

FIFTH JUDICIAL DISTRICT COURT – CEDAR

IRON COUNTY - STATE OF UTAH

<p>DAVID HINSON;</p> <p>Plaintiff,</p> <p>vs.</p> <p>DARRELL L. WILSON, M.D.; JARED C. COX, D.O.; KIMBERLY D. HAYCOCK, P.A.; DOE INDIVIDUALS 1 through 10; and ROE ENTITIES 1 through 10, inclusive.</p> <p>Defendants.</p>	<p>FINAL JURY INSTRUCTIONS</p>
---	---------------------------------------

JURY INSTRUCTION NO. 42

Closing Roadmap

Members of the jury, you now have all the evidence. Three things remain to be done:

First, I will give you additional instructions that you will follow in deciding this case. Second, the lawyers will give their closing arguments. The Plaintiff will go first, then the Defendants. The Plaintiff may give a rebuttal.

Finally, you will go to the jury room to decide the case.

In the jury room you will have two main duties as jurors.

First, you will decide from the evidence what the facts are. You may draw all reasonable inferences from that evidence. Second, you will take the law I give you in the instructions, apply it to the facts, and reach a verdict.

JURY INSTRUCTION NO. 43

Duty to Disclose Material Medical Information

Defendants had a duty to disclose to Plaintiff information concerning Plaintiff's condition that was unknown to Plaintiff, if the information would be important to a reasonable person in making decisions about health care, and if disclosure of the information would not be expected to make Plaintiff's health worse.

JURY INSTRUCTION NO. 44

Patient's Negligence in Giving Medical History

A patient must use ordinary care in giving an accurate history to his treating physician. In determining whether this was done, you may consider whether the physician's questions were sufficient to alert the patient of the need to disclose particular aspects of that history.

Jury Instruction No. 45

Patient's Duty to Follow Instructions

A patient has a duty to follow the reasonable instructions given to him by medical providers. You may consider the failure to do so in deciding whether Mr. Hinson was at fault and whether any of Mr. Hinson's fault was a cause of his harm.

JURY INSTRUCTION NO. 46

Economic Damages – Loss of Household Services

Economic damages include loss of household services. To recover damages for this loss, Plaintiff must prove the reasonable value of the household services that he has been or will be unable to do since the harm.

JURY INSTRUCTION NO. 47

Stipulated Facts – Past Medical Expenses

A stipulation is an agreement. Unless I instruct you otherwise, when the lawyers on both sides stipulate or agree to a fact, you must accept the stipulation as evidence and regard that fact as proved.

The parties have stipulated to a past medical expenses amount of \$23,747.91. If the Jury finds Defendants liable, this amount will automatically be added to the damages award. The Jury should not include an award for past medical expenses.

Since the parties have agreed on these facts, you must accept them as true for purposes of this case.

Jury Instruction No. 48

Mitigation of Damages

If you decide to allocate fault to Plaintiff, disregard this instruction. If you do not allocate fault to Plaintiff, Plaintiff has a duty to exercise reasonable diligence and ordinary care to minimize the damages caused by Defendants' fault. Any damages awarded to Plaintiff should not include those that he could have avoided by taking reasonable steps. It is Defendants' burden to prove that Plaintiff could have minimized his damages, but failed to do so. If Plaintiff made reasonable efforts to minimize his damages, then your award should include the amounts that he reasonably incurred to minimize them.

JURY INSTRUCTION NO. 49

Life Expectancy

You have heard evidence regarding life expectancy. You may consider this fact in deciding the amount of future damages. A life expectancy is merely an estimate of the average remaining life of all persons in our country of a given age, race, and gender, with average health and exposure to danger. Some people live longer and others die sooner. You may also consider all other evidence bearing on the expected life of Plaintiff, including his occupation, health, habits, life style, and other activities.

