

IN THE IOWA DISTRICT COURT FOR HENRY COUNTY

ERIC PEEBLER, Individually and as
Executor of the ESTATE OF MARY J.
PEEBLER, and CARRIE HERRING,
Individually,

Plaintiffs,

vs.

HEARTLAND HEALTH MANAGEMENT,
INC.,

Defendant.

CAUSE NO. LALA012227

INSTRUCTIONS TO THE JURY**INSTRUCTION NO. 1**

Members of the Jury: In this case, Eric Peebler, Individually and as Executor of the Estate of Mary Jo Peebler, and Carrie Herring, Individually, are the Plaintiffs. Heartland Health Management, Inc. doing business as Arbor Court is the Defendant.

Plaintiffs allege that Defendant was negligent in its care and treatment of Mary Jo Peebler which resulted in damages to the Plaintiffs.

Defendant denies it was negligent or that anything it did caused any damage to Plaintiffs.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

100.1

INSTRUCTION NO. 2

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. It is common to have hidden or implicit thoughts that help us form our opinions. You are making very important decisions in this case. You must evaluate the evidence carefully. You must avoid decisions based on things such as generalizations, gut feelings, prejudices, fears, sympathies, stereotypes, or inward or outward biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

100.2

INSTRUCTION NO. 3

Whenever a party must prove something they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

100.3

INSTRUCTION NO. 4

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted (e.g. answers to interrogatories, matters which judicial notice was taken, and etc.).

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

100.4

INSTRUCTION NO. 5

Certain testimony has been read or played by video into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing and by video. Consider that testimony as if it had been given in court.

100.5

INSTRUCTION NO. 6

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

100.9

INSTRUCTION NO. 7

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

100.12

INSTRUCTION NO. 8

An expert witness was asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

100.11

INSTRUCTION NO. 9

The fact that Defendant is a corporation should not affect your decision. All persons are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

100.20

INSTRUCTION NO. 10

A nursing home and its staff must use the degree of skill, care and learning ordinarily possessed and exercised by other nursing homes and their staff in similar circumstances.

A violation of this duty is negligence.

1600.4

INSTRUCTION NO. 11

A nursing home and its staff's conduct must be viewed in light of the circumstances existing at the time of providing care and not retrospectively. If a nursing home and its staff exercised a reasonable degree of care and skill under the circumstances as they existed, though not as seen in perfect hindsight, then the nursing home is not negligent.

INSTRUCTION NO. 12

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct. There can be more than one cause of an injury or damage.

700.3

INSTRUCTION NO. 13

Plaintiffs claim that Defendant was negligent.

In order to prevail on this claim, Plaintiffs must prove all of the following propositions:

1. The Defendant was negligent in one or more of the following ways:
 - a. Failure to follow physicians' orders; or
 - b. Failure to get clarification of physician's orders; or
 - c. Failure to adequately monitor changes in condition and to notify a primary care provider of changes in condition.
2. Defendant's negligence was a cause of damage to Plaintiffs.
3. The amount of damage.

If the Plaintiffs has failed to prove any of these propositions, the Plaintiffs are not entitled to damages. If the Plaintiffs have proved all of these propositions, the Plaintiffs are entitled to damages in some amount.

700.1

INSTRUCTION NO. 14

The mere fact that a party was injured does not mean another party was negligent.

700.8

INSTRUCTION NO. 15

If you find that the Plaintiffs are entitled to recover, it is your duty to determine the amount. In doing so, you shall consider the following items in determining an amount which will fully compensate the Plaintiffs for the damages incurred:

- 1. Parental Consortium.** If you find Defendant's negligence caused Mary Jo Peebler's death, you shall consider the present value of the services which Mary Jo Peebler would have performed for her children, but for her death. This is also known as loss of parental consortium. "Parental consortium" is the relationship between parent and child and the right of the child to the benefits of companionship, comfort, guidance, affection and aid of the parent in every parental relationship, general usefulness, industry and attention within the family. It does not include the loss of financial support from the injured parent, nor mental anguish caused by the parent's death. A child is not entitled to damages for loss of parental consortium unless the parent's death has caused a significant disruption or diminution of the parent-child relationship. Damages for loss of parental consortium are limited in time to Mary Jo Peebler's normal life expectancy.
- 2. Pre-Death Mental Pain and Suffering.** Mary Jo Peebler's mental pain and suffering from the date of injury to the date of death. Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.
- 3. Pre-Death - Loss of Full Mind And Body.** Mary Jo Peebler's loss of function of the mind and body from the date of injury to the date of death. Loss of mind and body is the inability of a particular part of the mind and body to function in a normal manner.

The amount you assess for Mary Jo Peebler's mental pain and suffering and Mary Jo Peebler's loss of function of the body cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by a party as proved by the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage.

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

200.14, 200.20, 200.12, 200.10

INSTRUCTION NO. 16

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Mary Jo Peebler is 3.63 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Mary Jo Peebler's health, habits, occupation, and lifestyle, when deciding issues of damages.

200.36

INSTRUCTION NO. 17

In arriving at an item of damage you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage, and agreeing in advance that the average of those estimates shall be your item of damage.

200.38

INSTRUCTION NO. 18

Upon retiring to the jury room for deliberations, you shall select a foreman or forewoman. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but are judges - judges of the facts. Your sole interest is to find the truth and do justice.

100.18

INSTRUCTION NO. 19

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room and they will be destroyed.

100.21

INSTRUCTION NO. 19A

Occasionally, jurors have questions during deliberations. I have prepared the Instructions after carefully conferring with the parties and their counsel. I have tried to use language which is generally understandable. Usually, questions about the Instructions can be answered by carefully re-reading them. If, however, you deem it necessary to ask the court a question, please do so in writing. After I receive a question from you, I am required to confer with the parties and their attorneys before responding. This process, of course, takes time. My response to any question will be in writing.

Please do not ask the court attendant any questions about the Instructions.


INSTRUCTION NO. 20

I am giving you one verdict form with special interrogatories. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict and interrogatories must be signed by your foreman or forewoman.

After deliberating for six hours from 2:40 pm. o'clock P.m. excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the answers to the questions. In that case, the verdict and interrogatories must be signed by all seven jurors who agree.

When you have agreed upon the verdict and interrogatories and appropriately signed it, please tell the Court Attendant.

300.1


Wyatt Peterson, Judge