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Elizabeth A. Brown  
Clerk of Supreme Court

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

TAWNI McCROSKY, individually and  
as the natural parent of  
LYAM McCROSKY, a minor child,

Appellants,

vs.

CARSON TAHOE REGIONAL  
MEDICAL CENTER, a Nevada  
business entity,

Respondent.

Supreme Court Case No.: 70325

FJDC Case No. 13TRT000281B

**APPELLANTS' SUPPLEMENTAL APPENDIX**

**VOLUME 16**

**Attorneys for Appellant:**

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**ALPHABETICAL INDEX TO APPENDIX**

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NOS.</u></b>
1.	Complaint	April 17, 2013	1	AA000001 – AA000022
2.	Defendant Amy Sue Hayes, M.D.'s Answer to First Amended Complaint	May 14, 2015	1	AA000066 – AA000075
3.	Defendant Carson Tahoe Regional Medical Center's Answer to Plaintiff's Complaint	May 30, 2013	1	AA000030 – AA000038
4.	Defendant Carson Tahoe Regional Medical Center's Answer to Plaintiff's First Amended Complaint	April 30, 2015	1	AA000050 – AA000065
5.	Defendant Carson Tahoe Regional Medical Center's Motion for Partial Summary Judgment	August 11, 2015	1	AA000112 – AA000213
6.	Defendant Carson Tahoe Regional Medical Center's Motion in Limine No. 7 to Permit the Introduction of Collateral Source Payments as Evidence at the Time of Trial	October 1, 2015	4	AA000646 – AA000652

**ALPHABETICAL INDEX TO APPENDIX**

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NOS.</u></b>
7.	Defendant Carson Tahoe Regional medical Center's Motion to Include Co- Defendant Amy Sue Hayes, M.D. On the Verdict Form	August 5, 2015	1	AA000079 – AA000111
8.	Defendant Carson Tahoe Regional Medical Center's Opposition to Plaintiff's Omnibus Motion in Limine	November 4, 2015	5	AA000807 – AA000882
9.	Defendant Carson Tahoe Regional Medical Center's Reply in Support of Motion for Partial Summary Judgment	August 28, 2015	3	AA000314 – AA000529
10.	Defendant Carson Tahoe Regional medical Center's Reply in Support of Motion to Include Co-Defendant Amy Sue Hayes, MD on the Verdict Form	August 28, 2015	3	AA000530 – AA000537
11.	Defendant Carson Tahoe Regional Medical Center's Reply in Support of Motion in Limine No. 7 to Permit the Introduction of Collateral Source Payments as Evidence at the Time of Trial	October 29, 2015	5	AA000799 – AA000804

**ALPHABETICAL INDEX TO APPENDIX**

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NOS.</u></b>
12.	Defendant Hayes' Answer to Amended Complaint	May 21, 2013	1	AA000023- AA000029
13.	Fetal Monitor Strips	N/A	15	AA003134 – AA003199
14.	First Amended Complaint	April 17, 2015	1	AA000039 – AA000049
15.	Judgment on Jury Verdict	April 6, 2016	15	AA003124 – AA003126
16.	Jury Instructions	March 22, 2016	16	AA003200 – AA003242
17.	Notice of Appeal	May 2, 2016	15	AA003127 – AA003133
18.	Notice of Entry of Order re: Hayes on Verdict Form	September 23, 2015	4	AA000631 – AA000637
19.	Notice of Entry of Order re: Motion for Summary Judgment	September 23, 2015	4	AA000638 – AA000645
20.	Order Granting Defendant Carson Tahoe Regional Medical Center's Motion for Partial Summary Judgment	September 22, 2015	4	AA000624 – AA000627

