

CHAPTER 604

ACTIONS INVOLVING FAULT

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604.01 COMPARATIVE FAULT; EFFECT.

Subdivision 1. **Scope of application.** Contributory fault does not bar recovery in an action by any person or the person's legal representative to recover damages for fault resulting in death, in injury to person or property, or in economic loss, if the contributory fault was not greater than the fault of the person against whom recovery is sought, but any damages allowed must be diminished in proportion to the amount of fault attributable to the person recovering. The court may, and when requested by any party shall, direct the jury to find separate special verdicts determining the amount of damages and the percentage of fault attributable to each party and the court shall then reduce the amount of damages in proportion to the amount of fault attributable to the person recovering.

Subd. 1a. **Fault.** "Fault" includes acts or omissions that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability. The term also includes breach of warranty, unreasonable assumption of risk not constituting an express consent or primary assumption of risk, misuse of a product and unreasonable failure to avoid an injury or to mitigate damages, and the defense of complicity under section 340A.801. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault. The doctrine of last clear chance is abolished.

Evidence of unreasonable failure to avoid aggravating an injury or to mitigate damages may be considered only in determining the damages to which the claimant is entitled. It may not be considered in determining the cause of an accident.

Subd. 2. **Personal injury or death; settlement or payment.** Settlement with or any payment made to an injured person or to others on behalf of such injured person with the permission of such injured person or to anyone entitled to recover damages on account of injury or death of such person shall not constitute an admission of liability by the person making the payment or on whose behalf payment was made.

Subd. 3. **Property damage or economic loss; settlement or payment.** Settlement with or any payment made to a person or on the person's behalf to others for damage to or destruction of property or for economic loss does not constitute an admission of liability by the person making the payment or on whose behalf the payment was made.

Subd. 4. **Settlement or payment; admissibility of evidence.** Except in an action in which settlement and release has been pleaded as a defense, any settlement or payment referred to in subdivisions 2 and 3 shall be inadmissible in evidence on the trial of any legal action.

Subd. 5. **Credit for settlements and payments; refund.** All settlements and payments made under subdivisions 2 and 3 shall be credited against any final settlement or judgment; provided however that in the event that judgment is entered against the person seeking recovery or if a verdict is rendered for an amount less than the total of any such advance payments in favor of the recipient thereof, such person shall not be required to refund any portion of such advance payments voluntarily made. Upon motion to the court in the absence of a jury and upon proper proof thereof, prior to entry of judgment on a verdict, the court shall first apply the provisions of subdivision 1 and then shall reduce the amount of the damages so determined by the amount of the payments previously made to or on behalf of the person entitled to such damages.

History: 1969 c 624 s 1; 1978 c 738 s 6,7; 1986 c 444; 1990 c 555 s 19-21

604.02 APPORTIONMENT OF DAMAGES.

Subdivision 1. When two or more persons are jointly liable, contributions to awards shall be in proportion to the percentage of fault attributable to each, except that each is jointly and severally liable for the whole award. Except in cases where liability arises under chapters 18B - pesticide control, 115 - water pollution control, 115A - waste management, 115B - environmental response and liability, 115C - leaking underground storage tanks, and 299J - pipeline safety, public nuisance law for damage to the environment or the public health, any other environmental or public health law, or any environmental or public health ordinance or program of a municipality as defined in section 466.01, a person whose fault is 15 percent or less is liable for a percentage of the whole award no greater than four times the percentage of fault, including any amount reallocated to that person under subdivision 2.

If the state or a municipality as defined in section 466.01 is jointly liable, and its fault is less than 35 percent, it is jointly and severally liable for a percentage of the whole award no greater than twice the amount of fault, including any amount reallocated to the state or municipality under subdivision 2.

Subd. 2. Upon motion made not later than one year after judgment is entered, the court shall determine whether all or part of a party's equitable share of the obligation is uncollectible from that party and shall reallocate any uncollectible amount among the other parties, including a claimant at fault, according to their respective percentages of fault. A party whose liability is reallocated is nonetheless subject to contribution and to any continuing liability to the claimant on the judgment.

Subd. 3. In the case of a claim arising from the manufacture, sale, use or consumption of a product, an amount uncollectible from any person in the chain of manufacture and distribution shall be reallocated among all other persons in the chain of manufacture and distribution but not among the claimant or others at fault who are not in the chain of manufacture or distribution of the product. Provided, however, that a person whose fault is less than that of a claimant is liable to the claimant only for that portion of the judgment which represents the percentage of fault attributable to the person whose fault is less.

