UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

JERRY ADAMS

v. C.A. No. 13-802-ML

SIMON MELNICK, D.O., and the
RHODE ISLAND DEPARTMENT OF CORRECTIONS

JURY INSTRUCTIONS

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PART I -THE EVIDENCE

1. PROVINCE OF THE COURT AND JURY

Members of the Jury, now that you have heard the evidence and the arguments of counsel, it becomes my duty to give you instructions as to the law applicable to this case.

It is your duty as jurors to follow the law as I shall state it to you, and to apply that law to the facts of the case as you determine those facts to be from the evidence in this case. You are not to single out any 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 me.

Counsel have quite properly referred to some of the governing rules of law in their arguments. If, however, any difference appears to you between the law as stated by counsel and that stated by the Court in these instructions, you are to adhere to the Court's instructions.

Further, nothing I say in these instructions is to be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts, but rather that is yours.

You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be governed by sympathy, prejudice, or public opinion. All parties expect that you will carefully and impartially consider all the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

2. ALL PERSONS EQUAL BEFORE THE LAW

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations of life.

All persons stand equal before the law and are to be dealt with as equals in a court of justice.

3. EVIDENCE IN THE CASE

The evidence in this case consists of the sworn testimony of the witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

In determining the facts in this case, you are to consider only the evidence that properly has been put before you. It is the duty of the Court, during the course of trial, to pass upon the admissibility of proffered evidence, that is, to decide whether or not you should consider it. Evidence the Court admits is properly before you for your consideration; evidence the Court has refused to admit is not a proper subject for your deliberations and should not be given consideration by you.

Papers, documents, and other objects admitted into evidence by the Court are a part of the evidence properly before you and will be available to you in the jury room for consideration during your deliberations.

The fact that the Court admitted evidence over objection should not influence you in determining the weight you should give such evidence. Nor should statements made by counsel, either for or against the admission of such evidence, influence your determination of the weight you will give the evidence, if admitted. In other words, you should determine the weight you will give such evidence on the basis of your own consideration of it and without regard to the ruling of the Court or the statements of counsel concerning the admissibility of such evidence.

Nor should you permit objection by counsel to the admission of evidence, or the rulings

of the Court, to create any bias or prejudice in your minds with respect to counsel or the party he represents. It is the duty of counsel to protect the rights and interests of his client, and in the performance of that duty he freely may make objection to the admission of proffered evidence and should not, in any manner, be penalized for doing so.

4. PREPONDERANCE OF THE EVIDENCE

The burden is on the plaintiff in a civil action, such as this, to prove every essential element of his claim by a preponderance of the evidence. If the proof should fail to establish any essential element of the plaintiff's claim by a preponderance of the evidence in this case, you should find for the defendants. A defendant in a civil case is under no obligation to prove anything.

The plaintiff in this case has made separate and distinct claims against specific defendants. The defendants are not to be treated as a group. Rather, each element of each claim pled by the plaintiff must be proved against each defendant against whom money damages are sought.

To "establish by a preponderance of the evidence" means to prove that something is more likely so than not so. In other words, a preponderance of the evidence in the case means such evidence as, when considered and compared with that opposed to it, has more convincing force, and produces in your minds the belief that what is sought to be proved is more likely true than not true. This rule does not, of course, require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case.

In determining whether any fact in issue has been proved by a preponderance of the

evidence in this case, you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

5. "IF YOU FIND"

When I say in these instructions that a party has the burden of proof on any proposition, or use the expression "if you find," I mean you must be persuaded, considering all the evidence in the case, that the proposition is more probably true than not true.

6. EVIDENCE – DIRECT, INDIRECT OR CIRCUMSTANTIAL

As I told you at the beginning of the case, there are two types of evidence from which you may properly find the truth as to the facts of a case. One is direct evidence—such as the testimony of an eyewitness. The other is indirect or circumstantial evidence—that is, the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

As a general rule, the law makes no distinction between direct or circumstantial evidence, but simply requires that you find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

7. INFERENCES – DEFINED

You are to consider only the evidence in the case. In your consideration of the evidence, however, you are not limited to the bald statements of the witnesses. In other words, you are not limited to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proved, such reasonable inferences as seem justified in light of your

experience.

Inferences are deductions or conclusions which reason and common sense lead you to draw from facts which have been established by the evidence in this case. Inferences may not be based on speculation or conjecture.

