any act or failure to act on the part of the Defendant, or by anything over which he had control, your verdict must be in favor of the Defendant. You are not allowed to conjecture or speculate as to the cause of the injuries, if any, in this case.

Refused
J. J. J. Marshall
Judge

DEFENDANT'S SPECIALLY REQUESTED CHARGE NO: 10

Ladies and Gentlemen of the Jury, where there are two or more possible causes of an injury, for one or more of which the Defendant is not responsible, the Plaintiff's intestate, in order to recover, must provide evidence that the injury was wholly or partly the result of that cause which would render the Defendant liable. If the evidence in the case renders it just as probable that the injury was a result of one cause as much as the other, the Plaintiff cannot recover.

Given
Jeffrey J. Washburn
Judge.

DEFENDANT'S SPECIALLY REQUESTED CHARGE NO: //

Ladies and Gentlemen of the Jury, in actions for damages, the Court usually instructs the jury upon the measure of damages; however, the jury is not to understand that they are to give damages simply because instructions have been addressed to them on that subject. Instructions as to damages are intended to apply only in a case where the Plaintiff is entitled to a verdict; they have no application where the liability of the Defendant has not been established. Instructions on damages should not be understood by the jury as conveying any intimation that in the opinion of the Court the Plaintiff's intestate is or is not entitled to damages.

Refused
Jeffrey J. Marshall
Judge

DEFENDANT'S SPECIALLY REQUESTED CHARGE NO: 12

Ladies and Gentlemen of the Jury, the term "preponderance of the evidence" is not a mere figure of speech, and is not to be looked upon lightly by a jury. It is a substantial right given by law to the Defendant, requiring the Plaintiff to establish her case by the greater weight of the evidence. Therefore, before any juror is warranted in assenting to a verdict in favor of the Plaintiff, the juror must first conclude that the Plaintiff's case is supported by the more believable evidence. If a juror concludes that it is as likely that there was not negligence as that there was negligence, then the juror should not assent to a verdict in Plaintiff's favor.

*Refused,
Jeffrey J. Washburn
Judge*

DEFENDANT'S SPECIALLY REQUESTED CHARGE NO: 13

Ladies and Gentlemen of the Jury, you are to assess damages against the Defendant only as to those conditions which you find to be proximately caused by negligence on his part, if any. If you find that Plaintiff's intestate suffered from an unfortunate condition which existed previous to the treatment performed by Defendant, although such condition invites your sympathy, you are not to assess damages for that condition against the Defendant.

Refused
Jeffrey J. Madisewski
Judge

DEFENDANT'S SPECIALLY REQUESTED CHARGE NO: 14

Ladies and Gentlemen of the Jury, you may not include in any award to Plaintiff's intestate of damages, any sum for the purpose of punishing the Defendant or of the making an example of him for the public good, or of preventing other such incidents. Such damages would be punitive rather than compensatory, and the law does not authorize punitive damages in this action.

Refused
Jefair J. Woodhouse

DEFENDANT'S SPECIALLY REQUESTED CHARGE NO: 15

The Court charges you that if you believe from the evidence that the sole proximate cause of the damages suffered by Plaintiff's intestate was the result of the cancerous condition from which Plaintiff's intestate suffered, then I charge you that the Plaintiff is not entitled to recover.

Refused
Tufan J. Madhwar
Judge.

DEFENDANT'S SPECIALLY REQUESTED CHARGE NO: 16

The Court charges you that if you believe from the evidence that the Plaintiff's intestate in this case suffered no damages, then in such event, the Plaintiff is not entitled to recover.

Given
Jeffrey M. Markham
Judge.

DEFENDANT'S SPECIALLY REQUESTED CHARGE NO: 17

The Court charges you that if you find from the evidence in this case, that Plaintiff is entitled to recover, then Plaintiff can recover only the damages actually sustained by Plaintiff's intestate as the proximate result of the negligence, if any, of the Defendant.

~~John~~ Refused
Jeffrey Madison
Judge.

DEFENDANT'S SPECIALLY REQUESTED CHARGE NO: 18

The Court charges you that as regarding the conduct of the Defendant in this case, you are instructed that:

"NEGLIGENCE" as applied to a general practitioner, means a failure to exercise ordinary care; that is to say, failure to do that which a general practitioner of ordinary prudence in Foley, would have done under the same or similar circumstances, or doing that which a general practitioner of ordinary prudence in Foley would not have done under the same or similar circumstances;

"PROXIMATE CAUSE" as applied to a general practitioner, means that cause, which, in a natural and continuous sequence, produces a result and without which cause such result would not have occurred, and which result or some similar result, would have been reasonably foreseen by a general practitioner of ordinary prudence in Foley, in the light of the attending circumstances. There may be more than one proximate cause of a result.

*Refused,
Jeffrey W. Wadsworth
Judge.*

DEFENDANT'S SPECIALLY REQUESTED CHARGE NO: 19

The Court charges you that the term "nominal damages" means damages in name only and not in amount and are to be awarded where legal right is shown to have been violated but no actual damages have been proven to have been sustained by the complaining party, and the Court further instructs the jury that if you find that the Defendant was negligent in this case as alleged, but that you further find that the Plaintiff's intestate suffered no actual damages as a proximate consequence of the Defendant's negligence, then you will find for the Plaintiff nominal damages by setting some trifling sum for such negligence when no serious loss is proven by such negligence.

Given
Jeffrey J. Madlock
Judge.

DEFENDANT'S SPECIALLY REQUESTED CHARGE NO: 20

The Court charges you that should you find from the evidence in this case that Plaintiff is entitled to recover, Plaintiff can recover only nominal damages as a matter of law, and I charge you that nominal damages in this case would be \$1.00 or other inconsiderate sum.

Refused
Jeffrey J. Maslowski
Judge