



## **JURY INSTRUCTION NO. 1**

Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning and during the trial are not repeated here.

## **JURY INSTRUCTION NO. 2**

Members of the jury, now that you have heard all of the evidence, it is my duty to instruct you in the law.

1. 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 give any opinion or suggestion as to what your verdict should be. During this trial I have occasionally asked questions of witnesses. Do not assume that because I asked questions I hold any opinion on the matters to which my questions related.

2. It is my duty to tell you what the law is. It is your duty to decide what the facts are and to apply the law to those facts.

In determining what the facts are you must rely solely upon the evidence in this trial and the general knowledge that everyone has. You must disregard your personal knowledge of any other specific fact.

3. You must apply the law in these instructions, even if you believe that the law is or should be different.

Not one of these instructions contains all of the law applicable to this case. You must consider each instruction in light of all of the others.

The law demands of you a just verdict. You must not indulge in any speculation, guess, or conjecture. You must not allow sympathy or prejudice to influence your verdict.

### **JURY INSTRUCTION NO. 3**

The evidence from which you are to find the facts consists of the following:

1. The testimony of the witnesses;
2. Documents and other things received as exhibits;
3. Any facts that have been stipulated--that is, formally agreed to by the parties;

The following things are not evidence:

1. Statements, arguments, and questions of the lawyers for the parties in this case;
2. Objections to questions;
3. Any testimony I told you to disregard; and
4. Anything you may have seen or heard about this case outside the courtroom or have overheard from one of the bench conferences between the lawyers and myself.

## **JURY INSTRUCTION NO. 4**

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, you may consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent mis-recollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

Testimony has been presented through deposition. A deposition contains the sworn, recorded answers to questions asked a witness in advance of the trial. A witness's testimony may sometimes be presented in the form of a deposition if the witness is not present. Some time before this trial, attorneys representing the parties in this case questioned this witness under oath. A court reporter was present and recorded the testimony. The questions and answers were read to you during the trial.

You must give this deposition testimony the same consideration as if the witness had been present and had testified from the witness stand in court.

## **JURY INSTRUCTION NO. 5**

In these instructions you are told that your verdict depends on whether you find certain facts have been proved. The burden of proving a fact is upon the party whose claim depends upon that fact. The party who has the burden of proving a fact must prove it by the greater weight, that is, a preponderance, of the evidence. To prove something by the greater weight of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable. If, on any issue in the case, the evidence is equally balanced, you must resolve that issue against the party who has the burden of proving it. The greater weight of the evidence is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

## **JURY INSTRUCTION NO. 6**

The plaintiff and the defendants have stipulated – that is, they have agreed – that certain facts are as I have stated. You, should, therefore, treat the following fact as having been proved:

1. Midwest Health Partners, P.C., is a corporation, and is an “employer” within the meaning Title VII of the Civil Rights Act of 1964, as amended, of 42 U.S.C. § 2000e.
2. On December 20, 2005, the plaintiff filed a Charge of Discrimination against the defendants.
3. On June 19, 2006, the plaintiff filed a Charge of Discrimination against the defendants.
4. The plaintiff, a female, worked as a physical therapist in the defendant’s facilities at all times relevant to this action.

## JURY INSTRUCTION NO. 7

Your verdict must be for the plaintiff and against the defendants on the plaintiff's claim of sexual harassment by a hostile work environment if all of the following elements have been proved by the greater weight of the evidence:

*First*, the plaintiff was subjected to sexual harassment by Dr. Meyer, an employee of the defendants; and

*Second*, such conduct was unwelcome; and

*Third*, such conduct was based on the plaintiff's gender; and

*Fourth*, such conduct was sufficiently severe or pervasive that a reasonable person in the plaintiff's position would find the plaintiff's work environment to be abusive or hostile; and

*Fifth*, at the time such conduct occurred and as a result of such conduct, the plaintiff believed her work environment to be abusive or hostile; and

*Sixth*, the defendants knew or should have known of Dr. Meyer's harassment of the plaintiff; and

*Seventh*, the defendants failed to take prompt and appropriate corrective action to end the harassment by Dr. Meyer.

If any of the above elements has not been proved by the greater weight of the evidence, your verdict must be for the defendants and you need not proceed further in considering this claim.



## **JURY INSTRUCTION NO. 8**

In determining whether a reasonable person in the plaintiff's circumstances would find the plaintiff's work environment to be hostile or abusive, you must look at all the circumstances. The circumstances may include the frequency of the conduct complained of; its severity; whether it was physically threatening or humiliating, or merely offensive; whether it unreasonably interfered with the plaintiff's work performance; and the effect on plaintiff's psychological well-being. No single factor is required in order to find a work environment hostile or abusive.

