

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

<p>CYNTHIA RAE ROWELL and PAUL GERARD THIBEAULT,  Plaintiffs,  vs.  KEVIN J. WEILAND, MD, and RAPID CITY MEDICAL CENTER, LLP,  Defendants.</p>	<p>CIV. 19-5002-JLV  PRIMARY JURY INSTRUCTIONS</p>
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**INSTRUCTION NO. 1 - ROLE OF INSTRUCTIONS**

Members of the jury, I will take a few minutes to give you some initial instructions about this case and about your duties as jurors. At the end of the trial, I will give you further instructions. I may also give you instructions during the trial. These instructions explain the law that applies to this case. Unless I specifically tell you otherwise, all instructions, both those I give you now and those I give you later, are equally binding on you and must be followed. Consider these instructions with all written and oral instructions given to you during and at the end of the trial and apply them to the facts of the case. You must consider my instructions as a whole and not single out some instructions and ignore others.

This case is presented to you because the parties dispute certain facts. You will decide the facts from the evidence presented in court. "Evidence" is defined in Instruction No. 12. This evidence is governed by various rules of law. Under these rules, it is my duty as judge to rule on the admissibility of the evidence from time to time. You must not concern yourselves with the reasons for these rulings, and you must not consider any exhibit which was not received in evidence or any testimony that I order stricken. You must put such things out of your mind.

You are entitled to consider the evidence in light of your own observations and experiences. You may use reason and common sense to draw conclusions from facts established by the evidence. You will then apply the law, which I will give you in my instructions, to the facts to reach your

verdict. You are the sole judges of the facts, but you must follow the law as stated in my instructions, whether you agree with the law or not.

It is vital to the administration of justice that each of you faithfully perform your duties as jurors. You must carefully and honestly consider this case with due regard for the rights and interests of the parties. Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict based solely on the evidence, your common sense and the law as I give it to you. Your verdict must not be based on speculation, guess or conjecture.

Finally, do not take anything I may say or do during the trial as an indication of what I think about the evidence or what I think your verdict should be. Do not conclude from any ruling or comment I may make that I have any opinion on how you should decide the case.

**INSTRUCTION NO. 2 - NATURE OF THE CASE**

This is a civil case brought by plaintiffs Cynthia Rowell and Paul Thibeault against defendants Dr. Kevin Weiland and Rapid City Medical Center. The plaintiffs allege the defendants were negligent in caring for and treating Ms. Rowell in 2017, causing injuries to Ms. Rowell and Mr. Thibeault. The plaintiffs seek to recover for damages they allege are the result of defendants' negligence. The defendants deny the allegations.

**INSTRUCTION NO. 3 - BURDEN OF PROOF**

In civil actions, the party who has the burden of proving an issue must prove that issue by the greater convincing force of the evidence.

“Greater convincing force” means that after weighing the evidence on both sides there is enough evidence to convince you that something is more likely true than not true. In the event the evidence is evenly balanced so that you are unable to say the evidence on either side of an issue has the greater convincing force, then your finding upon the issue must be against the party who has the burden of proving it.

In determining whether or not an issue has been proven by the greater convincing force of the evidence, you should consider all of the evidence bearing upon that issue, regardless of who produced it.

**INSTRUCTION NO. 4 - STIPULATION**

The parties agree and stipulate Dr. Weiland was an agent of Rapid City Medical Center and was acting within the scope and course of his agency at all times at issue in this case. Therefore, if you find Dr. Weiland liable for the plaintiffs' claim against him, you must also find defendant Rapid City Medical Center liable.

**INSTRUCTION NO. 5 - PLAINTIFFS' NEGLIGENCE CLAIM**

The plaintiffs have the burden of proving the following issues on their negligence claim:

***First*, that Dr. Weiland was negligent;**

***Second*, that the negligence of Dr. Weiland was a legal cause of injuries to Ms. Rowell, Mr. Thibeault or both plaintiffs; and**

***Third*, the amount of damages, if any, legally caused by Dr. Weiland for Ms. Rowell's injuries, Mr. Thibeault's injuries or injuries to both plaintiffs.**

**INSTRUCTION NO. 6 - DUTY OF SPECIALIST**

In performing professional services for Ms. Rowell, Dr. Weiland had the duty to possess that degree of knowledge and skill ordinarily possessed by a board certified internal medicine physician, in good standing engaged in the same field of specialization in the United States.