8. CREDIBILITY OF WITNESSES – DISCREPANCIES IN TESTIMONY

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witnesses, the manner in which the witness testified, the character of the testimony given, or evidence to the contrary of the testimony given.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness's intelligence, motive, state of mind, and demeanor or manner while on the stand. Consider the witness's ability to observe the matters as to which he or she has testified, and whether he or she impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case—including statements that he or she may have made on some prior occasion.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; innocent mis-

recollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such weight, if any, as you may think it deserves. You may, in short, accept or reject the testimony of any witness in whole or in part. Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or non-existence of any fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

9. OPINION EVIDENCE - EXPERT WITNESS

While the rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions, there is an exception as to those persons to whom we refer as "expert witnesses." These are witnesses who, by education and experience, have become experts in some art, science, profession, or calling, and thus may state their opinions as to relevant and material matters in which they profess to be experts. They may also state their reasons for the opinion.

Expert testimony is considered in the same manner as any other testimony. You should consider each expert opinion received in evidence in this case, and give it such weight as you may think it deserves, whether it was based on personal observations or on hypothetical questions. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or if you feel that it is outweighed by other evidence, you may disregard

the opinion entirely.

PART II - PLAINTIFF'S CLAIM

10. NATURE OF THE PLAINTIFF'S CLAIM

In this case, the plaintiff is seeking damages for the pain and injury he is alleged to have suffered after he did not receive emergency medical care in a timely fashion while he was in the care and custody of the Rhode Island Department of Corrections.

The plaintiff contends that he is entitled to recover such damages from the defendants because they were caused by the defendants' negligence.

11. ESSENTIAL ELEMENTS OF PLAINTIFF'S NEGLIGENCE CLAIM

In order to prove his negligence claim as to each of the defendants, the plaintiff must prove, by a preponderance of the evidence in the case, the following four elements:

First, that the defendant owed Mr. Adams a duty of care.

Second, that the defendant breached the duty of care.

Third, that the defendant's negligent acts were the proximate cause of Mr. Adams' injuries.

Fourth, that Mr. Adams suffered actual damages as a result.

12. NEGLIGENCE—STATE ACTS THROUGH ITS EMPLOYEES

With respect to an individual defendant in a negligence case, the alleged negligence relates to that individual's own acts. You are instructed that when the defendant in a negligence case is the State, the State can act only through its employees.

In your consideration of the plaintiff's claim against the State, therefore, you should consider the actions and/or omissions of its employees.

13. NEGLIGENCE—DEFINED

Negligence is the doing of some act which a reasonably prudent person would not do, or the failure to do something which a reasonably prudent person would do, when prompted by considerations which ordinarily regulate the conduct of human affairs. To prevail in a negligence action, a plaintiff must introduce competent evidence to establish that the defendant breached a duty of care that the defendant owed to the plaintiff and that the breach of that duty was a proximate cause of the harm or injury about which the plaintiff complains. The mere fact that someone is injured, however, does not, by itself, constitute negligence nor does it raise an inference of negligence.

14. NEGLIGENCE—FORESEEABILITY

Reasonable foreseeability of harm is an essential ingredient of negligence in the action brought against the defendants. The test for foreseeability is not whether a defendant should have foreseen the injury exactly as it happened to the plaintiff. The test is whether under all the circumstances a reasonably prudent person would have anticipated that injury was likely to result to someone from the act or failure to act. The test, therefore, is one of foreseeability or foresight, not hindsight.

15. DUTY OF CARE-DUTY TO EXERCISE PROFESSIONAL SKILL

When a medical service provider agrees to provide medical treatment to a patient, the provider assumes a duty of care to that patient. The duty of care stems from the professional relationship between the medical service provider and the patient.

Where a medical service provider fails to fulfill this duty of care through some act or omission, the provider may be held liable for negligence if that negligence was a proximate cause of some harm to the patient.

Generally, a medical service provider owes a duty to the patient to exercise professional skill in all aspects of the patient's treatment. When I refer to professional skill I mean technical skill and professional judgment and diligence commensurate with that degree of expertise expected of a reasonably competent medical service provider practicing in the same field.

16. PROXIMATE CAUSE

In addition to proving that the defendants breached the standard of care, the plaintiff must also prove by a preponderance of the evidence that the breach was a proximate cause of the injury or harm sustained.

In this case, the plaintiff must prove that his injury was proximately caused by the negligent conduct alleged. An injury or damage is proximately caused by an act, or a failure to act, whenever it appears from the evidence in the case that the act or omission played a substantial part in bringing about or causing the injury or damage, and that the injury or damage was either a direct result or a reasonably probable consequence of the act or

omission. The plaintiff must prove that the injury or damage would not have occurred but for the defendants' acts or omissions, and the defendants' acts or omissions must be shown to have been a direct, rather than a remote, cause of the injury. In other words, the plaintiff must prove that, but for the defendants' negligence, no harm or injury would have occurred.

