ADAPTED FROM MASSACHUSETS STANDARD JURY INSTRUCTIONS

DUTY AND NEGLIGENCE IN THIS CASE, THE PLAINTIFF ESTATE OF **PATTY PATIENT,** DECEASED CONTEND(S) THAT THE DEFENDANTS, **NURSE CASE MANAGER, HOSPTAL, DOCTORS, THERAPISTS,** ***ET AL*****,** WERE NEGLIGENT IN THE DIAGNOSIS AND [/OR] TREATMENT OF **PATTY PATIENT,** AND THAT SUCH NEGLIGENCE WAS A SUBSTANTIAL FACTOR IN CAUSING THE PLAINTIFF TO BE INJURED.

Jury Instructions Medical Malpractice

The term "medical malpractice" is the same thing as "medical negligence." "Medical malpractice" refers to medical negligence by a physician or other health care professional in providing medical care to a patient.

In order to prove medical negligence, Plaintiff must show that the following things are **more likely true than not true**:

1. what the **standard of care** applies to the circumstances of this case

   in other words, **what Defendant should have done**
2. that Defendant's actions/inactions **fell below that standard of care** - in other words, that Defendant was negligent;[1]
3. that Defendant's negligence was a **cause** of Plaintiff's injury, harm or death;
4. the extent of the alleged **injuries/harm**, which we call "damages."

(a) Doctor/Nurse-Patient Relationship

1, Plaintff must prove that, more likely than not, Defendant had a doctor/nurse-patient relationship at the time of the alleged negligence. A relationship exists when the practitioner participates in the evaluation, care, or treatment of the patient.

The relationship with the patient must involve more than a casual or informal conversation. **A doctor-patient relationship may be formed by a virtual visit (such as a phone call or videoconference appointment) or an in-person visit, and the same principles apply.**

(b) Standard of Care

2. Plaintiff must prove **what standard of care** the Defensant(s) should have provided to PLF in this case.[2] Defendant owed a **duty** to treat Plaintiff, according to the "standard of care." "Standard of care" means the degree of skill and care of the average nurse, case manager, practicing in the defendant's area of specialty, taking into account the advances in the profession and the resources available to the

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[1] *Stepakoff* v. *Kantar*, 393 Mass. 836, 840-841 (1985).

[2] *Palandjian* v. *Foster,* 446 Mass. 100, 104 (2006).

nurse.[3] This standard of care required the Defendant to use the degree and skill and care of the average nurse/case manager practicing between 2010-2021. You measure the standard of care as of the time of the events [2021].

This standard does not require nurse/case managers to provide the best care possible.[4] But a nurse/case manager must have and exercise the skill and expertise ordinarily possessed by other in the same specialty.

The Plaintiff has the burden to prove what standard of care would have been provided by the average qualified Nurse/Case Manager providing similar care in 2021, under similar circumstances. You may not hold Defendant to some other standard of care. For example, **what a different individual nurse/case manager did or would have done is not enough to show what care the average qualified nurse/case manager would provide**.[5]

You must determine this standard of care from the testimony presented by the experts during the trial of this case,[6] as well as the contents of CMSA Standards of Practice for Case Management (2016)(Exhibit A) and CCMC Code of Professional Conduct (2015)(Exhibit B)

In deciding the standard of care for an average qualified Nurse/Case Manager at that time, you may consider only testimony by witnesses whose education, training, and experience give them sufficient knowledge of what other Nurse/Case Manager in that specialty typically did at that time.[7] That may include testimony by the parties' outside experts, as well as the testimony and statements of the defendant[s] [and other treating practitioners.[8] An expert must be familiar with the standard of care through education, training, experience and familiarity with the subject matter,[9] but does not have to be a specialist in DFT's area of practice.[10] Similarly, an expert does not have to practice in the same state or geographic area.[11]

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[3] *Palandjian* v. *Foster,* 446 Mass. 100, 112 (2006); *McCarthy* v. *Boston City Hospital*, 358 Mass. 639, 643 (1971); *Brune* v. *Belinkoff*, 354 Mass. 102 (1968).

[4] *Palandjian* v. *Foster*, 446 Mass. 100, 105 (2006).

[5] *Palandjian* v. *Foster,* 446 Mass. 100, 104-105 & n.7 (2006).

[6] In the rare case that expert medical testimony is not required, this sentence should be omitted or modified.

[7] *Palandjian* v. *Foster,* 446 Mass. 100, 106 (2006).

[8] If applicable, add in any other source of expert testimony in the case. For example, there may be rare cases where a part of the standard of care comes by way of stipulation of the parties. If so, the instruction should include "or a stipulation of the parties."

[9] *Letch* v. *Daniels,* 401 Mass. 65, 68 (1987).

[10] *Letch* v. *Daniels,* 401 Mass. 65, 68 (1987).

[11] *Brune* v. *Belinkoff*, 354 Mass. at 108.

You may not guess or speculate as to the applicable standard of care, or substitute your belief of what the standard of care should be. You may not do your own research, on the Internet or somewhere else, to try to understand the standard of care. Instead, you must base your decision solely on the evidence presented here in the courtroom.

Plaintiff must show, by expert medical testimony, what standard of care Defendant should have followed. If the standard of care has changed between that time and now, then you need to consider the standard of care that applied at the time the Defendant treated Plaintiff.

(c) **Falling Below the Standard of Care PLF must prove by a proponderence of the evidence (more likely than not) that the Defendant was negligent, which means that Plaintiff must prove that Defendant provided care that fell below the standard of care that the average qualified RN/CM would have provided. Negligence might consist of doing something inconsistent with the standard of care, or failing to do something required by the standard of care.**

You must decide whether or not the Defendant met the standard of care in light of the facts that she knew or reasonably should have known under the circumstances, at the time of the alleged negligence. Even if the Defendant did not know some information, you must consider what she should have known at the time, if she had complied with the standard of care. Nurses cannot predict everything accurately, but they do need to comply with the standard of care in deciding whether to **get more information through additional communication**, testing or other means.

(1) **Nursing Judgment Nurses are expected to use their judgment as long as that judgment does not fall below the standard of care. Sometimes more than one course of action or conclusion may be consistent with the required standard of care. If so, then a Nurse/CM may exercise her best judgment as to the appropriate steps to take, and doing so is not negligence. However, a RN/CM is negligent and may be held liable for an error of judgment if that judgment represents a departure from the standard of care. Evidence that another RN/CM might have treated the client differently is not, by itself, evidence of negligence, as long as the judgment falls within the standard of care.**

If you find that Defendant was negligent, then you must decide whether Plaintiff proved that, more likely than not, Defendant's negligence caused Plaintiff's injuries or caused injuries to get worse. You must ask: "Would the same harm have happened without Defendant's negligence?" **In other words, did the negligence make a difference?** Here, again Plaintiff must prove causation by expert medical evidence.[12] This evidence may be in the form of testimony or in the form of medical records.

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[12] *Zaleskas* v. *Brigham & Women's Hosp.,* 97 Mass. App. Ct. 55, 70 (2020) ("if the causation question involves questions of medical science or technology, the jury requires the assistance of expert testimony").