Dr. Weiland also had the duty to use that care and skill ordinarily exercised under similar circumstances by a board certified internal medicine physician, in good standing engaged in the same field of specialization in the United States and to be diligent in an effort to accomplish the purpose for which he was employed.

A failure to perform this duty is negligence.

**INSTRUCTION NO. 7 - EXPERT WITNESSES**

**AS TO A PROFESSIONAL'S KNOWLEDGE, SKILL AND CARE**

You must decide whether Dr. Weiland possessed and used the knowledge, skill and care which the law demands of a board certified internal medicine physician. Your determination must be based on the testimony and evidence of physicians who testify as expert witnesses.

See also Instruction No. 17 in considering the testimony of expert witnesses.

**INSTRUCTION NO. 8 -**

**BAD RESULT DOES NOT PROVE NEGLIGENCE**

The fact that an unfortunate or bad condition resulted to the patient does not alone prove that a defendant was negligent, but it may be considered, along with other evidence, in determining the issue of negligence.

**INSTRUCTION NO. 9 - LEGAL CAUSE**

A legal cause is a cause that produces harm in a natural and probable sequence and without which the harm would not have occurred.

A legal cause need not be the only cause, nor the last or nearest cause. It is sufficient if the complained of cause occurs in combination with some other cause and results in the complained of harm. For legal cause to exist, you must find the complained of cause was a substantial factor in bringing about the harm.

Liability cannot be based on mere speculative possibilities or circumstances and conditions remotely connected to the events leading up to the harm. A party's conduct must have had such an effect in producing the harm as to lead a reasonable person to regard that conduct as a cause of the harm.

### **INSTRUCTION NO. 10 - DAMAGES**

If you decide for Ms. Rowell on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate Ms. Rowell for any of the following elements of loss or harm suffered and proven by the greater convincing force of the evidence to have been legally caused by Dr. Weiland. You must take into consideration the nature, extent, and duration of the injury. The elements of loss or harm alleged by Ms. Rowell include:

- (1) Disability and disfigurement.
- (2) Pain and suffering, mental anguish and loss of capacity of the enjoyment of life she experienced in the past and reasonably certain to be experienced by her in the future as a result of the injury.
- (3) The reasonable value of necessary medical care, treatment and services she has received, and the reasonable value of the necessary expense of medical care, treatment and services she is reasonably certain to receive in the future.
- (4) The reasonable value of necessary household services, nursing and attendance, including services furnished gratuitously by family members or others, which has been required as a result of the injury and the value of such services reasonably certain to be required in the future.
- (5) The earnings Ms. Rowell has lost, if any, from any source from the date of the injury until the date of trial.
- (6) Loss of earning capacity. The factors to be considered in determining the measure of damages for loss of earning capacity include:
  - What Ms. Rowell earned before the injury;
  - What Ms. Rowell is capable of earning after the injury;
  - The prior ability of Ms. Rowell;

- The extent to which the injury affects Ms. Rowell's power to earn;
- Age;
- Life expectancy;
- Physical condition;
- Occupation;
- Skill; and
- Habits of industry.

If you decide for Mr. Thibeault on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate Mr. Thibeault for any of the following elements of loss or harm suffered and proven by the greater convincing force of the evidence to have been legally caused by Dr. Weiland. The elements of loss or harm alleged by Mr. Thibeault include:

(1) Loss of consortium.

Loss of consortium is the reasonable value of the services, aid, comfort, society, companionship and conjugal affections of Ms. Rowell which Mr. Thibeault has been deprived of and the present cash value of the services, aid, comfort, society, companionship and conjugal affections of the spouse which Mr. Thibeault is reasonably certain to be deprived of in the future, if any.