**ALPHABETICAL INDEX TO APPENDIX**

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NOS.</u></b>
21.	Order Granting Defendant Carson Tahoe Regional Medical Center's Motion to Include Co-Defendant, Amy Sue Hayes, MD on the Verdict Form	September 22, 2015	4	AA000628 – AA000630
22.	Order Granting in Part and Denying in Part Defendant's Motions in Limine	December 14, 2015	5	AA000957 – AA000965
23.	Order Granting in Part and Denying in Part Plaintiffs' Omnibus Motions in Limine	December 29, 2015	5	AA000966 – AA000972
24.	Order on Motion for Good Faith Settlement	June 9, 2015	1	AA000076 – AA000078
25.	Plaintiff's Opposition to Defendant Carson Tahoe Regional Medical Center's Motion for Summary Judgment	August 25, 2015	2	AA000264 – AA000313
26.	Plaintiff's Opposition to Defendant CTRMC's Motion to Include Co-Defendant Amy Sue Hayes, MD on the Verdict Form	August 21, 2015	2	AA000214 – AA000263

## **ALPHABETICAL INDEX TO APPENDIX**

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NOS.</u></b>
27.	Plaintiff's Reply to Defendant Carson Tahoe Regional Medical Center's Opposition to Plaintiffs' Omnibus Motion in Limine	November 16, 2015	5	AA000883 – AA000954
28.	Plaintiffs' Omnibus Motion in Limine	October 19, 2015	5	AA000771 – AA000798
29.	Plaintiffs' Opposition to Defendant Carson Tahoe Regional Medical Center's Motion in Limine Nos. 1-15	October 19, 2015	4	AA000653 – AA000770
30.	Request for Submission re: Motion in Limine No. 7	October 29, 2015	5	AA000805 – AA000806
31.	Request for Submission re: Plaintiffs' Omnibus Motion in Limine	December 3, 2015	5	AA000955 – AA000956
32.	Special Verdict	March 22, 2016	15	AA003121 – AA003123
33.	Sur-Reply to Defendant Carson Tahoe Regional Medical Center's Motion for Partial Summary Judgment	August 31, 2015	4	AA000538 – AA000544

**ALPHABETICAL INDEX TO APPENDIX**

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NOS.</u></b>
34.	Transcript from hearing on Carson Tahoe Regional Medical Center's Motion for Partial Summary Judgment	September 1, 2015	4	AA000545 – AA000623
35.	Transcript of Trial Proceedings Day 1	March 8, 2016	5-6	AA000973 – AA001242
36.	Transcript of Trial Proceedings Day 10	March 19, 2016	14	AA002918 – AA003005
37.	Transcript of Trial Proceedings Day 11	March 20, 2016	14-15	AA003006 – AA003120
38.	Transcript of Trial Proceedings Day 2	March 9, 2016	6-7	AA001243 – AA001532
39.	Transcript of Trial Proceedings Day 3	March 10, 2016	8	AA001533 – AA001717
40.	Transcript of Trial Proceedings Day 4	March 11, 2016	8-9	AA001718 – AA001918
41.	Transcript of Trial Proceedings Day 5	March 12, 2016	9-10	AA001919 – AA002054
42.	Transcript of Trial Proceedings Day 6	March 15, 2016	10-11	AA002055 – AA002326
43.	Transcript of Trial Proceedings Day 7	March 16, 2016	11-12	AA002327 – AA002579

**ALPHABETICAL INDEX TO APPENDIX**

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NOS.</u></b>
44.	Transcript of Trial Proceedings Day 8	March 17, 2016	12-13	AA002580 – AA002775
45.	Transcript of Trial Proceedings Day 9	March 18, 2016	13-14	AA002776 – AA002917



**CHRONOLOGICAL INDEX TO APPENDIX**

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5.	First Amended Complaint	April 17, 2015	1	AA000039 – AA000049
6.	Defendant Carson Tahoe Regional Medical Center’s Answer to Plaintiff’s First Amended Complaint	April 30, 2015	1	AA000050 – AA000065
7.	Defendant Amy Sue Hayes, M.D.’s Answer to First Amended Complaint	May 14, 2015	1	AA000066 – AA000075
8.	Order on Motion for Good Faith Settlement	June 9, 2015	1	AA000076 – AA000078