If you find a defendant was negligent, then you must consider whether that negligence was a proximate cause of Mr. Adams' injuries.

PART III - DAMAGES

17. CONSIDER DAMAGES ONLY IF LIABILITY IS PROVEN

I now turn to the question of damages. In doing so, I do not intend to indicate that I am of the opinion that the defendants are liable. You are instructed on damages in order that you may reach a sound and proper determination of the amount you will award, if any, in the event that you find the defendants liable.

Damages must be proven. You need only consider the question of damages if you find that the plaintiff has proved all elements of his claim. The burden of proof as to the existence and the extent of damages is on the plaintiff. In other words, you may make an award of damages only to the extent that you find that the plaintiff has proved by a preponderance of evidence that the defendants caused Mr. Adams' damages. You may not base an award of damages or the amount of any such award on speculation or conjecture. You must base an award of damages on the evidence presented and on what you consider to be fair and adequate compensation for such damages as you find have been proved. In making an award of damages, it is required that you determine the precise amount to be

awarded.

18. CALCULATION OF DAMAGES

Mr. Adams seeks to recover damages for physical injuries, mental pain and suffering, emotional distress, and loss of enjoyment of life, as well as expenses for future medical treatment. You may award compensatory damages for physical injuries, mental pain and suffering, emotional distress, loss of enjoyment of life, and expenses for future medical treatment if you determine that Mr. Adams has proven by a preponderance of the evidence that he has experienced any of these consequences as a result of the defendants' negligence. No evidence of the monetary value of intangible things like mental pain and suffering, emotional distress, and loss of enjoyment of life is available and there is no standard I can give you for fixing any compensation to be awarded for these injuries. Even though it is obviously difficult to establish a standard of measurement for these damages, that difficulty is not grounds for denying a recovery on this element of damages. You must, therefore, make the best and most reasonable estimate you can, not from a personal point of view, but from a fair and impartial point of view, of the amount of mental pain and suffering, emotional distress, and loss of enjoyment of life you find that Mr. Adams has undergone and can probably be expected to suffer in the future as a result of the defendants' negligence. And you must place a money value on this, attempting to come to a conclusion that will be fair and just to both of the parties. This will be difficult for you to measure in terms of dollars and cents, but there is no other rule I can give you for assessing this element of damages.

PART IV - DELIBERATIONS AND VERDICT

19. DELIBERATIONS – GENERAL CONSIDERATIONS

Members of the Jury, in a moment I will dismiss you so that you may commence your deliberations. However, before I do that, I need to give you some instructions about the procedures you must use in the course of your deliberations.

Prejudice, sympathy, or compassion should not be permitted to influence you in the course of your deliberations. From what I have said I do not and did not mean to imply that you should approach your consideration of this case in an intellectual vacuum. You are not required to put aside or to disregard your experiences and observations in the ordinary, everyday affairs of life. Indeed, your experiences and observations in the ordinary, everyday affairs of life are essential to your exercise of reasonably sound judgment and discretion in the course of your deliberations; it is your right and duty to consider the evidence in the light of such experience and observations.

20. VERDICT – UNANIMITY & DUTY TO DELIBERATE

In order for you to return a verdict, your decision must be a unanimous decision, that is, all nine of you must concur in the decision. You cannot return a verdict, either for the plaintiff or for the defendants, unless and until you are in unanimous agreement as to what your verdict shall be.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement. Each of you must decide this for yourself, but you should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. Your verdict must be unanimous, but you are not bound to surrender your honest convictions concerning the effect or weight

of the evidence for the mere purpose of returning a verdict or solely because of the opinion of other jurors. Discuss and weigh your respective opinions dispassionately, without regard to sympathy, without regard to prejudice or favor for either party, and adopt that conclusion which in your good conscience appears to be in accordance with the truth.

Again, each of you must make your own decision about the proper outcome of this case based on your consideration of the evidence and your discussions with your fellow jurors. No juror should surrender his or her conscientious beliefs solely for the purpose of returning a unanimous verdict.

21. COMMUNICATIONS BETWEEN COURT AND JURY DURING DELIBERATIONS

During your deliberations, if you need further instruction or assistance by the Court in any way, I ask that, through your foreperson, you reduce such requests or questions as you may have to writing. The foreperson may then hand such written requests or questions to the officer in whose charge you will now be placed. The officer will then bring such written requests to me and I will attempt to fulfill your request or answer the question. Other than the method outlined, please do not attempt to communicate privately or in any other way with the Court.

Finally, you are never to reveal to any person – not even to the Court – how you stand, numerically or otherwise, on the questions before you, until you have reached a unanimous verdict.