

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

EDWARD P. HAGEN,

Plaintiff,

vs.

SIUXLAND OBSTETRICS &
GYNECOLOGY, P.C., an Iowa
corporation; PAUL J. EASTMAN;
TAUHNI T. HUNT; and ANGELA J.
ALDRICH,

Defendants.

No. C 11-4047-MWB

**INSTRUCTIONS
TO THE JURY**

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VERDICT FORM

No. 1 — INTRODUCTION

Congratulations on your selection as a juror!

These Instructions are to help you better understand the trial and your role in it.

As I explained during jury selection, this is an action by plaintiff Dr. Edward P. Hagen against his former medical practice, defendant Siouxland Obstetrics & Gynecology, P.C., (Siouxland), and the other shareholders in the practice at the time of his discharge, defendant doctors Paul J. Eastman, Tauhni T. Hunt, and Angela J. Aldrich. Dr. Hagen asserts that the defendants wrongfully discharged him in violation of public policy on or about November 16, 2009. The defendants deny Dr. Hagen's claims.

You have been chosen and sworn as jurors to try the issues of fact related to Dr. Hagen's claim. In making your decisions, you are the sole judges of the facts. You must not decide this case based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these Instructions. Do not take anything that I have said or done or that I may say or do as indicating what I think of the evidence or what I think your verdict should be.

You should consider and decide this case as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. Individuals, like Dr. Hagen, Dr. Eastman, Dr. Hunt, and

Dr. Aldrich, and business entities, like Siouxland, stand equal before the law, and each is entitled to the same fair consideration.

However, a business entity, like Siouxland, can act only through its employees, officers, and directors. Any employee, officer, or director of Siouxland may bind Siouxland by acts and statements made while acting within the scope of the authority delegated to that person by Siouxland.

Also, please remember that this case is important to the parties and to the fair administration of justice. Therefore, please be patient, consider all of the evidence, and do not be in a hurry to reach a verdict just to be finished with the case.

In these Instructions, I will explain how you are to determine whether or not Dr. Hagen has proved his claim. A claim consists of “elements,” which are the factual parts of the claim. Therefore, to prove his claim, Dr. Hagen must prove all of its elements.

Before explaining the elements of Dr. Hagen’s “wrongful discharge” claim, I will explain some preliminary matters, including the burden of proof, what is evidence, and how you are to treat the testimony of witnesses.

No. 2 — BURDEN OF PROOF

Your verdict depends on what facts have been proved. Unless I tell you otherwise, facts must be proved “by the greater weight of the evidence.” This burden of proof is sometimes called “the preponderance of the evidence.”

“Proof by the greater weight of the evidence” is proof that a fact is more likely true than not true.

- It does not depend on which side presented the greater number of witnesses or exhibits
- It requires you to consider all of the evidence and decide which evidence is more convincing or believable
 - For example, you may choose to believe the testimony of one witness, if you find that witness to be convincing, even if a number of other witnesses contradict that witness’s testimony
 - You are free to disbelieve any testimony or other evidence that you do not find convincing or believable
- If, on any issue in the case, you find that the evidence is equally balanced, then you cannot find that the issue has been proved

You may have heard that criminal charges require “proof beyond a reasonable doubt.” That is a stricter standard that does not apply in a civil case, such as this one.

No. 3 — DEFINITION OF EVIDENCE

Evidence is

- Testimony
 - Testimony may be either “live” or “by deposition”
 - A “deposition” is testimony taken under oath before the trial and preserved in writing or on video
 - Consider “deposition” testimony as if it had been given in court
- Answers to interrogatories
 - An interrogatory is a written question asked before trial by one party of another, who must answer it under oath in writing
 - Consider interrogatories and the answers to them as if the questions had been asked and answered here in court
- Exhibits admitted into evidence
 - Just because an exhibit may be shown to you does not mean that it is more important than any other evidence
- Stipulations
 - Stipulations are agreements between the parties
 - If the parties stipulate that certain facts are true, then you must treat those facts as having been proved

Evidence is *not*

- Testimony that I tell you to disregard
- Exhibits that are not admitted into evidence
- Statements, arguments, questions, and comments by the lawyers
- Objections and rulings on objections
- Anything that you see or hear about this case outside the courtroom

You may have heard of “direct” or “circumstantial” evidence.