History: 1978 c 738 s 8; 1986 c 444; 1986 c 455 s 85; 1988 c 503 s 3; 1989 c 209 art 1 s 44

604.03 USEFUL LIFE OF PRODUCT.

Subdivision 1. In any action for the recovery of damages for personal injury, death or property damage arising out of the manufacture, sale, use or consumption of a product, it is a defense to a claim against a designer, manufacturer, distributor or seller of the product or a part thereof, that the injury was sustained following the expiration of the ordinary useful life of the product.

Subd. 2. The useful life of a product is not necessarily the life inherent in the product, but is the period during which with reasonable safety the product should be useful to the user. This period shall be determined by reference to the experience of users of similar products, taking into account present conditions and past developments, including but not limited to (1) wear and tear or deterioration from natural causes, (2) the progress of the art, economic changes, inventions and developments within the industry, (3) the climatic and other local conditions peculiar to the user, (4) the policy of the user and similar users as to repairs, renewals and replacements, (5) the useful life as stated by the designer, manufacturer, distributor, or seller of the product in brochures or pamphlets furnished with the product or in a notice attached to the product, and (6) any modification of the product by the user.

History: 1978 c 738 s 9

604.04 NOTICE OF POSSIBLE CLAIM REQUIRED.

Subdivision 1. The attorney for a person who intends to claim damage for or on account of personal injury, death or property damage arising out of the manufacture,

sale, use or consumption of a product shall cause to be presented a notice of possible claim stating the time, place and circumstances of events giving rise to the claim and an estimate of compensation or other relief to be sought. This notice shall be given within six months of the date of entering into an attorney-client relation with the claimant in regard to the claim. Notice shall be given to all persons against whom the claim is likely to be made. Any person in the chain of manufacture and distribution shall promptly furnish to the claimant's attorney the names and addresses of all persons the person knows to be in the chain of manufacture and distribution if requested to do so by the attorney at the time the notice is given. Failure to furnish this information shall subject the person to the liability provided for in subdivision 3.

Actual notice of sufficient facts to reasonably put a person against whom the claim is to be made or the person's insurer on notice of a possible claim satisfies the notice requirements of this section. Failure to state an estimate of the amount of compensation or other relief demanded does not invalidate the notice, but the claimant shall furnish full information regarding the nature and extent of the injuries and damages within 15 days after demand by a person to whom the notice was given or by the person's insurer.

Subd. 2. A claimant who delays entering into an attorney-client relation with the purpose of delaying unreasonably the notice required by subdivision 1 is subject to liability as provided in subdivision 3.

Subd. 3. Any person injured by the failure of a claimant or the claimant's attorney or of a person in the chain of manufacture and distribution to comply with the requirements of this section may recover damages, costs and reasonable attorney fees from a person who violated this section, but failure to give notice does not affect the validity of a claim against a party who did not receive notice.

History: 1978 c 738 s 10; 1986 c 444

604.05 GOOD SAMARITAN LAW.

Subdivision 1. **Duty to assist.** Any person at the scene of an emergency who knows that another person is exposed to or has suffered grave physical harm shall, to the extent that the person can do so without danger or peril to self or others, give reasonable assistance to the exposed person. Reasonable assistance may include obtaining or attempting to obtain aid from law enforcement or medical personnel. Any person who violates this section is guilty of a petty misdemeanor.

Subd. 2. **General immunity from liability.** Any person who, without compensation or the expectation of compensation renders emergency care, advice, or assistance at the scene of an emergency or during transit to a location where professional medical care can be rendered, is not liable for any civil damages as a result of acts or omissions by that person in rendering the emergency care, advice, or assistance unless that person acts in a willful and wanton or reckless manner in providing the care, advice, or assistance. Any person rendering emergency care, advice, or assistance during the course of regular employment, and receiving compensation or expecting to receive compensation for rendering such care, advice, or assistance, shall be excluded from the protection of this section.

For the purposes of this section, the scene of an emergency shall be those areas not within the confines of a hospital or other institution which has hospital facilities, or an office of a person licensed to practice one or more of the healing arts pursuant to chapter 147, 148, 150A, or 153. The scene of an emergency includes areas threatened by or exposed to spillage, seepage, fire, explosion, or other release of hazardous materials, and includes ski areas and trails.

