IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DAWN LAWREY, Mother and Next Friend of Aubree Lawrey, a Minor, **Plaintiff,** **vs.** **KEARNEY CLINIC, P.C., DAWN M. MURRAY, M.D.,** **Defendants.**	**CASE NO. 8:11CV63** **JURY INSTRUCTIONS**

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 of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 2

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.

INSTRUCTION NO. 3

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 a witness's intelligence; the opportunity a witness had to see or hear the things testified about; a witness's memory, knowledge, education, and experience; any motives a witness may have for testifying a certain way; the manner of a witness while testifying; whether a 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 misrecollection 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.

INSTRUCTION NO. 4

A witness who has special knowledge, skill, experience, training, or education in a particular area may testify as an expert in that area. You determine what weight, if any, to give to an expert's testimony just as you do with the testimony of any other witness. You should consider the expert's credibility as a witness, the expert's qualifications as an expert, the sources of the expert's information, and the reasons given for any opinions expressed by the expert.

INSTRUCTION NO. 5

During the trial, testimony was presented to you by deposition. Such testimony is under oath and is entitled to the same and impartial consideration you give other testimony.

There is evidence before you from life expectancy tables. This evidence may assist you in determining probable life expectancy. This is only an estimate based on average experience. It is not conclusive. You should consider it along with any other evidence bearing on probable life expectancy, such as evidence of health, occupation, habits, and the like.

INSTRUCTION NO. 6

The Plaintiff and the Defendants have stipulated – that is, they have agreed – to certain facts in this case. You should, therefore, treat those facts as having been proved. Those facts include the following:

1. Dawn Murray, M.D., is a licensed Nebraska physician practicing at all relevant times in Kearney, Nebraska, at the Kearney Clinic, P.C., where she is a partner.

2. Prior to December 21, 2007, Dawn Lawrey obtained her prenatal care in Beloit, Wisconsin.

3. On December 21, 2007, Dawn Lawrey was living in Kearney, Nebraska, with her husband, Jeremy Lawrey. At that time, Dawn Lawrey was approximately 29 weeks pregnant and had her first visit with Dawn Murray, M.D., at the Kearney Clinic.

4. Dawn Lawrey finished her prenatal care after visiting with Dawn Murray, M.D., at the Kearney Clinic on December 21, 2007.

5. On March 1, 2008, Dawn Lawrey arrived at Good Samaritan Hospital in Kearney, Nebraska, for inducement of labor and the delivery of her child. That same day, Dawn Murray, M.D., delivered Aubree Lawrey, Dawn and Jeremy Lawrey's daughter.

6. At birth, Aubree Lawrey had an injury to the nerves of the brachial plexus of her right arm.

INSTRUCTION NO. 7

You will have to decide whether certain facts have been proved by the greater weight of the evidence. A fact has been proved by the greater weight of the evidence if you find that it is more likely true than not true. You decide that by considering all of the evidence and deciding what evidence is more believable.

You have probably heard the phrase "proof beyond a reasonable doubt." That is a stricter standard than "more likely true than not true." It applies in criminal cases, but not in this civil case; so put it out of your mind.

INSTRUCTION NO. 8

The Plaintiff is suing the Defendants for what is commonly referred to as medical malpractice or professional negligence. The Plaintiff claims that the Defendants were negligent in failing to obtain Dawn Lawrey's informed consent before proceeding with the vaginal delivery of Aubree Lawrey. The Plaintiff also claims Aubree Lawrey was injured as a result of that negligence, and seeks a judgment against the Defendants for damages. The Defendants deny the Plaintiff's allegations.

Before the Plaintiff can recover against either of the Defendants on her claim of failure to obtain informed consent, she must prove, by the greater weight of the evidence, each and all of the following:

1. That the Defendant failed to obtain Dawn Lawrey's informed consent before she chose to undergo a vaginal delivery of Aubree Lawrey;
2. That, under similar circumstances, a reasonably prudent physician in Kearney, Nebraska, or in a similar community, would have obtained express or implied consent for such a vaginal delivery procedure;
3. That a reasonably prudent person in Dawn Lawrey's position would not have undergone the vaginal delivery procedure had she been properly informed;
4. That the lack of informed consent was a proximate cause of some damage to Aubree Lawrey; and
5. The nature and extent of that damage to Aubree Lawrey.

Consent to a procedure is informed consent if it is based on information that would ordinarily be provided to a patient under like circumstances by physicians engaged in similar practice in the same or similar localities. Failure to obtain informed consent includes the failure to obtain any express or implied consent for any procedure in a case in which a reasonably prudent health care provider in the community or similar communities would have obtained an express or implied consent for such procedure under similar circumstances. You must not arbitrarily set your own standards, but you should determine the information that must be given for consent to a medical procedure to be "informed" from the testimony of the expert witnesses who have testified in this case, either from the witness stand or by deposition.

A proximate cause is a cause that produces a result in a natural and continuous sequence, and without which the result would not have occurred.

If you find that the Plaintiff has not met her burden of proof, then your verdict must be for the Defendants and against the Plaintiff. On the other hand, if the Plaintiff has met her burden of proof, then your verdict must be for the Plaintiff and against the Defendants.

INSTRUCTION NO. 9

If you return a verdict for the Plaintiff, then you must decide how much money will fairly compensate the Plaintiff for her injury.

I am about to give you a list of things you may consider in making this decision. From this list, you must only consider those things you decide were proximately caused by the Defendants' negligence:

1. The nature and extent of the injury, including whether the injury is temporary or permanent, and whether any resulting disability is partial or total;
2. The reasonable value of therapy and similar care and supplies Aubree Lawrey is reasonably certain to need and be provided in the future once she reaches the age of 19 years old;
3. The reasonable value of the earning capacity Aubree Lawrey is reasonably certain to lose in the future; and
4. The physical pain and mental suffering Aubree Lawrey has experienced and is reasonably certain to experience in the future.

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

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.

If you decide that the Plaintiff is entitled to recover damages for any future losses, then you must reduce those damages to their present cash value. You must decide how much money must be given to the Plaintiff today to compensate her fairly for her future losses.

INSTRUCTION NO. 10

There are rules you must follow when you go to the jury room to deliberate and return with your verdict.

First, you will select a 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 this without going against what you believe to be the truth, because all jurors have to agree on the verdict.

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

Do not be afraid to change your mind if the discussion persuades you that you should. But, do not come to a decision just because other jurors think it is right, or just to reach a verdict. Remember you are not for or against any party. You are judges – judges of the facts. Your only job is to study the evidence and decide what is true.

Third, if you need to communicate with me during your deliberations, you may send note to me signed by one or more of you. You may call my chambers at tel. 661-7323 to inform a member of my staff that you have a note for me. I will respond as soon as possible either in writing or orally in open court. While you are deliberating, do not tell anyone - including me - how many jurors are voting for any side.

Fourth, your verdict has to be based only on the evidence and on the law that I have given to you in my instructions. Nothing I have said or done was meant to suggest what I think your verdict should be. The verdict is entirely up to you.

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, and when each of you has agreed on the verdicts, your foreperson will fill in the form, sign and date it, and advise Ms. Frahm or call my chambers at 661-7323 and tell whoever answers the telephone that you have a verdict and are ready to return to the courtroom.