Whether any of these elements of damages have been proved by the evidence is for you to determine. Your verdict must be based on evidence and not upon speculation, guesswork, or conjecture.

**INSTRUCTION NO. 11 - FUTURE DAMAGES**

The law allows damages for losses reasonably certain to occur in the future. By their nature, all future happenings are somewhat uncertain. The fact and cause of the loss must be established with reasonable certainty. Once future loss is established, the law does not require certainty as to the amount of those damages. Once the existence of those damages is established, recovery is not barred by uncertainty as to the measure or extent of damages, or the fact that they cannot be measured with exactness. On the other hand, an award of future damages cannot be based on conjecture, speculation or mere possibility.

## **INSTRUCTION NO. 12 - DEFINITION OF EVIDENCE**

I mentioned the word “evidence.” “Evidence” includes the testimony of witnesses, documents and other things received as exhibits and stipulated facts. Stipulated facts are facts that are formally agreed to by the parties. Certain things are not evidence. I shall list those things for you now:

- Statements, arguments, questions and comments by lawyers representing the parties in the case are not evidence. Opening statements and closing arguments by lawyers are not evidence.
- Objections and rulings on objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustain an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
- Testimony I strike from the record or tell you to disregard is not evidence and must not be considered.
- Anything you see or hear about this case outside the courtroom is not evidence.

The fact an exhibit may be shown to you does not mean you must rely on it more than you rely on other evidence.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose and not for any other purpose. I will tell you when that occurs and instruct you on the purposes for which the item can and cannot be used.

Some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You should not be concerned with those terms.

The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

Finally, the weight of the evidence is not determined by the number of witnesses testifying as to the existence or non-existence of any fact. Also, the weight of the evidence should not be determined merely by the number or volume of documents or exhibits. The weight of evidence depends on its quality, not quantity. The quality and weight of the evidence are for you to decide.

**INSTRUCTION NO. 13 - DEPOSITION EVIDENCE**

Testimony may be presented to you in the form of a deposition. A deposition is the recorded answers a witness made under oath to questions asked by lawyers before trial. You should consider deposition testimony and judge its credibility as you would that of any witness who testifies here in person.

**INSTRUCTION NO. 14 - CHARTS AND SUMMARIES**

During trial, charts and summaries may be shown to you in order to help explain the facts disclosed by the books, records or other evidence in the case. These charts or summaries are used for convenience. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts shown by the evidence, you should disregard these charts and summaries.

**INSTRUCTION NO. 15 - CREDIBILITY OF WITNESSES**

You are the sole judges of all questions of fact and the credibility of witnesses. 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 says, only part of it or none of it.

In deciding what testimony to believe, consider:

- The witness' intelligence;
- The opportunity the witness had to see or hear the things testified about;
- The witness' memory;
- Any motives the witness may have for testifying a certain way;
- The behavior of the witness while testifying;
- Whether the 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 people sometimes see or hear things differently and sometimes forget things. You need to consider whether a contradiction results from an innocent misrecollection or sincere lapse of memory or instead from an intentional falsehood or pretended lapse of memory.

**INSTRUCTION NO. 16 - IMPEACHMENT**

The credibility of a witness may be attached by introducing evidence that on some former occasion the witness made a statement or acted in a manner inconsistent with the witness's testimony during trial on a matter material to the issues. You may consider evidence of this kind in connection with all the other facts and circumstances in evidence in deciding the weight to give to the testimony of that witness.

**INSTRUCTION NO. 17 - EXPERT WITNESSES**

You may hear testimony from individuals described as experts. An individual who, by knowledge, skill, training, education or experience has become an expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it and give it as much weight as you think it deserves considering the witness' education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

**INSTRUCTION NO. 18 - BENCH CONFERENCES AND RECESSES**

During the trial it may be necessary for me to talk with the lawyers out of the hearing of the jury, either by having a bench conference while the jury is present in the courtroom or by calling a recess. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, to avoid confusion and error and to save your valuable time. We will do what we can to keep the number and length of these conferences to a minimum.

Please be patient because while you are waiting, we are working.