For the purposes of this section, "person" includes a public or private nonprofit volunteer firefighter, volunteer police officer, volunteer ambulance attendant, volunteer first provider of emergency medical services, volunteer ski patroller, and any partnership, corporation, association, or other entity.

For the purposes of this section, compensation does not include payments, reim-

bursement for expenses, or pension benefits paid to members of volunteer organizations.

History: 1971 c 218 s 1; 1978 c 542 s 1; 1983 c 319 s 1; 1984 c 429 s 1; 1985 c 104 s 1; 1986 c 444; 1990 c 555 s 22

604.06 FIREMAN'S RULE.

The common law doctrine known as the fireman's rule shall not operate to deny any peace officer, as defined in section 626.84, subdivision 1, clause (c), or public safety officer, as defined in section 299A.41, subdivision 4, a recovery in any action at law or authorized by statute.

History: 1982 c 601 s 3; 1983 c 159 s 1; 1987 c 384 art 1 s 45; 1991 c 199 art 2 s 28

604.07 [Repealed, 1988 c 503 s 5]

604.08 VOLUNTEER ATHLETIC COACHES AND OFFICIALS; IMMUNITY FROM LIABILITY.

Subdivision 1. Grant. No individual who provides services or assistance without compensation as an athletic coach, manager, or official for a sports team that is organized or performing under a nonprofit charter, and no community-based, voluntary nonprofit athletic association, or any volunteer of the nonprofit athletic association, is liable for money damages to a player, participant, or spectator as a result of an individual's acts or omissions in the providing of that service or assistance.

This section applies to organized sports competitions and practice and instruction in that sport.

For purposes of this section, "compensation" does not include reimbursement for expenses.

Subd. 2. Limitation. Subdivision 1 does not apply:

(1) to the extent that the acts or omissions are covered under an insurance policy issued to the entity for whom the coach, manager, or official serves;

(2) if the individual acts in a willful and wanton or reckless manner in providing the services or assistance;

(3) if the acts or omissions arise out of the operation, maintenance, or use of a motor vehicle;

(4) to an athletic coach, manager, or official who provides services or assistance as part of a public or private educational institution's athletic program; and

(5) if the individual acts in violation of federal, state, or local law.

The limitation in clause (1) constitutes a waiver of the defense of immunity to the extent of the liability stated in the policy, but has no effect on the liability of the individual beyond the coverage provided.

History: 1987 c 337 s 126; 1988 c 708 s 8

604.09 BREATH ALCOHOL TESTING DEVICE IN LIQUOR ESTABLISHMENTS.

Subdivision 1. Definitions. (a) For purposes of this section, the following terms have the meanings given them.

(b) "Breath alcohol testing device" means a device that tests for alcohol concentration by using a breath sample.

(c) "Licensed premises" has the meaning given in section 340A.101, subdivision 15.

(d) "Liquor licensee" means a person licensed under sections 340A.403 to 340A.407 or section 340A.414, and includes an agent or employee of a licensee.

Subd. 2. Immunity from liability. (a) Subject to subdivision 3, a liquor licensee who administers or makes available a breath alcohol testing device in the licensed premises is immune from any liability arising out of the result of the test.

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(b) Subject to subdivision 3, a designer, manufacturer, distributor, or seller of a breath alcohol testing device is immune from any products liability or other cause of action arising out of the result of a test by the breath alcohol testing device in a licensed premises.

Subd. 3. **Immunity requirements.** Subdivision 2 applies only if:

(1) a conspicuous notice is posted in the licensed premises:

(i) informing patrons of the immunity provisions of subdivision 2 and notifying them that the test is made available solely for their own informal use and information; and

(ii) informing patrons of the alcohol-related driving penalties under sections 169.121 to 169.123, 169.129, and 609.21;

(2) the type of breath alcohol testing device is certified by the commissioner of public safety under subdivision 7; and

(3) the breath alcohol testing device test results are indicated as follows:

(i) the breath alcohol testing device shows a white light and gives a reading of alcohol concentration if alcohol concentration is less than .05;

(ii) the breath alcohol testing device shows a yellow light and gives a reading of alcohol concentration if alcohol concentration is .05 or more but less than .08;

(iii) the breath alcohol testing device shows an orange light and gives a reading of alcohol concentration if alcohol concentration is .08 or more but less than .10, and displays a message that states "You are close to the legal limit and your driving may be impaired," or

(iv) the breath alcohol testing device shows a red light if alcohol concentration is .10 or greater but does not give a reading of alcohol concentration, and displays a message that states that the person fails the test.