- “Direct” evidence is direct proof of a fact
 - An example is testimony by a witness about what that witness personally saw or heard or did
- “Circumstantial” evidence is proof of one or more facts from which you could find another fact
 - An example is testimony that a witness personally saw a broken window and a brick on the floor from which you could find that the brick broke the window
- You should consider both kinds of evidence, because the law makes no distinction between their weight

Some evidence may be admitted only for a limited purpose.

- I will tell you if that happens
- I will instruct you on the purposes for which the evidence can and cannot be used

The weight to be given any evidence—whether that evidence is “direct” or “circumstantial,” or in the form of testimony, an exhibit, or a stipulation—is for you to decide.

No. 4 — TESTIMONY OF WITNESSES

You may believe all of what any witness says, only part of it, or none of it.

In evaluating a witness's testimony, consider the following:

- the witness's
 - intelligence
 - memory
 - opportunity to have seen and heard what happened
 - motives for testifying
 - interest in the outcome of the case
 - manner while testifying
 - drug or alcohol use or addiction, if any
- the reasonableness of the witness's testimony
- any differences between what the witness says now and said earlier
- any inconsistencies between the witness's testimony and any other evidence that you believe
- whether any inconsistencies are the result of seeing or hearing things differently, actually forgetting things, or innocent mistakes, or are, instead, the result of lies or phony memory lapses, and
- any other factors that you find bear on believability or credibility

You should not give any more or less weight to a witness's testimony just because the witness is an expert.

You may give any witness's opinion whatever weight you think it deserves, but you should consider

- the reasons and perceptions on which the opinion is based
- any reason that the witness may be biased, and
- all of the other evidence in the case

It is your exclusive right to give any witness's testimony whatever weight you think it deserves.

No. 5 — WRONGFUL DISCHARGE

Dr. Hagen claims that he was wrongfully discharged from his employment with Siouxland on November 16, 2009, in violation of public policy. The defendants deny that Dr. Hagen was discharged for any reason that violated public policy.

To win on his “wrongful discharge” claim, Dr. Hagen must prove all of the following elements by the greater weight of the evidence:

One, Dr. Hagen was employed by Siouxland.

The parties agree that Dr. Hagen was employed by Siouxland.

Two, Dr. Hagen engaged in conduct protected by public policy.

The following conduct, if engaged in by Dr. Hagen, is protected by Iowa public policy:

- Dr. Hagen reporting, stating an intention to report, or stating that he might report to the Iowa Board of Medicine conduct of Dr. Eastman that Dr. Hagen believed may have involved wrongful acts, omissions, negligence, or malpractice
- Dr. Hagen reporting, stating an intention to report, or stating that he might report to a hospital conduct of Dr. Eastman that Dr. Hagen believed may have involved wrongful acts, omissions, negligence, or malpractice
- Dr. Hagen reporting, stating an intention to report, or stating that he might report to a

hospital conduct of nurses that Dr. Hagen believed may have involved wrongful acts or omissions

- Dr. Hagen disclosing to a patient or a patient's family that the patient may have been the victim of negligent care or malpractice
- Dr. Hagen consulting with an attorney, stating an intention to consult with an attorney, or stating that he might consult with an attorney about whether Dr. Eastman or nurses had committed wrongful acts or omissions that Dr. Hagen should report to the Iowa Board of Medicine or a hospital

You must unanimously agree which one or more, if any, of these kinds of conduct Dr. Hagen engaged in. If he did not engage in any such conduct, then your verdict must be for the defendants on this claim.