**INSTRUCTION NO. 19 - OBJECTIONS**

The lawyers may make objections and motions during the trial that I must rule upon. If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself. The lawyers have a duty to object to testimony or other evidence they believe is not properly admissible. Do not hold it against a lawyer or the party the lawyer represents because the lawyer may make objections.

### **INSTRUCTION NO. 20 - NOTE TAKING**

At the end of the trial, you must make your decision based on the evidence. We have an official court reporter making a record of the trial. However, we will not have a typewritten transcript of the trial testimony of any witness for your use in reaching a verdict. You must pay close attention to the evidence as it is presented.

If you want to take notes during the trial, you may, but be sure your note taking does not interfere with listening to and considering all the evidence. If you choose not to take notes, remember it is your personal responsibility to listen carefully to the evidence.

Notes you take during the trial are not necessarily more reliable than your memory or another juror's memory. Therefore, you should not be overly influenced by the notes.

If you take notes, do not discuss them with anyone before you begin your deliberations. At the end of each day, please leave your notes in the jury room. At the end of the trial, you may take your notes out of the notebook and keep them or leave them, and we will destroy them. No one will read the notes, either during or after the trial.

**INSTRUCTION NO. 21 - MEDIA AND TECHNOLOGY**

You are required to decide this case based solely on the evidence and exhibits that you see and hear in the courtroom. If one or more of you were to get additional information from an outside source, that information might be inaccurate or incomplete, or for some other reason not applicable to this case, and the parties would not have a chance to explain or contradict that information because they would not know about it. This is why it is so important that you base your verdict only on information you receive in this courtroom.

In order for your verdict to be fair, you must not be exposed to any other information about the case, the law or any of the issues involved in this trial during the course of your jury duty. This is very important, so I am taking the time to give you a detailed explanation about what you should do and not do during your time as jurors.

*First*, you must not try to get information from any source other than what you see and hear in this courtroom. That means you may not speak to anyone, including your family and friends, about this case. You may not use any printed or electronic sources to get information about this case or the issues involved. This includes the internet, reference books or dictionaries, newspapers, magazines, television, radio, computers, smartphones, or any other electronic device. You may not do any personal investigation, such as visiting any of the places involved in this case, using internet maps or Google Earth or any other such technology, talking to any possible witnesses, or

creating your own demonstrations or reenactments of the events which are the subject of this case.

*Second*, you must not communicate with anyone about this case or your jury service, and you must not allow anyone to communicate with you. In particular, you may not communicate about the case through emails, text messages, tweets, blogs, chat rooms, comments or other postings, social networking sites, including but not limited to Facebook, Instagram, Twitter, or any other website or application. This applies to communicating with your fellow jurors, your family members, your employer and the people involved in the trial, although you may notify your family and employer that you have been seated as a juror in the case. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and immediately report the contact to the court.

I recognize these rules and restrictions may affect activities you would consider to be normal and harmless. I assure you that I am very much aware I am asking you to refrain from activities which may be very common and very important in your daily lives. However, the law requires these restrictions to ensure the parties have a fair trial based on the evidence each party has an opportunity to address.

Any juror who violates these restrictions I have explained to you jeopardizes the fairness of these proceedings, and a mistrial could result which would require the entire trial process to start over. As you can imagine, a

mistrial is a tremendous expense and inconvenience to the parties, the court and the taxpayers. If any juror is exposed to any outside information or has any difficulty whatsoever in following these instructions, please notify the court immediately. If any juror becomes aware that one of your fellow jurors has done something that violates these instructions, you are obligated to report that violation to the court as well.

These restrictions remain in effect throughout this trial. Once the trial is over, you may resume your normal activities. At that point, you will be free to read or research anything you wish. You will be able to speak—or choose not to speak—about the trial to anyone you wish. You may write, post or tweet about the case if you choose to do so. The only limitation is that you must wait until after the verdict, when you have been discharged from your jury service.

**INSTRUCTION NO. 22 - CONDUCT OF THE JURY**

Finally, to insure fairness, you as jurors must obey the following rules:

*First*, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room.

*Second*, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and I discharge you as jurors. This means you must not talk to your spouse, other family members or friends about this case until I discharge you as jurors.