## **JURY INSTRUCTION NO. 9**

Your verdict must be for the plaintiff and against the defendants on the plaintiff's claim of constructive discharge if all of the following elements have been proved by the greater weight of the evidence:

*First*, the defendants made the plaintiff's working conditions intolerable by subjecting her to a hostile work environment; and

*Second*, the plaintiff's gender was a motivating factor in the defendants' actions; and

*Third*, the plaintiff's resignation was a reasonably foreseeable result of the defendants' actions.

Working conditions are intolerable if a reasonable person in the plaintiff's situation would have deemed resignation the only reasonable alternative.

## **JURY INSTRUCTION NO. 10**

There is evidence that the plaintiff suffered from anxiety and migraines prior to her employment with the defendants. The defendants are liable only for any damages that you find were proximately caused by the defendants' unlawful employment practices.

If you cannot separate damages by the pre-existing condition from those caused by the defendants' unlawful employment practices, then the defendants are liable for all of those damages.

The defendants may be liable for these damages even if the damages suffered were greater than those experienced "by a normal person under the same circumstances."

In short, the defendants take the plaintiff as they find her.

## JURY INSTRUCTIONS NO. 11

If you find in favor of the plaintiff under these jury instructions, then you must award the plaintiff such sum as you find by the greater weight of the evidence will fairly and justly compensate the plaintiff for any damages you find the plaintiff sustained as a direct result of the defendants' actions. The plaintiff's claim for damages includes distinct types of damages and you must consider them separately:

*First*, you must determine the amount of any wages and fringe benefits the plaintiff would have earned in her employment with the defendants if she had not been constructively discharged on April 10, 2006, through the date of your verdict, minus the amount of earnings and benefits that the plaintiff received from other employment during that time.

*Second*, you must determine the amount of any other damages sustained by the plaintiff, such as mental anguish and emotional suffering endured by the plaintiff as a result of the plaintiff being subjected to the defendants' actions. You must enter separate amounts for each type of damages in the verdict form and must not include the same items in more than one category.

Remember, throughout your deliberations, you must not engage in any speculation, guess, or conjecture and you must not award damages under this Instruction by way of punishment or through sympathy.

## **JURY INSTRUCTIONS NO. 12**

If you find in favor of the plaintiff under these instructions, but you find that the plaintiff's damages have no monetary value, then you must return a verdict for the plaintiff in the nominal amount of One Dollar (\$1.00).

### **JURY INSTRUCTION NO. 13**

The law forbids you to return a verdict determined by chance. You may not, for instance, agree in advance that each juror will state an amount to be awarded in damages, that all of those amounts will be added together, that the total will be divided by the number of jurors, and that the result will be returned as the jury's verdict. A verdict determined by chance is invalid.

## **JURY INSTRUCTION NO. 14**

A verdict reached during the first six hours of your deliberation must be agreed to by all eleven of you, that is, it must be unanimous. After six hours of deliberation, you may reach a verdict by nine of the eleven jurors.

## **JURY INSTRUCTION NO. 15 (Page 1 of 2)**

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment.

Each of you must make your own conscientious decision, but only after you have considered all of the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges -- judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the courtroom deputy signed by one or more jurors. Or, you may reach my chambers directly by lifting the receiver of the telephone in the jury room. The caller should clearly identify himself or herself as a member of the jury so that my staff will react accordingly. I will respond to your question as soon as possible either in writing or orally in open court. Remember that you should not tell anyone -- including me -- how your votes stand numerically.



**JURY INSTRUCTION NO. 15 (Page 2 of 2)**

If you do not agree on a verdict by 5:00 o'clock p.m., you may separate and return for deliberation at 9:00 o'clock a.m. on the next business day, i.e., Thursday, June 25, 2009. You may deliberate after 5:00 o'clock p.m., but if so, please advise the courtroom deputy of your intention to do so. You may also separate for meals during the course of your deliberations, but if you do separate for meals please contact the courtroom deputy to advise her of your intention to separate and when you expect to return to the jury room to reconvene your deliberations. If you do separate, then during that time, you are not allowed to discuss this case with anyone, even another juror.

Fourth, your verdict must be based solely on the evidence and law which I have given to you in my instructions. Your verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be -- that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, complete it pursuant to the instructions on the form, and advise the courtroom deputy when you are ready to deliver your verdict.

Submitted at 11:17 o'clock a.m.

DATED this 24th day of June, 2009.

BY THE COURT:

s/Thomas D. Thalken  
United States Magistrate Judge