Three, Siouxland discharged Dr. Hagen from his employment.

The parties agree that Dr. Hagen was discharged from his employment with Siouxland on or about November 16, 2009.

Four, Dr. Hagen's conduct protected by public policy was the determining factor in Siouxland's decision to discharge him.

A determining factor

- need not be the main reason behind the decision, *but*
- must be the reason that tips the scales decisively one way or the other

Siouxland must have known of the protected activity before it made the decision to discharge Dr. Hagen.

A short time between Dr. Hagen engaging in the protected activity and his discharge

- is not enough, by itself, to find that the protected activity was the determining factor in the discharge, *but*
- may be suspicious, in light of other evidence that the discharge was for engaging in protected activity

You should consider whether or not there are other legitimate reasons or motives for the discharge.

- If the defendants offer other reasons for the discharge, you must determine whether those other reasons are merely pretexts for a discharge for engaging in protected activity
 - You may find that a reason is a pretext if it was not the real reason, but is a reason given to hide a discharge for engaging in protected activity
- If the reasons offered by Siouxland are legitimate and not pretexts, you must determine whether any protected conduct by Dr. Hagen was nevertheless the determining factor in his discharge

Five, the wrongful discharge caused injury to Dr. Hagen.

An injury to Dr. Hagen was caused by the wrongful discharge, if Dr. Hagen would not have

suffered the same injury if Siouxland had not discharged him.

If Dr. Hagen does not prove *all* of these elements by the greater weight of the evidence, then you must find in favor of the defendants on Dr. Hagen's "wrongful discharge" claim. On the other hand, if Dr. Hagen does prove all of these elements by the greater weight of the evidence, then you must consider his claim for "damages" for "wrongful discharge," as damages are explained in the next four Instructions.

No. 6 — DAMAGES IN GENERAL

The fact that I am instructing you on damages is not an indication that I have any view as to whether Dr. Hagen has proved his “wrongful discharge” claim. Rather, I am giving you instructions on damages for your guidance, if you find that Dr. Hagen has proved his “wrongful discharge” claim, in accordance with the other instructions.

I will explain in the next Instructions how you are to determine Dr. Hagen’s specific damages, if he prevails on his “wrongful discharge” claim. First, however, I will explain some general rules for awarding damages.

If you find in favor of Dr. Hagen on his claim, then you must determine the amount of damages to which he is entitled. You must award Dr. Hagen such sum as you find will fairly and justly compensate him for any damages that you find he sustained as a direct result of the defendants’ wrongful discharge.

In deciding what amounts, if any, to award for damages,

- Decide what damages, if any, have been proved, based upon the evidence
- Do not base the amount of any compensatory damages upon speculation, guesswork, conjecture, sympathy, a desire to punish, or prejudice
- Do not decide the amount of damages by taking down the estimate of each juror and agreeing in advance that the average of those estimates will be your award of damages; instead, use your sound judgment based upon an impartial consideration of the evidence

- Do not allow amounts awarded under one item of compensatory damages to be included in any amount awarded under another item of compensatory damages
- ~~Dr. Hagen had a duty to mitigate his damages~~
 - ~~A duty to “mitigate” damages is a duty to exercise ordinary care to reduce, minimize, or limit his damages~~
 - ~~It is not a duty to do something unreasonable under the circumstances~~
 - ~~The defendants have the burden to prove Dr. Hagen’s failure to mitigate his damages by the greater weight of the evidence. To do so, they must prove *all* of the following elements:~~
 - ~~Dr. Hagen failed to seek out or take advantage of an opportunity to reduce his damages, such as taking advantage of an available, substantially equivalent employment position~~
 - ~~Taking advantage of the opportunity was reasonable under the circumstances~~
 - ~~Dr. Hagen unreasonably failed to take advantage of the opportunity~~
 - ~~Dr. Hagen’s failure to take advantage of the opportunity caused an identifiable portion of his damages~~
- ~~If the defendants prove that Dr. Hagen failed to mitigate his damages, you must reduce his damages by the amount that he reasonably could have avoided if he had done so~~

No. 7 — COMPENSATORY DAMAGES

If you find in Dr. Hagen’s favor on his “wrongful discharge” claim, as explained in Instruction No. 5, then you must decide the amount of “compensatory” or “actual” damages, if any, that will fairly and fully compensate Dr. Hagen for the damage caused by his wrongful discharge, as proved by the greater weight of the evidence.