Subd. 4. **Evidence.** Evidence regarding the result of a test by a breath alcohol testing device in a licensed premises is not admissible in any civil or criminal proceeding.

Subd. 5. **Dramshop.** This section does not affect liability under section 340A.801.

Subd. 6. **Preparation of notice.** The commissioner of public safety shall prepare and make available to liquor licensees the notices described in subdivision 3.

Subd. 7. **Rules; certification.** The commissioner of public safety shall adopt any rules reasonably required to implement this section, including performance and maintenance standards for breath alcohol testing devices. The commissioner shall certify breath alcohol testing devices that meet the performance standards. The costs of rule-making and certification must be borne by the manufacturers of the breath alcohol testing devices.

History: 1991 c 270 s 7

604.10 ECONOMIC LOSS ARISING FROM THE SALE OF GOODS.

(a) Economic loss that arises from a sale of goods that is due to damage to tangible property other than the goods sold may be recovered in tort as well as in contract, but economic loss that arises from a sale of goods between parties who are each merchants in goods of the kind is not recoverable in tort.

(b) Economic loss that arises from a sale of goods, between merchants, that is not due to damage to tangible property other than the goods sold may not be recovered in tort.

(c) The economic loss recoverable in tort under this section does not include economic loss due to damage to the goods themselves.

History: 1991 c 352 s 2

604.11 MEDICAL MALPRACTICE CASES.

Subdivision 1. **Discovery.** Pursuant to the time limitations set forth in the Minnesota rules of civil procedure, the parties to any medical malpractice action may

exchange the uniform interrogatories in subdivision 3 and ten additional nonuniform interrogatories. Any subparagraph of a nonuniform interrogatory will be treated as one nonuniform interrogatory. By stipulation of the parties, or by leave of the court upon a showing of good cause, more than ten additional nonuniform interrogatories may be propounded by a party. In addition, the parties may submit a request for production of documents pursuant to rule 34 of the Minnesota rules of civil procedure.

Subd. 2. Alternative dispute resolution. At the time a trial judge orders a case for trial, the court shall require the parties to discuss and determine whether a form of alternative dispute resolution would be appropriate or likely to resolve some or all of the issues in the case. Alternative dispute resolution may include arbitration, mediation, summary jury trial, or other alternatives suggested by the court or parties, and may be either binding or nonbinding. All parties must agree unanimously before alternative dispute resolution proceeds.

Subd. 3. Uniform interrogatories. (a) Uniform plaintiff's interrogatories to the defendant are as follows:

PLAINTIFF'S INTERROGATORIES TO DEFENDANT

INTERROGATORY NO. 1:

Please attach a complete curriculum vitae for Dr. (.....), M.D., which should include, but is not limited to, the following information:

- a. Name;
- b. Office address;
- c. Name of practice;
- d. Identities of partners or associates, including their names, specialties, and how long they have been associated with Dr. (.....);
- e. Specialty of Dr. (.....);
- f. Age;
- g. The names and dates of attendance at any medical schools;
- h. Full information as to internship or residency, including the place and dates of the internship or residency as well as any specialized fields of practice engaged in during such internship or residency;
- i. The complete history of the practice of Dr. (.....) from and after medical school, setting forth the places where Dr. (.....) practiced medicine, the persons with whom Dr. (.....) was associated, the dates of the practice, and the reasons for leaving the practice;
- j. Full information as to any board certifications Dr. (.....) may hold, including the field of specialty and the dates of the certifications and any recertifications;
- k. Identifying the medical societies and organizations to which Dr. (.....) belongs, giving full information as to any offices held in the organizations;
- l. Identifying all professional journal articles, treatises, textbooks, abstracts, speeches, or presentations which Dr. (.....) has authored or contributed to; and
- m. Any other information which describes or explains the training and experience of Dr. (.....) for the practice of medicine.

INTERROGATORY NO. 2:

Has Dr. (.....) been the subject of any professional disciplinary actions of any kind and, if so:

State whether Dr. (.....)'s license to practice medicine has ever been revoked or publicly limited in any way and, if so, give the date and the reasons for such revocation or restriction.

INTERROGATORY NO. 3:

Please set forth a listing by author, title, publisher, and date of publication of all the medical texts referred to by Dr. (.....) with respect to the practice of medicine during the past five years.

INTERROGATORY NO. 4:

Please set forth a complete listing of the medical and professional journals to which Dr. (.....) subscribes or has subscribed within the past five years.

