

DEFENDANT’S PROPOSED JURY INSTRUCTIONS

Defendant requests that the Court provide the following General Instructions to the Jury:

- T.P.I. – Civil 1.01 Before *Voir Dire*
- T.P.I. – Civil 1.02 After *Voir Dire* and Before Trial
- T.P.I. – Civil 1.03 Use of Juror Notes
- T.P.I. – Civil 1.06 Juror Questions
- T.P.I. – Civil 15.01 Respective Duties of Judge and Jury
- T.P.I. – Civil 15.02 Instructions to Be Considered as a Whole
- T.P.I. – Civil 15.03 Statements of Counsel – Evidence Stricken Out – Insinuations of Questions
- T.P.I. – Civil 15.04 Ordinary Observations and Experiences
- T.P.I. – Civil 2.01 Evidence
 - T.P.I. – Civil 2.02 Direct and Circumstantial Evidence
- T.P.I. – Civil 2.03 Weighing Conflicting Testimony
- T.P.I. – Civil 2.04 Absence of Witness or Evidence
- T.P.I. – Civil 2.05 Limited Admission of Evidence – Parties or Purpose
- T.P.I. – Civil 2.07 Interrogatories
- T.P.I. – Civil 2.20 Credibility of Witness
- T.P.I. – Civil 2.21 Discrepancies in Testimony
- T.P.I. – Civil 2.22 Witness Willfully False
- T.P.I. – Civil 2.23 Admissions Implied From Silence
- T.P.I. – Civil 11.01 Power of Eminent Domain
- T.P.I. – Civil 11.02 Just Compensation / Burden of Proof
- T.P.I. – Civil 2.40 Burden of Proof – Preponderance of Evidence
- T.P.I. – Civil 11.03 Measure of Damages – Property Taken
- T.P.I. – Civil 11.04 Partial Taking – Incidental Damages
- T.P.I. – Civil 11.15 Opinion of Valuation Witnesses
- T.P.I. – Civil 2.31 Hypothetical Question
- T.P.I. – Civil 11.16 Comparable Sales
- T.P.I. – Civil 15.11 All Instructions not Necessarily Applicable
- T.P.I. – Civil 15.12 Use of Juror Notes (After Trial)
- T.P.I. – Civil 15.15 How Jurors Should Approach Their Task
- T.P.I. – Civil 15.16 Each Juror Should Deliberate and Vote on Each Issue to Be Decided
- T.P.I. – Civil 15.17 Instructions as to Unanimous Verdict
- T.P.I. – Civil 15.18 Chance or Quotient Verdict Prohibited
- T.P.I. – Civil 15.19 Questions During Deliberations
- T.P.I. – Civil 15.20 Prohibited Research and Communication
- T.P.I. – Civil 15.21 Concluding Instruction

In addition, given the issues in this case regarding XXX and XXX, special jury instructions are also warranted on these issues. Defendant has accordingly filed two Proposed Special Jury Instructions.

PLAINTIFF'S PROPOSED
SPECIAL JURY INSTRUCTION NO. 2

COMPARATIVE FAULT OF NON-PARTIES

None of the parties have suggested that the XXX clinic or any other health care provider other than the Defendants failed to provide appropriate care and treatment to XXX. Therefore, it would be inappropriate for you to speculate as to whether any other health care provider used the skill, knowledge, and care required of their specialties in treating XXX.

In addition, the Court has previously determined that XXX was not negligent and did not in any way cause XXX's death. Therefore, you should not consider any conduct of XXX or any other member of XXX's family in determining fault for XXX's death. You should only consider the possible fault of the Defendants and XXX in determining who, if anyone, caused XXX's death.

See George v. Alexander, 931 S.W.2d 517, 518 (Tenn. 1996). *See also* Tenn. R. Civ. P. 8.03.

PLAINTIFF'S PROPOSED
SPECIAL JURY INSTRUCTION NO. 3

PERSONAL PRACTICES OF EXPERT WITNESSES TESTIFYING AS TO THE APPLICABLE
STANDARD OF CARE

While you may not determine the standard of care based solely upon the testimony of an expert witness as to his or her own conduct under similar circumstances, you may consider the witness's conduct under similar circumstances in determining the standard of care as well as that witness's credibility.

Cf. e.g., Ashe v. McDonald, 2002 WL 597315, *5 (Tenn. App. 2002) (case attached). Compare *Jennings v. Case*, 10 S.W.3d 625, 631-632 (Tenn. App. 1999). See also *Wallbank v. Rothenberg*, 74 P.3d 413, 416 (Colo. App. 2003) (case attached).

PLAINTIFF'S PROPOSED
SPECIAL JURY INSTRUCTION NO. 4

PHYSICIANS' DUTY TO COOPERATE IN TREATMENT

All physicians involved in the treatment of a patient owe that patient the duty to exercise ordinary care for the well-being of the patient to the extent of their involvement. The law requires that these physicians coordinate their efforts and communicate between each other in a manner that best serves their patient's well-being. The promptness of communication and the type of information which must be relayed should equal the way physicians in good standing and other members of the profession practicing in the same or similar community would act under similar circumstances.

Bass v. Barksdale, 671 S.W.2d 476, 491 (Tenn. Ct. App. 1984).

PLAINTIFF'S PROPOSED
SPECIAL JURY INSTRUCTION NO. 5

JURORS' DUTY TO FOLLOW COURT'S INSTRUCTIONS

Over the course of deliberations, if any juror is disregarding my instructions, your foreperson has the duty to tell me through the bailiff. If the foreperson does not do that, it is the duty of every other juror to do so.

See T.P.I. – Civil 1.02 (After *Voir Dire* and Before Trial); T.P.I. – Civil 15.19 (Questions During Deliberations); T.P.I – Civil 15.20 (Concluding Instruction).