Dr. Hagen seeks “past lost earnings” and “future lost earnings.” I will now explain the circumstances under which each item of damages can be awarded and how you are to determine the amount of each item of damages.

- **Past lost earnings**

You may award the reasonable value of earnings that Dr. Hagen lost because Siouxland wrongfully discharged him, from the date of his discharge on November 16, 2009, to the date that you find Dr. Hagen would have voluntarily left employment with Siouxland or the date of your verdict, whichever comes first. To determine this amount,

- Determine the amount of wages and fringe benefits that Dr. Hagen would have earned working for Siouxland from the date of his discharge to the date that you find he would have voluntarily left employment with Siouxland or the date of your verdict, whichever comes first
- Subtract from this amount
 - the wages and fringe benefits, if any, that Dr. Hagen actually did earn

during that time from other employment, ~~and~~

- ~~• if the defendants prove that Dr. Hagen failed to mitigate his damages, the wages and fringe benefits that Dr. Hagen reasonably could have earned during that time if he had sought out or taken advantage of another reasonably available employment opportunity~~

- **Future lost earnings**

If you find that Dr. Hagen's employment with Siouxland would have continued into the future, if he had not been wrongfully discharged by Siouxland, you may also award the "present value" of his lost future earnings from the date of your verdict until the date that you find that he would have quit working for Siouxland.

- "Present value" is a sum of money paid now, in advance, that, with interest earned at a reasonable rate of return, will compensate Dr. Hagen for future losses

To determine the amount to award for future lost earnings,

- Determine the present value of wages and fringe benefits that Dr. Hagen would have earned from working for Siouxland from the date of your verdict until the date that you find by the greater weight of the evidence he would have quit working for Siouxland. In deciding the date that Dr. Hagen would have quit working for Siouxland, consider the following factors:

- His remaining work life expectancy
- His health, habits, occupation, and lifestyle
- Any other evidence that he would have reduced his work load or quit working for Siouxland before the end of his remaining work life expectancy
- Subtract from this amount
 - the present value of wages and fringe benefits, if any, that Dr. Hagen would have earned from other employment during that time, *and*
 - ~~if the defendants prove that Dr. Hagen failed to mitigate his damages, the present value of wages and fringe benefits that Dr. Hagen reasonably could have earned if he had sought out or taken advantage of another reasonably available employment opportunity~~

You will indicate the amounts, if any, that you award for these items of damages in the blanks provided in the Verdict Form.

No. 8 — NOMINAL DAMAGES

“Nominal damages” are awarded to vindicate a party’s rights, when the violation of those rights has not caused injury that can be valued in monetary terms. If you find for Dr. Hagen on his “wrongful discharge” claim, but you find that he has failed to prove “compensatory damages” as defined in Instruction No. 7 on that claim, then you must award “nominal damages.” In other words, do not award “nominal damages” on Dr. Hagen’s “wrongful discharge” claim, if you award any “compensatory damages” on that claim. “Nominal damages” may not exceed one dollar.

No. 9 — PUNITIVE DAMAGES

In addition to compensatory damages, the law permits, but does not require, the jury, under certain circumstances, to award punitive damages. You must determine separately whether or not punitive damages should be awarded against each or any of the individual defendants and whether defendant Siouxland is liable for the punitive damages because of the acts of one or more of its employees.