JURY INSTRUCTION NO. 50

Stipulated Facts – Altitude

During trial, a juror asked the question whether altitude had an impact on Mr. Hinson's PT/INR. An expert cardiologist retained in this case testified at his deposition that altitude had no impact on Mr. Hinson's PT/INR. In order to be more efficient with the jury's time, the parties have stipulated that the jury shall accept as established for purposes of this case that altitude had no impact on Mr. Hinson's PT/INR.

JURY INSTRUCTION NO. 51

Do Not Resort to Chance

When you deliberate, do not flip a coin, draw straws, choose opinions at random, or use other methods of chance. Instead, you must weigh the evidence carefully and come to a decision that is supported by the evidence.

If you decide that Plaintiffs are entitled to recover damages, you must then agree upon the amount of money to award that party. Each of you should state your own independent judgment on what the amount should be. You must thoughtfully consider the amounts suggested, evaluate them according to these instructions and the evidence, and reach an agreement on the amount. You must not agree in advance to average the estimates.

JURY INSTRUCTION NO. 52

Legal Rulings

During the trial I have made certain rulings. I made those rulings based on the law, and not because I favor one side or the other.

However, if I sustained an objection, if I did not accept evidence offered by one side or the other, or if I ordered that certain testimony be stricken, then you must not consider those things in reaching your verdict.

JURY INSTRUCTION NO. 53

Closing Arguments

When the lawyers give their closing arguments, keep in mind that they are advocating their views of the case. What they say during their closing arguments is not evidence. If the lawyers say anything about the evidence that conflicts with what you remember, you are to rely on your memory of the evidence. If they say anything about the law that conflicts with these instructions, you are to rely on these instructions.

JURY INSTRUCTION NO. 54

Agreement on Special Verdict

I am going to give you a form called the Special Verdict that contains several questions and instructions. You must answer the questions based upon the instructions and the evidence you have seen and heard during this trial.

Because this is not a criminal case, your verdict does not have to be unanimous. At least six jurors must agree on the answer to each question, but they do not have to be the same six jurors on each question.

As soon as six or more of you agree on the answer to all of the required questions, the foreperson should sign and date the verdict form and tell the bailiff you have finished. The bailiff will escort you back to this courtroom; you should bring the completed Special Verdict with you.

JURY INSTRUCTION NO. 55

Juror Questions During Deliberations.

These instructions should contain all the information you need to decide this case based upon the evidence. However, if you have a question or need clarification during deliberations, write a note and give it to the bailiff. I will review it with the lawyers. We will answer your question as appropriate.

JURY INSTRUCTION NO. 56

Foreperson Selection and Duties and Jury Deliberations


Among the first things you should do when you go to the jury room to deliberate is to appoint someone to serve as the jury foreperson. The foreperson should not dominate the jury's discussion, but rather should facilitate the discussion of the evidence and make sure that all members of the jury get the chance to speak. The foreperson's opinions should be given the same weight as those of other members of the jury. Once the jury has reached a verdict, the foreperson is responsible for filling out and signing the verdict form(s) on behalf of the entire jury.

In the jury room, discuss the evidence and speak your minds with each other. Open discussion should help you reach an agreement on a verdict. Listen carefully and respectfully to each other's views and keep an open mind about what others have to say. I recommend that you not commit yourselves to a particular verdict before discussing all the evidence.

Try to reach an agreement, but only if you can do so honestly and in good conscience. If there is a difference of opinion about the evidence or the verdict, do not hesitate to change your mind if you become convinced that your position is wrong. On the other hand, do not give up your honestly held views about the evidence simply to agree on a verdict, to give in to pressure from other jurors, or just to get the case over with. In the end, your vote must be your own.

In reaching your verdict you may not use methods of chance, such as drawing straws or flipping a coin. Rather, the verdict must reflect your individual, careful, and conscientious judgment.

The foregoing 56 Instructions are given and dated this 25th day of January 2024.


Jeffrey C. Wilcox, Judge
Fifth District Court