INTERROGATORY NO. 5:

As to each expert whom you expect to call as a witness at trial, please state:

- a. The expert's name, address, occupation, and title;
- b. The expert's field of expertise, including subspecialties, if any;
- c. The expert's education background;
- d. The expert's work experience in the field of expertise;
- e. All professional societies and associations of which the expert is a member;
- f. All hospitals at which the expert has staff privileges of any kind;
- g. All written publications of which the expert is the author, giving the title of the publication and when and where it was published.

INTERROGATORY NO. 6:

With respect to each person identified in answer to the foregoing interrogatory, state:

- a. The subject matter on which the person is expected to testify;
- b. The substance of the facts and opinions to which the person is expected to testify; and
- c. A summary of the grounds for each opinion, including the specific factual data upon which the opinion will be based.

INTERROGATORY NO. 7:

Please state whether there is any policy of insurance that will provide coverage to the defendant should liability attach on the basis of the allegations contained in the plaintiff's Complaint. If so, state with regard to each policy applicable:

- a. The name and address of the insurer;
- b. The exact limits of coverage applicable;
- c. Whether any reservation of rights or controversy or coverage dispute exists between you and the insurance company.

Please attach copies of each policy to your Answers.

INTERROGATORY NO. 8:

State the full name, present address, occupation, age, present employer, and the present employer's address of each physician, nurse, or other medical personnel in the employ of the defendant or defendant's professional association who treated, cared for, examined, or otherwise attended (name) from (date 1), through (date 2). With regard to every individual, please state:

- a. Each date upon which the individual attended (name);
- b. The nature of the treatment or care rendered (name) on each date;
- c. The qualifications and area of specialty of each individual; and
- d. The present address of each individual.

In responding to this interrogatory, referring plaintiff's counsel to medical records will not be deemed to be a sufficient answer as plaintiff's counsel has reviewed the medical records and is not able to determine the identity of the individuals.

INTERROGATORY NO. 9: (Hospital defendant only)

Please state the name, address, telephone number, and last known employer of the nursing supervisor for the shifts set forth in the preceding interrogatory.

INTERROGATORY NO. 10:

Please identify by name and current or last known address and telephone number each and every person who has or claims to have knowledge of any facts relevant to the issues in this lawsuit, stating in detail all facts each person has or claims to have knowledge of.

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INTERROGATORY NO. 11:

a. Have any statements been taken from nonparties or the plaintiff(s) pertaining to this claim? For purposes of this request, a statement previously made is (1) a written statement signed or otherwise adopted or approved by the person making it, or (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantial verbatim recital or an oral statement by the person making it and contemporaneously recorded. With regard to each statement, state:

1. The name and address of each person making a statement;
2. The date on which the statement was made;
3. The name and address of the person or persons taking each statement; and
4. The subject matter of each statement.

b. Attach a copy of each statement to the answers to these interrogatories.

c. If you claim that any information, document, or thing sought or requested is privileged, protected by the work product doctrine, or otherwise not discoverable, please:

1. Identify each document or thing by date, author, subject matter, and recipient;
2. State in detail the legal and factual basis for asserting said privilege, work product protection, or objection, or refusing to provide discovery as requested.

INTERROGATORY NO. 12:

Do you or anyone acting on your behalf know of any photographs, films, or videotapes depicting ? If so, state:

- a. The number of photographs or feet of film or videotape;
- b. The places, objects, or persons photographed, filmed, or videotaped;
- c. The date the photographs, film, or videotapes were taken;
- d. The name, address, and telephone number of each person who has the original or copy.

Please attach copies of any photographs or videotapes.

INTERROGATORY NO. 13:

If you claim that injuries to plaintiff complained of in plaintiff's Complaint were contributed to or caused by plaintiff or any other person, including any other physician, hospital, nurse, or other health care provider, please state:

- a. The facts upon which you base the claim;
- b. The name, current address, and current employer of each person whom you allege was or may have been negligent.

INTERROGATORY No. 14:

Please state the name or names of the individuals supplying the information contained in your Answers to these Interrogatories. In addition, please state these individuals' current addresses, places of employment, and their current position at their place of employment.

INTERROGATORY NO. 15:

Does defendant have knowledge of any conversations or statements made by the plaintiff(s) concerning any subject matter relative to this action? If so, please state:

- a. The name and last known address of each person who claims to have heard such conversations or statements;
- b. The date of such conversations or statements;
- c. The summary or the substance of each conversation or statement.