Punitive damages are not intended to compensate for injury. You should consider Dr. Hagen to be made whole for his injuries by the “compensatory damages,” if any, that you may award under Instruction No. 7. Consequently, you should only award punitive damages, if additional damages are appropriate to punish the defendant in question and to discourage that defendant and others from like conduct in the future.

Burden of proof

An award of punitive damages is subject to a different standard of proof than other issues in this case:

- The elements required to award punitive damages must be proved “by the greater weight of clear, convincing, and satisfactory evidence”
- Evidence is “clear, convincing, and satisfactory,” if there is no serious or substantial uncertainty about the conclusion to be drawn from it

Eligibility for punitive damages

Dr. Hagen is eligible for an award of punitive damages against a particular defendant, if he proves *both* of the following elements by the greater weight of clear, convincing, and satisfactory evidence against that defendant:

One, the defendant’s conduct in wrongfully discharging Dr. Hagen in violation of public policy warrants a penalty in addition to any amount that you award as compensatory damages on Dr. Hagen’s claim.

Conduct warrants an award of punitive damages if it constituted a willful and wanton disregard for the rights of Dr. Hagen. Conduct was “willful and wanton” if

- a person intentionally did an act of an unreasonable character
- the person did so in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow

Two, the defendant’s conduct caused actual injury to Dr. Hagen.

You can only award punitive damages if you first find that the wrongful conduct of the defendant in question caused actual injury to Dr. Hagen and you award compensatory damages for such actual injury pursuant to Instruction No. 7 or nominal damages for such actual injury pursuant to Instruction No. 8.

If Dr. Hagen does not prove *both* of these elements by the greater weight of clear, convincing, and satisfactory evidence against a particular defendant, then you cannot award him punitive damages against that defendant on his “wrongful discharge” claim.

Amount of punitive damages

If Dr. Hagen does prove *both* of the elements establishing eligibility for punitive damages by the greater weight of clear, convincing, and satisfactory evidence against a particular defendant, then you may, but are not required to, award him punitive damages in some amount on his “wrongful discharge” claim. To award punitive damages, you must determine the following:

The amount, if any, of punitive damages that is warranted by the defendant’s wrongful conduct.

There is no exact rule to determine the amount of punitive damages, if any, you should award. In determining what amount, if any, to award for punitive damages against a particular defendant, you may consider the following factors:

- the nature of the defendant’s conduct that harmed Dr. Hagen
- the amount of punitive damages that will punish and discourage like conduct by the defendant
 - you may consider the defendant’s financial condition or ability to pay
 - you may not award punitive damages solely because of a defendant’s wealth or ability to pay
- the amount of punitive damages that is reasonably related to the amount of compensatory damages that you award to Dr. Hagen on his “wrongful discharge” claim

- the existence and frequency of prior similar conduct

Conduct directed specifically at Dr. Hagen

In addition, if you award Dr. Hagen punitive damages against a particular defendant on his “wrongful discharge” claim, then you will be asked to answer the following question in the Verdict Form:

Was the wrongful conduct of the defendant in question relating to the “wrongful discharge” claim directed specifically at Dr. Hagen?

The wrongful conduct was not “directed specifically at” Dr. Hagen, if the defendant’s conduct would have been the same if a different plaintiff were involved.

You need not be concerned with the effect of your determination on this question, because the effect of your determination on this question is for me to decide.

Siouxland’s liability for punitive damages

Siouxland is liable for the punitive damages awarded by reason of the acts of the individual defendants, if one or more of the following occurred:

- Siouxland authorized the particular defendant’s act and the way it was done, *or*
- The particular defendant was employed in a managerial capacity and was acting in the scope of employment, *or*
- Siouxland ratified or approved the act

No. 10 — OUTLINE OF THE TRIAL

I will now explain how the trial will proceed.