*Third*, when you are outside the courtroom, do not let anyone tell you anything about the case or about anyone involved with it, until the trial has ended and I accept your verdict. If someone tries to talk to you about the case, please report it to me.

*Fourth*, during the trial, you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case—you should not even pass the time of day with any of them. It is important you not only do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the case sees you talking to a person from the other side, even if it is simply to pass the time of day, an unwarranted and unnecessary suspicion about your fairness might be created. If any lawyer, party or witness does not speak to you when you pass in the hall, ride the elevator or the like, it is because they are not supposed to talk or visit with you.

*Fifth*, do not read any news stories or articles, in print, on the internet or in any blog, about the case or about anyone involved with it. Do not listen to

any radio or television reports about the case or about anyone involved with it. If you want, you may have your spouse or a friend clip out any stories and set them aside to give you after the trial is over. I can assure you, by the time you have heard the evidence, you will know more about the case than anyone will learn through the news media.

*Sixth*, during the trial, do not make up your mind about what the verdict should be. Keep an open mind until you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

*Seventh*, if at any time during the trial you have a problem you would like to bring to my attention or if you feel ill or need to go to the restroom, please send a note to the court security officer, who will deliver it to me. Or just raise your hand and get my attention. I want you to be comfortable, so please do not hesitate to inform me of any problem.

**INSTRUCTION NO. 23 - OUTLINE OF THE TRIAL**

The trial will proceed as follows:

After these instructions, the lawyer for the plaintiffs may make an opening statement. Next, the lawyer for the defendants may make an opening statement. An opening statement is not evidence. It is simply a summary of what the lawyer expects the evidence to be.

The plaintiffs will present their evidence and call witnesses. The lawyer for the defendants may cross-examine them. Following the plaintiffs' case, the defendants may present evidence and call witnesses. If the defendants call witnesses, the lawyer for the plaintiffs may cross-examine them.

After presentation of the evidence is complete, the lawyers will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. I will give you further instructions. You will then retire to deliberate on your verdict.

Dated December 13, 2021.

BY THE COURT:



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JEFFREY L. VIKEN  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

<p>CYNTHIA RAE ROWELL and PAUL GERARD THIBEAULT,  Plaintiffs,  vs.  KEVIN J. WEILAND, MD, and RAPID CITY MEDICAL CENTER, LLP,  Defendants.</p>	<p>CIV. 19-5002-JLV  SUPPLEMENTAL JURY INSTRUCTIONS</p>
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VERDICT FORM

**INSTRUCTION NO. 24 - EQUALLY IMPORTANT INSTRUCTIONS**

Members of the jury, I will now take a few minutes to give you additional instructions explaining the law which applies to this case. All instructions, both those I gave you earlier and these instructions, are equally binding on you and must be followed. You must consider my instructions as a whole and not single out some instructions and ignore others.

**INSTRUCTION NO. 25 - LIFE EXPECTANCY**

According to the mortality table, the life expectancy of a 62-year-old woman is 23.14 years. The court takes judicial notice of this fact, which is now evidence for you to consider.

You should note the restricted significance of this evidence. Life expectancy shown by the mortality table is merely an estimate of the probable average length of life of all persons of a given age in the United States. It is an estimate because it is based on a limited record of experience.

Because it reflects averages, the table applies only to one who has the same health and exposure to danger as the average person that age.

In connection with the mortality table evidence, you should also consider other evidence bearing on life expectancy. For example, you should consider the occupation, health, habits and activities of Ms. Rowell.

**INSTRUCTION NO. 26 - DAMAGES – PRESENT VALUE**

If you find the plaintiffs are entitled to a verdict and further find the evidence in the case establishes:

- (1) A reasonable likelihood of future medical expense; or
- (2) A reasonable likelihood of loss of future earnings; or
- (3) A reasonable likelihood that Mr. Thibeault is entitled to a verdict for future loss of consortium;

then you must ascertain the present value in dollars of such future damage.

The award of future damages necessarily requires that payment be made now for a loss that will not be sustained until some future date.