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11.	Plaintiff's Opposition to Defendant CTRMC's Motion to Include Co- Defendant Amy Sue Hayes, MD on the Verdict Form	August 21, 2015	2	AA000214 – AA000263
12.	Plaintiff's Opposition to Defendant Carson Tahoe Regional Medical Center's Motion for Summary Judgment	August 25, 2015	2	AA000264 – AA000313

## **CHRONOLOGICAL INDEX TO APPENDIX**

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15.	Sur-Reply to Defendant Carson Tahoe Regional Medical Center's Motion for Partial Summary Judgment	August 31, 2015	4	AA000538 – AA000544
16.	Transcript from hearing on Carson Tahoe Regional Medical Center's Motion for Partial Summary Judgment	September 1, 2015	4	AA000545 – AA000623

**CHRONOLOGICAL INDEX TO APPENDIX**

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## **CHRONOLOGICAL INDEX TO APPENDIX**

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24.	Defendant Carson Tahoe Regional Medical Center's Reply in Support of Motion in Limine No. 7 to Permit the Introduction of Collateral Source Payments as Evidence at the Time of Trial	October 29, 2015	5	AA000799 – AA000804
25.	Request for Submission re: Motion in Limine No. 7	October 29, 2015	5	AA000805 – AA000806
26.	Defendant Carson Tahoe Regional Medical Center's Opposition to Plaintiff's Omnibus Motion in Limine	November 4, 2015	5	AA000807 – AA000882

## **CHRONOLOGICAL INDEX TO APPENDIX**

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34.	Transcript of Trial Proceedings Day 4	March 11, 2016	8-9	AA001718 – AA001918

## **CHRONOLOGICAL INDEX TO APPENDIX**

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37.	Transcript of Trial Proceedings Day 7	March 16, 2016	11-12	AA002327 – AA002579
38.	Transcript of Trial Proceedings Day 8	March 17, 2016	12-13	AA002580 – AA002775
39.	Transcript of Trial Proceedings Day 9	March 18, 2016	13-14	AA002776 – AA002917
40.	Transcript of Trial Proceedings Day 10	March 19, 2016	14	AA002918 – AA003005
41.	Transcript of Trial Proceedings Day 11	March 20, 2016	14-15	AA003006 – AA003120
42.	Special Verdict	March 22, 2016	15	AA003121 – AA003123
43.	Jury Instructions	March 22, 2016	16	AA003200 – AA003242
44.	Judgment on Jury Verdict	April 6, 2016	15	AA003124 – AA003126
45.	Notice of Appeal	May 2, 2016	15	AA003127 – AA003133

**CERTIFICATE OF SERVICE**


I certify that I am an employee of Durney & Brennan, Ltd., and that on the date shown below, pursuant to NRAP 25(d), I caused service of the foregoing document by electronically filing the same with the Clerk of the Court which serves the following party automatically:

Robert C. McBride, Esq.  
CARROLL, KELLY, TROTTER  
FRANZEN, McKENNA & PEABODY  
8329 W. Sunset Rd., Ste. 260  
Las Vegas, Nevada 89113

Additionally, I deposited in the United States mail at Reno, Nevada, a true copy of the foregoing document, addressed to:

John C. Kelly, Esq.  
CARROLL, KELLY, TROTTER  
FRANZEN & McKENNA  
111 W. Ocean Blvd., 14<sup>th</sup> Fl.  
Long Beach, California 90801-5636

DATED this 17<sup>th</sup> day of March, 2017.

  
\_\_\_\_\_  
ABBIE WHITFIELD



Case No. 13 TRT 00028 1B  
Dept. No. 1

REC'D & FILED

2016 MAR 22 PM 5:01

SUSAN HERRIWEITER

CLERK  
BY *[Signature]*  
DEPUTY

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY**

TAWNI McCROSKY, individually and as the  
natural parent of LYAM McCROSKY, a minor  
child,

Plaintiffs,

vs.