After I have read all but the last Instruction,

- The lawyers may make opening statements
 - An opening statement is not evidence
 - It is simply a summary of what the lawyer expects the evidence to be
- Dr. Hagen will present evidence and call witnesses and the lawyer for the defendants may cross-examine them
- The defendants may present evidence and call witnesses, and the lawyer for Dr. Hagen may cross-examine those witnesses
- The parties will make their closing arguments
 - Closing arguments summarize and interpret the evidence for you
 - Like opening statements, closing arguments are not evidence
- I will give you the last Instruction, on “deliberations”
- You will retire to deliberate on your verdict
- You will indicate your verdict on Dr. Hagen’s claim in a Verdict Form, a copy of which is attached to these Instructions
 - A Verdict Form is simply a written notice of your decision

- When you have reached a unanimous verdict, your foreperson will complete one copy of the Verdict Form by marking the appropriate blank or blanks for each question
- You will all sign that copy to indicate that you agree with the verdict and that it is unanimous
- Your foreperson will then bring the signed Verdict Form to the courtroom when it is time to announce your verdict

No. 11 — 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
- Do not hold it against a lawyer or a party that a lawyer has made an objection, because lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible

No. 12 — BENCH CONFERENCES

During the trial, it may be necessary for me to talk with the lawyers out of your hearing.

- I may hold a bench conference while you are in the courtroom or call a recess
- Please be patient, because these conferences are
 - to decide how certain evidence is to be treated
 - to avoid confusion and error, and
 - to save your valuable time
- We will do our best to keep such conferences short and infrequent

No. 13 — NOTE-TAKING

You are allowed to take notes during the trial if you want to.

- Be sure that your note-taking does not interfere with listening to and considering all the evidence
- Your notes are not necessarily more reliable than your memory or another juror's notes or memory
- Do not discuss your notes with anyone before you begin your deliberations
- Leave your notes on your chair during recesses and at the end of the day
- At the end of trial, you may take your notes with you or leave them to be destroyed
- No one else will ever be allowed to read your notes, unless you let them

If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence.

An official court reporter is making a record of the trial, but her transcripts will not be available for your use during your deliberations.

No. 14 — QUESTIONS BY JURORS

When the attorneys have finished questioning a witness, you may propose questions in order to clarify the testimony.

- Do not express any opinion about the testimony or argue with a witness in your questions
- Submit your questions in writing by passing them to the Court Security Officer (CSO)

I will review each question with the attorneys. You may not receive an answer to your question:

- I may decide that the question is not proper under the rules of evidence
- Even if the question is proper, you may not get an immediate answer, because a witness or an exhibit you will see later in the trial may answer your question

Do not feel slighted or disappointed if your question is not asked. Remember, you are not advocates for either side, you are impartial judges of the facts.

No. 15 — CONDUCT OF JURORS DURING TRIAL

You must decide this case *solely* on the evidence and your own observations, experiences, reason, common sense, and the law in these Instructions. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to decide on your verdict.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- When you are outside the courtroom, do not let anyone ask you about or tell you anything about this case, anyone involved with it, any news story, rumor, or gossip about it, until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.
- During the trial, you should not talk to any of the parties, lawyers, or witnesses—even to pass the time of day—so that there is no reason to be suspicious about your fairness. The lawyers, parties, and witnesses are not supposed to talk to you, either.

- You may need to tell your family, friends, teachers, co-workers, or employer about your participation in this trial, so that you can tell them when you must be in court and warn them not to ask you or talk to you about the case. However, do not provide any information to anyone by any means about this case until after I have accepted your verdict. That means do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, a Blackberry, a PDA, a computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, any blog, or any website such as Facebook, MySpace, YouTube, or Twitter, to communicate to anyone any information about this case until I accept your verdict.
- Do not do any research—on the Internet, in libraries, in the newspapers, in dictionaries or other reference books, or in any other way—or make any investigation about this case, the law, or the people involved on your own.
- Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony.
- Do not read any news stories or articles, in print, on the Internet, or in any “blog,” about this case, or about anyone involved with it, or listen to any radio or television reports about it or about anyone involved with it, or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you

will know more about this case than anyone will learn through the news media—and it will be more accurate.

- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.
- Do not decide the case based on biases. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.
- If, at any time during the trial, you have a problem that 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 (CSO), who will give it to me. I want you to be comfortable, so please do not hesitate to tell us about any problem.

I will read the remaining Instruction at the end of the evidence.

No. 16 — DELIBERATIONS

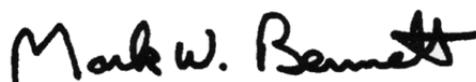
In conducting your deliberations and returning your verdict, there are certain rules that you must follow.

- When you go to the jury room, select one of your members as your foreperson to preside over your discussions and to speak for you here in court
- Discuss this case with one another in the jury room to try to reach agreement on the verdict, if you can do so consistent with individual judgment
 - Nevertheless, each of you must make your own conscientious decision, after considering all the evidence, discussing it fully with your fellow jurors, and listening to the views of your fellow jurors
- Do not be afraid to change your opinions if the discussion with other jurors 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 that you are not advocates, but judges—judges of the facts
 - Your sole interest is to seek the truth from the evidence in the case.

- If you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer (CSO), signed by one or more jurors
 - 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
- Base your verdict solely on the evidence and on the law as I have given it to you in my Instructions
 - Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide
- Your verdict on each question submitted must be unanimous
- Complete and sign one copy of the Verdict Form
 - The foreperson must bring the signed Verdict Form to the courtroom when it is time to announce your verdict
- When you have reached a verdict, the foreperson will advise the Court Security Officer that you are ready to return to the courtroom.

Good luck with your deliberations.

DATED this 19th day of April, 2013.



MARK W. BENNETT
U.S. DISTRICT COURT JUDGE
NORTHERN DISTRICT OF IOWA

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

EDWARD P. HAGEN,

Plaintiff,

vs.

SIOUXLAND OBSTETRICS &
GYNECOLOGY, P.C., an Iowa
corporation; PAUL J. EASTMAN;
TAUHNI T. HUNT; and ANGELA J.
ALDRICH,

Defendants.

No. C 11-4047-MWB

VERDICT FORM

On Dr. Hagen’s claim of “wrongful discharge in violation of public policy,” we, the Jury, find as follows:

I. LIABILITY	
Step 1: Verdict	<p>On Dr. Hagen’s “wrongful discharge” claim, as explained in Instruction No. 5, in whose favor do you find? <i>(If you find in favor of the defendants on this claim, then you do not need to answer any further questions in the Verdict Form. Instead, notify the Court Security Officer (CSO) that you have reached a verdict. On the other hand, if you find in favor of Dr. Hagen, go on to consider additional steps in this Part and in Part II concerning damages.)</i></p> <p style="text-align: center;">___ Dr. Hagen ___ The defendants</p>
Step 2: Protected Conduct	<p><i>If you found in favor of Dr. Hagen in Step 1, which one or more of the following kinds of conduct do you find were determining factor(s) in Siouxland’s decision to terminate Dr. Hagen?</i></p>
	<p>___ Dr. Hagen reporting, stating an intention to report, or stating that he might report to the Iowa Board of Medicine conduct of Dr. Eastman that Dr. Hagen believed may have involved wrongful acts, omissions, negligence, or malpractice</p>