INTERROGATORY NO. 16:

Did the defendant, the defendant's agents, or employees conduct a surveillance of the plaintiff(s)? If so, state:

- a. Name, address, and occupation of the person who conducted each surveillance;
- b. Name and address of the person who requested each surveillance to be made;

- c. Date or dates on which each surveillance was conducted;
- d. Place or places where each surveillance was performed;
- e. Information or facts discovered in the surveillance;
- f. Name and address of the person now having custody of each written report, photographs, videotapes, or other documents concerning each surveillance.

INTERROGATORY NO. 17:

Are you aware of any person you may call as a witness at the trial of this action who may have or claims you have any information concerning the medical, mental, or physical condition of the plaintiff(s) prior to the incident in question? If so, state:

- a. The name and last known address of each person and your means of ascertaining the present whereabouts of each person;
- b. The occupation and employer of each person;
- c. The subject and substance of the information each person claims to have.

INTERROGATORY NO. 18:

As to any affirmative defenses you allege, state the factual basis of and describe each affirmative defense, the evidence which will be offered at trial concerning any alleged affirmative defense, including the names of any witnesses who will testify in support thereof, and the descriptions of any exhibits which will be offered to establish each affirmative defense.

INTERROGATORY NO. 19:

Do you contend that any entries in the answering defendant's medical/hospital records are incorrect or inaccurate? If so, state:

- a. The precise entry(ies) that you think are incorrect or inaccurate;
- b. What you contend the correct or accurate entry(ies) should have been;
- c. The name, address, and employer of each and every person who has knowledge pertaining to a. and b.;
- d. A description, including the author and title of each and every document that you claim supports your answer to a. and b.;
- e. The name, address, and telephone number of each and every person you intend to call as a witness in support of your contention.

(b) Uniform defendant's interrogatories to the plaintiff for personal injury cases are as follows:

DEFENDANT'S INTERROGATORIES TO PLAINTIFF (PERSONAL INJURY)

1. State your full name, address, date of birth, marital status, and social security number.
2. If you have been employed at any time in the past ten years, with respect to this period state the names and addresses of each of your employers, describe the nature of your work, and state the approximate dates of each employment.
3. If you have ever been a party to a lawsuit where you claimed damages for injury to your person, state the title of the suit, the court file number, the date of filing, the name and address of any involved insurance carrier, the kind of claim, and the ultimate disposition of the same. (This is meant to include workers' compensation and social security disability claims.)
4. Identify by name and address each and every physician, surgeon, medical practitioner, or other health care practitioner whom you consulted or who provided advice, treatment, or care for you at any time within the last ten years and, with respect to each contract, consultation, treatment, or advice, describe the same with particularity and indicate the reasons for the same.
5. State the name and address of each and every hospital, treatment facility, or institution in which plaintiff has been confined for any reason at any time, and set forth with particularity the reasons for each confinement and/or treatment and the dates of each.

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6. Itemize all special damages which you claim in this case and specify, where appropriate, the basis and reason for your calculation as to each item of special damages.

7. List all payments related to the injury or disability in question that have been made to you, or on your behalf, from "collateral sources" as that term is defined in Minnesota Statutes, section 548.36.

8. List all amounts that have been paid, contributed, or forfeited by, or on behalf of, you or members of your immediate family for the two-year period immediately before the accrual of this action to secure the right to collateral source benefits that have been made to you or on your behalf.

9. Do you contend any of the following:

a. That defendant did not possess that degree of skill and learning which is normally possessed and used by medical professionals in good standing in a similar practice and under like circumstances;

b. That defendant did not exercise that degree of skill and learning which is normally used by medical professionals in good standing in a similar practice and under like circumstances.

10. If your answer to any part of the foregoing interrogatory is yes, with respect to each answer:

a. Specify in detail each contention;

b. Specify in detail each act or omission of defendant which you contend was a departure from the degree of skill and learning normally used by medical professionals in a similar practice and under like circumstances;

c. Specify in detail the conduct of defendant as you claim it should have been;

d. Specify in detail each fact known to you and your attorneys upon which you base your answers to interrogatories 9 and 10.

11. If you claim defendant failed to disclose to you any risk concerning the involved medical care and treatment which, if disclosed, would have resulted in your refusing to consent to the medical care or treatment, then:

a. State in detail each and every thing defendant did tell you concerning the risks of the involved medical care and treatment, giving the approximate dates thereof and identifying all persons in attendance;

b. Describe each and every risk which you claim defendant should have, but failed to, disclose to you;

c. Describe in detail precisely what you claim defendant should have said to you, but failed to say, concerning the risks of the involved medical care and treatment;

d. Explain in detail all facts and reasons upon which you base the claim that, if the foregoing risks were explained to you, you would not have consented to the involved medical care and treatment.