CARSON TAHOE REGIONAL MEDICAL  
CENTER, a Nevada business entity; and DOES I-  
X, inclusive;

Defendants.

**JURY INSTRUCTIONS**

**LADIES AND GENTLEMEN OF THE JURY:**

It is my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than given in the instructions of the court.

Instruction No. 1

1 If, in these instructions, any rule, direction or idea is repeated or stated in different ways,  
2 no emphasis thereon is intended by me and none may be inferred by you. For that reason, you  
3 are not to single out any certain sentence or any individual point or instruction and ignore the  
4 others, but you are to consider all the instructions as a whole and regard each in the light of all  
5 the others.

6 The order in which the instructions are given has no significance as to their relative  
7 importance.

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28 Instruction No. 2

1 The masculine form as used in the instructions, if applicable as shown by the text of the  
2 instruction and the evidence, applies to a female person or a corporation.  
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28 Instruction No. 3

1 The evidence which you are to consider in this case consists of the testimony of the  
2 witnesses, the exhibits, and any facts admitted or agreed to by counsel.

3 Statements, arguments and opinions of counsel are not evidence in the case. However, if  
4 the attorneys stipulate as to the existence of a fact, you must accept the stipulation as evidence  
5 and regard that fact as proved.

6 You must not speculate to be true any insinuations suggested by a question asked a  
7 witness. A question is not evidence and may be considered only as it supplies meaning to the  
8 answer.

9 You must disregard any evidence to which an objection is sustained by the court and any  
10 evidence ordered stricken by the court.

11 Anything you may have seen or heard outside the courtroom is not evidence and must  
12 also be disregarded.

1        You must decide all questions of fact in this case from the evidence received in this trial  
2 and not from any other source. You must not make any independent investigation of the facts or  
3 the law, or even discuss or consider or discuss facts as to which there is no evidence. This  
4 means, for example, that you must not on your own visit the scene, conduct experiments, or  
5 consult reference works or the internet for additional information.

6        You also may not consult or discuss with others the evidence and facts in this case by any  
7 social media, whether it be online through the internet or by any electronic device such as a  
8 cellular telephone, hand-held PDA, or tablet.

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28 Instruction No. 5

1 Although you are to consider only the evidence in the case in reaching a verdict, you  
2 must bring to the consideration of the evidence your everyday common sense and judgment as  
3 reasonable men and women. Thus, you are not limited solely to what you see and hear as the  
4 witnesses testify. You may draw reasonable inferences from the evidence which you feel are  
5 justified in the light of common experience, keeping in mind that such inferences should not be  
6 based on speculation or guess.

7 A verdict may never be influenced by sympathy, prejudice or public opinion. Your  
8 decision should be the product of sincere judgment and sound discretion in accordance with  
9 these rules of law.

1 One of the parties in this case is a corporation. A corporation is entitled to the same fair  
2 and unprejudiced treatment as an individual would be under like circumstances, and you should  
3 decide the case with the same impartiality you would use in deciding a case between individuals.  
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Instruction No. 7

1 If, during this trial, I have said or done anything which has suggested to you that I am  
2 inclined to favor the claims or position of any party, you will not be influenced by any such  
3 suggestion.

4 I have not expressed, nor intended to express, nor have I intended to intimate, any  
5 opinion as to which witnesses are or are not worthy of belief, what facts are or are not  
6 established, or what inference should be drawn from the evidence. If any expression of mine  
7 has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it.

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28 Instruction No. 8



1        There are two kinds of evidence; direct and circumstantial. Direct evidence is direct  
2 proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect  
3 evidence, that is, proof of a chain of facts from which you could find that another facts exists,  
4 even though it has not been proved directly. You are entitled to consider both kinds of evidence.  
5 The law permits you to give equal weight to both, but it is for you to decide how much weight to  
6 give to any evidence. It is for you to decide whether a fact has been proved by circumstantial  
7 evidence.