In order to make a reasonable adjustment for the present use of money representing a lump-sum payment of anticipated future loss, the law requires that you discount, or reduce to its present value, the amount of the anticipated future loss, by considering (1) the interest rate or return which the plaintiffs could reasonably be expected to receive on an investment of the lump-sum payment together with (2) the period of time over which the future loss is reasonably certain to be sustained; and then reduce, or in effect deduct from, the total amount of future loss whatever that amount would be reasonably certain to earn or return, if invested at such rate of interest over such period of time. Include in the verdict an award for only the present worth—the reduced amount of anticipated future loss.

This computation is made by using the “present-value” table which is attached to this instruction for your use.

Bear in mind that your duty to discount to present value applies, if at all, **only** to loss of future earnings, future medical expenses, and future loss of consortium. Damages for future pain and suffering, future mental anguish, and disability and disfigurement, if any, are not subject to any reduction for the present value of such money.

There has been evidence presented to you concerning the claims for future medical expenses, future earnings and future loss of consortium in the form of expert testimony. It is your duty to determine whether an expert's adjustment for present value is reasonable, and if not, you should make your own adjustment for present value of any sum you determine the plaintiffs are entitled for the above losses, if any.

In determining the present value of future damages, you may also take into consideration the effect of inflation or deflation on the future damages.

**INSTRUCTION NO. 27 - PRESENT VALUE CALCULATIONS**

The attached table may be used to calculate the present value of future expenses or losses, if any. This calculation requires you to determine three things.

First, determine the annual amount of the future expenses and losses to be incurred, without considering inflation.

Second, determine the number of years those future expenses and losses will be incurred and find that number in the “Yrs” column of the attached table.

Third, determine the net discount rate. The net discount rate is the interest rate you believe plaintiff is reasonably certain to receive on a risk free investment of a lump-sum payment, minus the expected inflation rate.

Find the factor located where the number of years (“Yrs”) and the net discount rate intersect on the table and multiply the annual amount of the future expenses and losses by that factor to calculate the total present value of those future expenses and losses.

## PRESENT VALUE TABLE

Yrs	1%	2%	3%	4%	5%	6%	7%	8%
1	0.9901	0.9804	0.9709	0.9615	0.9524	0.9434	0.9346	0.9259
2	1.9704	1.9416	1.9135	1.8861	1.8594	1.8334	1.8080	1.7833
3	2.9410	2.8839	2.8286	2.7751	2.7232	2.6730	2.6243	2.5771
4	3.9020	3.8077	3.7171	3.6299	3.5460	3.4651	3.3872	3.3121
5	4.8534	4.7135	4.5797	4.4518	4.3295	4.2124	4.1002	3.9927
6	5.7955	5.6014	5.4172	5.2421	5.0757	4.9173	4.7665	4.6229
7	6.7282	6.4720	6.2303	6.0021	5.7864	5.5824	5.3893	5.2064
8	7.6517	7.3255	7.0197	6.7327	6.4632	6.2098	5.9713	5.7466
9	8.5660	8.1622	7.7861	7.4353	7.1078	6.8017	6.5152	6.2469
10	9.4713	8.9826	8.5302	8.1109	7.7217	7.3601	7.0236	6.7101
11	10.3676	9.7868	9.2526	8.7605	8.3064	7.8869	7.4987	7.1390
12	11.2551	10.5753	9.9540	9.3851	8.8633	8.3838	7.9427	7.5361
13	12.1337	11.3484	10.6350	9.9856	9.3936	8.8527	8.3577	7.9038
14	13.0037	12.1062	11.2961	10.5631	9.8986	9.2950	8.7455	8.2442
15	13.8651	12.8493	11.9379	11.1184	10.3797	9.7122	9.1079	8.5595
16	14.7179	13.5777	12.5611	11.6523	10.8378	10.1059	9.4466	8.8514
17	15.5623	14.2919	13.1661	12.1657	11.2741	10.4773	9.7632	9.1216
18	16.3983	14.9920	13.7535	12.6593	11.6896	10.8276	10.0591	9.3719
19	17.2260	15.6785	14.3238	13.1339	12.0853	11.1581	10.3356	9.6036
20	18.0456	16.3514	14.8775	13.5903	12.4622	11.4699	10.5940	9.8181
21	18.8570	17.0112	15.4150	14.0292	12.8212	11.7641	10.8355	10.0168
22	19.6604	17.6580	15.9369	14.4511	13.1630	12.0416	11.0612	10.2007
23	20.4558	18.2922	16.4436	14.8568	13.4886	12.3034	11.2722	10.3711
24	21.2434	18.9139	16.9355	15.2470	13.7986	12.5504	11.4693	10.5288
25	22.0232	19.5235	17.4131	15.6221	14.0939	12.7834	11.6536	10.6748
26	22.7952	20.1210	17.8768	15.9828	14.3752	13.0032	11.8258	10.8100
27	23.5596	20.7069	18.3270	16.3296	14.6430	13.2105	11.9867	10.9352
28	24.3164	21.2813	18.7641	16.6631	14.8981	13.4062	12.1371	11.0511
29	25.0658	21.8444	19.1885	16.9837	15.1411	13.5907	12.2777	11.1584
30	25.8077	22.3965	19.6004	17.2920	15.3725	13.7648	12.4090	11.2578
31	26.5423	22.9377	20.0004	17.5885	15.5928	13.9291	12.5318	11.3498
32	27.2696	23.4683	20.3888	17.8736	15.8027	14.0840	12.6466	11.4350
33	27.9897	23.9886	20.7658	18.1476	16.0025	14.2302	12.7538	11.5139
34	28.7027	24.4986	21.1318	18.4112	16.1929	14.3681	12.8540	11.5869
35	29.4086	24.9986	21.4872	18.6646	16.3742	14.4982	12.9477	11.6546
36	30.1075	25.4888	21.8323	18.9083	16.5469	14.6210	13.0352	11.7172