12. Please identify by name and current or last known address and telephone number each and every person who has or claims to have any knowledge of any facts relevant to the issues in this lawsuit, stating in detail all facts each person has or claims to have knowledge of.

13. As to each expert whom you expect to call as a witness at trial, please state:

a. The expert's name, address, occupation, and title;

b. The expert's field of expertise, including subspecialties, if any;

c. The expert's education background;

d. The expert's work experience in the field of expertise;

e. All professional societies and associations of which the expert is a member;

f. All hospitals at which the expert has staff privileges of any kind;

g. All written publications of which the expert is the author, giving the title of the publication and when and where it was published.

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14. With respect to each person identified in answer to the foregoing interrogatory, state:

- a. The subject matter on which the expert is expected to testify;
- b. The substance of the facts and opinions to which the expert is expected to testify; and
- c. A summary of the grounds for each opinion, including the specific factual data upon which the opinion will be based.

15. Have any statements been taken from any defendant or nonparty pertaining to this claim? For purposes of this request, a statement previously made is: (1) a written statement signed or otherwise adopted or approved by the person making it, or (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantial verbatim recital or an oral statement by the person making it and contemporaneously recorded. With regard to each statement, state:

- a. The name and address of each person making a statement;
- b. The date on which the statement was made;
- c. The name and address of the person or persons taking each statement; and
- d. The subject matter of the statement;
- e. Attach a copy of each statement to the answers to these interrogatories.
- f. If you claim that any information, document, or thing sought or requested is privileged, protected by the work product doctrine, or otherwise not discoverable, please:

1. Identify each document or thing by date, author, subject matter, and recipient;
2. State in detail the legal and factual basis for asserting said privilege, work product protection, or objection, or refusing to provide discovery as requested.

(c) Uniform defendant's interrogatories to the plaintiff for wrongful death cases are as follows:

DEFENDANT'S INTERROGATORIES TO PLAINTIFF (WRONGFUL DEATH)

1. State the full name, age, present occupation, business address, present residence address, and address for a period of ten years prior to the present date for each heir or next of kin (including the Trustee) on whose behalf this action has been commenced.

2. Set forth the date of birth and place of birth of the decedent.
3. Set forth the date of birth and place of birth of the decedent's surviving spouse.
4. Set forth the names, date of birth, and places of birth of any children of decedent.

5. Set forth the names, addresses, and dates of birth of all heirs and next of kin of decedent and set forth the relationship of each individual to decedent.

6. Set forth the date of marriage between decedent and decedent's surviving spouse and the place of the marriage.

7. Set forth whether or not there were any proceedings for a legal separation or divorce instituted between decedent and decedent's surviving spouse and, if so, set forth the dates that the proceedings were instituted, the result of the proceedings, and the court in which the proceedings were instituted.

8. Set forth whether or not decedent was ever married to anyone other than decedent's surviving spouse and if so, set forth the names of any other spouse or spouses and the inclusive dates of any other marriages.

9. Set forth whether or not decedent's surviving spouse has ever been married to anyone other than decedent and, if so, set forth the names of any other spouses and the inclusive dates of any other marriages.

10. If you claim defendant failed to disclose to you any risk concerning the involved medical care and treatment which, if disclosed, would have resulted in the decedent's refusing to consent to the medical care or treatment, then:

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a. State in detail each and every thing defendant did tell you concerning the risks of the involved medical care and treatment, giving the approximate dates thereof and identify all persons in attendance;

b. Describe each and every risk which you claim defendants should have, but failed to, disclose to you;

c. Describe in detail precisely what you claim defendant should have said to you, but failed to say, concerning the risks of the involved medical care and treatment;

d. Explain in detail all facts and reasons upon which you base the claim that, if the foregoing risks were explained to you, you would not have consented to the involved medical care and treatment.

11. Was the deceased employed at the time of death?

12. If the answer to Interrogatory No. 10 is yes, indicate the following:

a. The name and address of the deceased's employer and the nature of the employment;

b. The amount of earnings from the employment;

c. Defendant requests copies of the decedent's federal and state income tax return for the past five years.