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28 Instruction No. 9

1 In determining whether any proposition has been proved, you should consider all of the  
2 evidence bearing on the question without regard to which party produced it.  
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28 Instruction No. 10

1 Certain testimony has been read into evidence from a deposition. A deposition is  
2 testimony taken under oath before the trial and preserved in writing. You are to consider that  
3 testimony as if it had been given in court.  
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Instruction No. 11

1 An attorney has a right to interview a witness for the purpose of learning what testimony  
2 the witness will give. The fact that the witness has talked to an attorney and told him or her  
3 what he or she would testify to does not, by itself, reflect adversely on the truth of the testimony  
4 of the witness.  
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Instruction No. 12

1 The credibility or "believability" of a witness should be determined by his or her manner  
2 upon the stand, his or her relationship to the parties, his or her fears, motives, interests or  
3 feelings, his or her opportunity to have observed the matter to which he or she testified, the  
4 reasonableness of his or her statements and the strength or weakness of his or her recollections.

5 If you believe that a witness has lied about a material fact in the case, you may disregard  
6 the entire testimony of that witness or any portion of this testimony which is not proved by other  
7 evidence.

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28 Instruction No. 13

1       Discrepancies in a witness's testimony or between his testimony and that of others, if  
2 there were any discrepancies, do not necessarily mean that the witness should be discredited.  
3 Failure of recollection is a common experience, and innocent misrecollection is not uncommon.  
4 It is a fact, also, that two persons witnessing an incident or transaction often will see or hear it  
5 differently. Whether a discrepancy pertains to a fact of importance or only to a trivial detail  
6 should be considered in weighing its significance.

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28 Instruction No. 14

1 A witness who has special knowledge, skill, experience, training or education in a  
2 particular science, profession or occupation is an expert witness. An expert witness may give his  
3 opinion as to any matter in which he is skilled.

4 You should consider such expert opinion and weigh the reasons, if any, given for it. You  
5 are not bound, however, by such an opinion. Give it the weight to which you deem it entitled,  
6 whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for  
7 it are unsound.

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28 Instruction No. 15

1 A hypothetical question has been asked of an expert witness. In a hypothetical question,  
2 the expert witness is told to assume the truth of certain facts, and the expert witness is asked to  
3 give an opinion based upon those assumed facts. You must decide if all of the facts assumed in  
4 the hypothetical question have been established by the evidence. You can determine the effect of  
5 that admission upon the value of the opinion.

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28 Instruction No. 16



1 In this case you have heard medical experts express opinions as to the standard of  
2 professional learning, skill and care required of the defendant.

3 To evaluate each such opinion, you should consider the qualifications and credibility of  
4 the witness and the reasons given for his opinion. Give each opinion the weight to which you  
5 deem it entitled.

6 You must resolve any conflict in the testimony of the witnesses by weighing each of the  
7 opinions expressed against the others, taking into consideration the reasons given for the  
8 opinion, the facts relied upon by the witness, his relative credibility, and his special knowledge,  
9 skill, experience, training and education.

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28 Instruction No. 17

1 Whenever in these instructions I state that the burden, or the burden of proof, rests upon a  
2 certain party to proved a certain allegation made by him, the meaning of such an instruction is  
3 this: That unless the truth of the allegation is proved by a preponderance of the evidence, you  
4 shall find the same to be not true.

5 The term "preponderance of the evidence" means such evidence as, when weighted with  
6 that opposed to it, has more convincing force, and from which it appears that the greater  
7 probability of truth lies therein.