	_____ Dr. Hagen reporting, stating an intention to report, or stating that he might report to a hospital conduct of Dr. Eastman that Dr. Hagen believed may have involved wrongful acts, omissions, negligence, or malpractice	
	_____ Dr. Hagen reporting, stating an intention to report, or stating that he might report to a hospital conduct of nurses that Dr. Hagen believed may have involved wrongful acts or omissions	
	_____ Dr. Hagen disclosing to a patient or a patient's family that the patient may have been the victim of negligent care or malpractice	
	_____ Dr. Hagen consulting with an attorney, stating an intention to consult with an attorney, or stating that he might consult with an attorney about whether Dr. Eastman or nurses had committed wrongful acts or omissions that Dr. Hagen should report to the Iowa Board of Medicine or a hospital	
II. DAMAGES		
Step 1: Compensatory Damages	<i>If you found in favor of Dr. Hagen on his "wrongful discharge" claim in Part I, Step 1, what amount, if any, do you award for each of the following items of damages, as compensatory damages for a "wrongful discharge" are explained in Instruction No. 7?</i>	
	Past lost earnings:	\$ _____
	Future lost earnings, reduced to present value:	\$ _____
TOTAL COMPENSATORY DAMAGES		\$ _____
Step 2: Nominal Damages	<i>If you found in favor of Dr. Hagen on his "wrongful discharge" claim in Part I, Step 1, but you find that he has failed to prove "compensatory damages" as defined in Instruction No. 7, then you must award "nominal damages" not exceeding \$1.00, as explained in Instruction No. 8. (Do not award "nominal damages" on Dr. Hagen's "wrongful discharge" claim, if you award any "compensatory damages" on that claim.)</i>	
	Nominal damages:	\$ _____

<p>Step 3: “Punitive Damages”</p>	<p><i>If you found in favor of Dr. Hagen on his “wrongful discharge” claim in Part I, Step 1, please answer the following questions concerning “punitive damages” for a “wrongful discharge,” as “punitive damages” are explained in Instruction No. 9.</i></p>		
<p>(a): “Willful And Wanton” Conduct”</p>	<p>Do you find by the greater weight of clear, convincing, and satisfactory evidence that the conduct of one or more of the individual defendants constituted willful and wanton disregard of the rights of another? <i>(If your answer is “no,” then you cannot award punitive damages. On the other hand, if your answer is “yes,” you may, but are not required to, award punitive damages in some amount.)</i></p>		
	<p>_____ Yes</p>	<p>_____ No</p>	
<p>(b): Responsible Defendant(s) And Amount Of Punitive Damages</p>	<p><i>If you answered “yes” in Step 3(a), which one or more of the following defendants do you find by the greater weight of clear, convincing, and satisfactory evidence engaged in conduct that constituted willful and wanton disregard of the rights of another, and what amount, if any, in punitive damages do you award against any such defendant?</i></p>		
	<p>_____ Dr. Eastman engaged in willful and wanton conduct, and the amount of punitive damages awarded against him is \$ _____</p>		
	<p>_____ Dr. Hunt engaged in willful and wanton conduct, and the amount of punitive damages awarded against her is \$ _____</p>		
	<p>_____ Dr. Aldrich engaged in willful and wanton conduct, and the amount of punitive damages awarded against her is \$ _____</p>		
<p>(c): Directed Specifically At Dr. Hagen</p>	<p><i>If you answered “yes” in Step 3(a), was the conduct of any defendant marked in Step 3(b) directed specifically at Dr. Hagen?</i></p>		
	<p>Dr. Eastman:</p>	<p>___ Yes</p>	<p>___ No</p>
	<p>Dr. Hunt:</p>	<p>___ Yes</p>	<p>___ No</p>
	<p>Dr. Aldrich:</p>	<p>___ Yes</p>	<p>___ No</p>

(d): Liability Of Siouxland	<i>If you answered "yes" in Step 3(a), and you awarded punitive damages in Step 3(b), is Siouxland liable for the punitive damages awarded by reason of the acts of any individual defendant identified in Step 3(b)?</i>		
	Dr. Eastman:	___ Yes	___ No
	Dr. Hunt:	___ Yes	___ No
	Dr. Aldrich:	___ Yes	___ No

_____ Date

Foreperson	Juror
Juror	Juror
Juror	Juror
Juror	Juror