13. If decedent was self-employed for any period of time during the ten-year period of time immediately preceding decedent's death, set forth the following:

a. The inclusive dates of the self-employment;

b. A specific and detailed description of the nature of the self-employment;

c. The business name and address under which decedent operated; and

d. A specific and detailed description of decedent's earnings from the self-employment.

14. Set forth in detail a chronological education history of decedent including the name and address of each school attended, the inclusive dates of attendance, the date of graduation, a description of any degrees awarded, a description of the major area of study and the grade point average upon graduation.

15. Did the decedent make any contribution of money, property, or other items having a money worth toward the support, maintenance, or well-being of any next of kin and, if so, please itemize the following:

a. The amount and nature of the contribution;

b. The date(s) upon which each contribution was made;

c. The person(s) receiving each contribution;

d. The period of time over which the contributions were made;

e. The regularity or irregularity of the contributions;

f. Identify by date, author, type, recipient, and present custodian each and every document referring to or otherwise evidencing each contribution.

16. Identify by name and address each and every physician, surgeon, medical practitioner, or other health care practitioner whom the decedent consulted or who provided advice, treatment, or care for the decedent at any time within ten years prior to death and, with respect to the contact, consultation, treatment, or advice, describe the same with particularity and indicate the reasons for the same.

17. State the name and address of each and every hospital, treatment facility, or institution in which the decedent has been confined for any reason at any time, and set forth with particularity the reasons for each confinement and/or treatment and the dates of each.

18. Itemize all special damages which you claim in this case and specify, where appropriate, the basis and reason for your calculation as to each item of special damages.

19. List any payment related to the injury or disability in question made to you, or on your behalf, from "collateral sources" as that term is defined in Minnesota Statutes, section 548.36.

20. List all amounts that have been paid, contributed or forfeited by, or on behalf of, you or members of your immediate family for the two-year period immediately before the accrual of this action to secure the right to collateral source benefits that have been made to you or on your behalf.

21. Do you contend any of the following:

a. That any of the defendants did not possess that degree of skill and learning which is normally possessed and used by medical professionals in good standing in a similar practice and under like circumstances? If so, identify the defendants;

b. That any of the defendants did not exercise that degree of skill and learning which is normally used by medical professionals in good standing in a similar practice and under like circumstances? If so, identify the defendants.

22. If your answer to any part of the foregoing interrogatory is yes, with respect to each answer:

a. Specify in detail your contention;

b. Specify in detail each act or omission of each defendant which you contend was a departure from that degree of skill and learning normally used by medical professionals in a similar practice and under like circumstances.

23. Please identify by name and current or last known address and telephone number of each and every person who has or claims to have any knowledge of any facts relevant to the issues in this lawsuit, stating in detail all facts each person has or claims to have knowledge of.

24. As to each expert whom you expect to call as a witness at trial, please state:

a. The expert's name, address, occupation, and title;

b. The expert's field of expertise, including subspecialties, if any;

c. The expert's education background;

d. The expert's work experience in the field of expertise;

e. All professional societies and associations of which the expert is a member;

f. All hospitals at which the expert has staff privileges of any kind;

g. All written publications of which the expert is the author, giving the title of the publication and when and where it was published.

25. With respect to each person identified in the foregoing interrogatory, state:

a. The subject matter on which the expert is expected to testify;

b. The substance of the facts and opinions to which the expert is expected to testify; and

c. A summary of the grounds for each opinion, including the specific factual data upon which the opinion will be based.

26. Set forth in detail anything said or written by which plaintiff claims to be relevant to any of the issues in this lawsuit, identifying the time and place of each statement, who was present, and what was said by each person who was present.

27. Have any statements been taken from any defendant or nonparty pertaining to this claim? For purposes of this request, a statement previously made is: (1) a written statement signed or otherwise adopted or approved by the person making it, or (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantial verbatim recital or an oral statement by the person making it and contemporaneously recorded. With regard to each statement, state:

a. The name and address of each person making a statement;

b. The date on which the statement was made;

c. The name and address of the person or persons taking each statement; and

d. The subject matter of each statement;

e. Attach a copy of each statement to the answers to these interrogatories;

f. If you claim that any information, document or thing sought or requested is privileged, protected by the work product doctrine, or otherwise not discoverable, please:

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1. Identify each document or thing by date, author, subject matter, and recipient;
2. State in detail the legal and factual basis for asserting said privilege, work product protection, or objection, or refusing to provide discovery as requested.

History: *1992 c 549 art 8 s 2*