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28 Instruction No. 18

1 The preponderance, or weight of evidence, is not necessarily with the greater number of  
2 witnesses.

3 The testimony of one witness worthy of belief is sufficient for the proof of any fact and  
4 would justify a verdict in accordance with such testimony, even if a number of witnesses have  
5 testified to the contrary. If, from the whole case, considering the credibility of witnesses, and  
6 after weighing the various factors of evidence, you believe that there is a balance of probability  
7 pointing to the accuracy and honesty of the one witness, you should accept his testimony.

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28 Instruction No. 19

1 The Plaintiffs have the burden to prove by a preponderance of the evidence:

- 2 1. The accepted standard of medical care for the nurses working for Carson Tahoe  
3 Regional Medical Center;
  - 4 2. That the conduct by the nurses departed from the standard of care;
  - 5 3. That the conduct by the nurses was the actual and proximate cause of the injuries;  
6 and
  - 7 4. The Plaintiffs' damages.
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28 Instruction No. 20

1 In order to establish a claim of negligence, the Plaintiffs must prove the following  
2 elements by a preponderance of the evidence:

- 3 1. That the Defendant was negligent; and
- 4 2. That the Defendant's negligence was a proximate cause of damage to the  
5 Plaintiffs.

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28 Instruction No. 21

1 A verdict cannot be founded on speculation or possibilities. In order for plaintiffs to  
2 recover damages for injuries arising from a medical provider's negligence, it must be shown to a  
3 reasonable degree of medical probability that one or more of the medical provider's negligence  
4 was a proximate cause of plaintiffs' injury, damage, loss or harm.  
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28 Instruction No. 22

1 A proximate cause of injury, damage, loss or harm is a cause which, in natural and  
2 continuous sequence, produces the injury, damage, loss, or harm, and without which the injury,  
3 damage, loss, or harm, would not have occurred.  
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28 Instruction No. 23

1 In a medical case, it is the duty of a Registered Nurse to have the knowledge and skill  
2 ordinarily possessed, and to use the care and skill ordinarily used, by reputable Registered  
3 Nurses practicing in the same field.

4 A failure to perform such duty is negligence.  
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28 Instruction No. 24



1 A nurse is not necessarily negligent because her efforts prove unsuccessful. A nurse is  
2 negligent if her lack of success is due to a failure to perform any of the duties as defined in these  
3 instructions.

28 Instruction No. 25

1 A nurse who, herself, is exercising ordinary care has a right to assume that every other  
2 person will perform his or her duty under the law; and in the absence of reasonable cause for  
3 thinking otherwise, it is not negligence for a nurse to fail to anticipate injury which can come to  
4 plaintiff only from a violation of law or duty by another.  
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Instruction No. 26

1 It is the duty of a hospital, such as defendant Carson Tahoe Regional Medical Center, to  
2 use reasonable care in furnishing a patient the care, attention, and protection reasonably required  
3 by her mental or physical condition. The amount of caution, attention, and protection required  
4 in the exercise of reasonable care depends on the know condition of the patient and her needs,  
5 and must be appropriate to that condition and those needs. The standard of reasonable care  
6 required of a hospital is the care, skill, and diligence ordinarily used by hospitals generally under  
7 similar circumstances.

8 A failure to perform any such duty is negligence.  
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28 Instruction No. 27

1 A medical provider, in treating a patient, is not an insurer of favorable results. The fact  
2 that a bad result followed the labor and delivery does not, in itself, require you to find that any  
3 of the defendants failed in the duty they owed to their patient, which duty I have defined for you.  
4 If they used the care and skill ordinarily exercised in like cases by reputable members of their  
5 professions practicing in the same specialties, they cannot be found to have failed in their duty  
6 simply on the basis of the results that followed.