37	30.7995	25.9695	22.1672	19.1426	16.7113	14.7368	13.1170	11.7752
38	31.4847	26.4406	22.4925	19.3679	16.8679	14.8460	13.1935	11.8289
39	32.1630	26.9026	22.8082	19.5845	17.0170	14.9491	13.2649	11.8786
40	32.8347	27.3555	23.1148	19.7928	17.1591	15.0463	13.3317	11.9246
41	33.4997	27.7995	23.4124	19.9931	17.2944	15.1380	13.3941	11.9672
42	34.1581	28.2348	23.7014	20.1856	17.4232	15.2245	13.4524	12.0067
43	34.8100	28.6616	23.9819	20.3708	17.5459	15.3062	13.5070	12.0432
44	35.4555	29.0800	24.2543	20.5488	17.6628	15.3832	13.5579	12.0771
45	36.0945	29.4902	24.5187	20.7200	17.7741	15.4558	13.6055	12.1084
46	36.7272	29.8923	24.7754	20.8847	17.8801	15.5244	13.6500	12.1374
47	37.3537	30.2866	25.0247	21.0429	17.9810	15.5890	13.6916	12.1643
48	37.9740	30.6731	25.2667	21.1951	18.0772	15.6500	13.7305	12.1891
49	38.5881	31.0521	25.5017	21.3415	18.1687	15.7076	13.7668	12.2122
50	39.1961	31.4236	25.7298	21.4822	18.2559	15.7619	13.8007	12.2335

**INSTRUCTION NO. 28 - MARKING EXHIBITS**

Prior to the commencement of trial, exhibits may have been marked in an effort to avoid delays during the course of trial. When you receive the exhibits to take back with you during your deliberations, you may notice the numbering is not sequential. In other words, some exhibit numbers may be missing. You should not concern yourselves with the numbering or the fact certain exhibits were not introduced.

**INSTRUCTION NO. 29 - DUTY TO DELIBERATE**

A verdict must represent the considered judgment of each juror. Your verdict must be unanimous. It is your duty to consult with one another and to deliberate with a view to reaching agreement if you can do so without violence to your individual judgment. Of course, you must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the case for yourself; but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations you should not hesitate to re-examine your own views, and to change your opinion if you are convinced it is wrong. To bring the jury to a unanimous result, you must examine the questions submitted to you openly and frankly, with proper regard for the opinions of others and with a willingness to re-examine your own views.