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28 Instruction No. 28

1 In this case, the nurses were within the employ and under the control of Carson Tahoe  
2 Regional Medical Center and, as such, each such person was the agent of Carson Tahoe  
3 Regional Medical Center and the hospital is liable for their negligence, if any, occurring within  
4 the scope of their employment.  
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28 Instruction No. 29

1 Evidence of the habit of a person or the routine practice of an organization, whether  
2 corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the  
3 conduct of the person or organization on a particular occasion was in conformity with the habit  
4 or routine practice.  
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Instruction No. 30

1 Dr. Amy Sue Hayes was previously a defendant in this case and has been dismissed  
2 based upon a settlement with Plaintiffs. You are not to speculate on the amount of that  
3 settlement. A settlement is not an admission of fault. In order to establish a claim of negligence  
4 as to Dr. Amy Sue Hayes, the following elements must be proved by a preponderance of  
5 evidence by the Defendant: that Dr. Hayes was negligent and that the negligence of Dr. Hayes  
6 was a proximate cause of the damages to Plaintiffs.

7 Defendant Carson Tahoe Regional Medical Center is not liable for the actions of Amy  
8 Sue Hayes, M.D.

9 If you decide that both Defendant Carson Tahoe Regional Medical Center and Dr. Hayes  
10 were negligent and that the negligence of both Defendant Carson Tahoe Regional Medical  
11 Center and Dr. Hayes was a proximate cause of injuries and damages to the Plaintiffs, you shall  
12 assess that percentage of negligence attributed to Defendant Carson Tahoe Regional Medical  
13 Center and Dr. Hayes in accordance with the Instructions on damages.

14 You are to award damages without consideration of any settlement by Dr. Hayes.  
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28 Instruction No. 31

1 In determining the amount of losses, if any, suffered by the plaintiffs as a proximate  
2 result of the negligence in question, you will take into consideration the nature, extent and  
3 duration of the injuries and damage you believe from the evidence plaintiffs have sustained, and  
4 you will decide upon a sum of money sufficient to reasonably and fairly compensate plaintiffs  
5 for the following items:

- 6 1. The reasonable medical expenses plaintiffs have necessarily incurred as a result  
7 of the incident to the present as reflected in the amount paid to date by Medicaid;
- 8 2. The medical expenses which you believe the plaintiffs are reasonably certain to  
9 incur in the future as a result of the incident, discounted to present value;
- 10 3. Plaintiffs' loss of earnings or earning capacity from the date of the incident to the  
11 present;
- 12 4. Plaintiffs' loss of earnings or earning capacity which you believe the plaintiffs are  
13 reasonably certain to experience in the future as a result of the incident,  
14 discounted to present value;
- 15 5. The physical and mental pain, suffering, anguish and disability endured by the  
16 plaintiffs from the date of the incident to the present; and
- 17 6. The physical and mental pain, suffering, anguish and disability which you believe  
18 plaintiffs are reasonably certain to experience in the future as a result of the  
19 incident.



1 In this action evidence of the amount payable as a benefit to Plaintiffs as a result of injury  
2 pursuant to Medicaid has been introduced. To date, Lyam McCrosky's medical expenses have  
3 been paid by Medicaid.

4 If you decide that Plaintiff Tawni McCrosky is entitled to judgment against Carson Tahoe  
5 Regional Medical Center, you should find her damages in accordance with the Court's  
6 instruction on damages and return a verdict in the Plaintiffs' favor in the amount so found.  
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28 Instruction No. 33

1 Tawni McCrosky claims damages for the nursing care she provided to Lyam McCrosky.

2 The measure of damages for nursing care for Lyam McCrosky is the reasonable monetary  
3 value of the services.

4 You must decide if the services to Lyam McCrosky were necessary, the reasonable  
5 monetary value of the services, and if the need for the services was a result of the negligence of  
6 Carson Tahoe Regional Medical Center.

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28 Instruction No. 34

1 No definite standard or method of calculation is prescribed by law by which to fix  
2 reasonable compensation for grief, sorrow or emotional pain. Nor is the opinion of any witness  
3 required as to the amount of such reasonable compensation. Furthermore, the argument of  
4 counsel as to the amount of damages is not evidence of reasonable compensation. In making an  
5 award for grief or sorrow and pain and suffering, you shall exercise your authority with calm  
6 and reasonable judgment and the damages you fix shall be just and reasonable in light of the  
7 evidence.

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28 Instruction No. 34

1 Whether any of these elements of damage have been proven by the evidence is for you to  
2 determine. Neither sympathy nor speculation is a proper basis for determining damages.  
3 However, absolute certainty as to the damages is not required. It is only required that plaintiffs  
4 proves each item of damage by a preponderance of the evidence.  
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Instruction No. 35

1 If you decide that Plaintiff Lyam McCrosky has suffered damages that will continue for  
2 the rest of his life, you must decide how long he will probably live.  
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Instruction No. 36

1 If you find more than one person at fault for Plaintiffs' injury, you must then determine  
2 the relative degrees of fault of all those whom you find to have been at fault.

3 The relative degrees of fault are to be entered on the special verdict form as percentage of  
4 the total fault for Plaintiffs' injury.

5 The fault of one person may be great or lesser than that of another, but the relative  
6 degrees of all fault must add up to 100%. This will be clear from the special verdict form.

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28 Instruction No. 37

1 The Court has given you instructions embodying various rules of law to help guide you to  
2 a just and lawful verdict. Whether some of these instructions will apply will depend upon what  
3 you find to be the facts. The fact that I have instructed you on various subjects in this case  
4 including that of damages must not be taken as indicating an opinion of the court as to what you  
5 should find to be the facts or as to which party is entitled to your verdict.  
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28 Instruction No. 38

1 It is your duty as jurors to consult with one another and to deliberate with a view toward  
2 reaching an agreement, if you can do so without violence to your individual judgment. Each of  
3 you must decide the case for yourself, but should do so only after a consideration of the case  
4 with you fellow jurors, and you should not hesitate to change an opinion when convinced that it  
5 is erroneous. However, you should not be influenced to vote in any way on any question  
6 submitted to you by the single fact that a majority of the jurors, or any of them, favor such a  
7 decision. In other words, you should not surrender your honest convictions concerning the  
8 effect or weight of evidence for the mere purpose of returning a verdict or solely because of the  
9 opinion of the other jurors. Whatever your verdict is, it must be the product of a careful and  
10 impartial consideration of all the evidence in the case under the rules of law as given you by the  
11 court.

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28 Instruction No. 39



1 If, during your deliberation, you should desire to be further informed on any point of law  
2 or hear again portions of the testimony, you must reduce your request to writing signed by the  
3 foreperson. The officer will then return a written instruction to you or return you to court.

4 Readbacks of testimony are time consuming and are not encouraged unless you deem it a  
5 necessity. Should you require a readback, you must carefully describe the testimony to be read  
6 back so that the court reporter can arrange the notes. Remember, the court is not at liberty to  
7 supplement the evidence.

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28 Instruction No. 40

1 Now you will listen to the arguments of counsel who will endeavor to aid you to reach a  
2 proper verdict by refreshing in your minds the evidence and by showing the application thereof  
3 to the law, but, whatever counsel may say, you will bear in mind that it is your duty to be  
4 governed in your deliberation by the evidence, as you understand it and remember it to be, and  
5 by the law as given you in these instructions, and return a verdict which, according to your  
6 reason and candid judgment, is just and proper.

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28 Instruction No. 41

1 When you retire to consider your verdict, you must select one of your number to act as  
2 foreman, who will preside over your deliberation and will be your spokesman here in court.

3 During your deliberation, you will have all the exhibits which were admitted into  
4 evidence, these written instructions and forms of verdict which have been prepared for your  
5 convenience.

6 In civil actions, three-fourths of the total number of jurors may find and return a verdict.  
7 This is a civil action. As soon as six or more of you have agreed upon a verdict, you must have  
8 it signed and dated by your foreman, and then return with it to this room.

9 DATED this 22 day of March, 2016.

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12 JAMES T. RUSSELL  
13 District Court Judge  
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28 Instruction No. 42