Remember that you are not partisans. You are judges of the facts. Your sole interest is to seek the truth from the evidence. You are the judges of the credibility of the witnesses and the weight of the evidence.

You may conduct your deliberations as you choose. You may take all the time that you feel is necessary.

There is no reason to think that another trial would be tried in a better way or that a more conscientious, impartial or competent jury would be selected to hear it. Any future jury must be selected in the same manner and

from the same source as you. If you should fail to agree on a verdict, then this case is left open and must be resolved at some later time.

### **INSTRUCTION NO. 30 - DUTY DURING DELIBERATIONS**

There are certain rules you must follow while conducting your deliberations and returning your verdict:

*First*, when you go to the jury room, you must select one of your members as your foreperson, who 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 because a verdict must be unanimous.

*Third*, if you need to communicate with me during your deliberations, you may send a note to me through the court security officer, signed by one or more jurors. After conferring with the lawyers, I will respond 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.

*Fourth*, your verdict must be based solely on the evidence and on the law in these instructions. **The 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 these forms to the jury room. If your verdict is for plaintiffs, use the verdict form entitled “Verdict for Plaintiffs.” If your verdict is for defendants, use the verdict form entitled “Verdict for Defendants.” When each of you has agreed on a verdict, your foreperson will

fill in the form, sign and date it, and advise the court security officer that you have reached a verdict. You will then return to the courtroom where your verdict will be received and announced.

Dated December 17, 2021.

BY THE COURT:



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JEFFREY L. VIKEN  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

CYNTHIA RAE ROWELL and  
PAUL GERARD THIBEAULT,

Plaintiffs,

vs.

KEVIN J. WEILAND, MD, and  
RAPID CITY MEDICAL CENTER,  
LLP,

Defendants.

CIV. 19-5002-JLV

VERDICT

We, the jury, duly impaneled to try the issues in this case, unanimously find as follows:

**Negligence**

1. Do you find the Defendant, Kevin J. Weiland, M.D., was negligent in his treatment of Plaintiff Cynthia Rae Rowell?

Yes \_\_\_\_\_ No \_\_\_\_\_

If your answer to question No. 1 is "yes," then you must also find Defendant Rapid City Medical Center, LLP, liable for negligence and proceed to question No. 2. If your answer to question No. 1 is "no," the foreperson should sign this verdict form and inform the Court Security Officer you have reached a verdict.

2. Do you find that the negligence of Dr. Weiland was a legal cause of injuries to Ms. Rowell, Mr. Thibeault or both plaintiffs?

Yes \_\_\_\_\_ No \_\_\_\_\_

If your answer to question No. 2 is "yes," then you must also find that the negligence of Defendant Rapid City Medical Center, LLP, was a legal cause of injuries to Ms. Rowell, Mr. Thibeault or both plaintiffs and proceed to question No. 3. If your answer to question No. 2 is "no," the foreperson should sign this verdict form and inform the Court Security Officer you have reached a verdict.

**Damages**

3. We award Plaintiff Cynthia Rae Rowell damages as follows:

- a. \$ \_\_\_\_\_ for disability and disfigurement.
- b. \$ \_\_\_\_\_ for past and future pain and suffering, mental anguish and loss of capacity of the enjoyment of life.
- c. \$ \_\_\_\_\_ for past medical care, treatment and services.
- d. \$ \_\_\_\_\_ for future medical care, treatment and services.
- e. \$ \_\_\_\_\_ for past household services, nursing and attendance.
- f. \$ \_\_\_\_\_ for future household services, nursing and attendance.
- g. \$ \_\_\_\_\_ for lost earnings.
- h. \$ \_\_\_\_\_ for lost earning capacity.

We award Plaintiff Paul Gerard Thibeault damages as follows:

- i. \$ \_\_\_\_\_ for past and future loss of consortium.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Foreperson