

**IN THE IOWA DISTRICT COURT IN AND FOR CERRO GORDO COUNTY**

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KRISTINE CHRISTENSEN, Individually	)	
and as Executor of the Estate of MARIA	)	
O'BRIEN, STEPHANIE PROHASKI,	)	LAW NO. LACV069306
Individually, ANTHONY SAVAS,	)	
Individually, and THEODORE SAVAS,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	<b>PLAINTIFFS' FIRST PROPOSED</b>
	)	<b>PRELIMINARY JURY INSTRUCTIONS</b>
	)	<b>AND VERDICT FORM</b>
GOOD SHEPHERD GERIATRIC CENTER,	)	
INC. d/b/a GOOD SHEPHERD HEALTH	)	
CENTER, INC. also d/b/a GOOD	)	
SHEPHERD, INC., DIANE HORNING,	)	
Individually, MIKE SVEJDA, Individually,	)	
IAN STOCKBERGER, Individually, and	)	
NURSES "JANE DOE" 1-3,	)	
	)	
Defendant.	)	
	)	

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Plaintiffs request that the Court give the attached Jury Instructions and Verdict Form as well as the following Model Jury Instructions. Plaintiffs reserve the right to supplement these instructions based upon instructions submitted by the Defendants, to conform to the proof, and the evidence and rulings at trial.

/s/ Pressley Henningsen  
Pressley Henningsen AT0003402  
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ATTORNEY FOR PLAINTIFFS

Original filed.

**PROOF OF SERVICE**

The undersigned certifies that the foregoing instrument was served upon the parties to this action by serving a copy upon each of the attorneys listed below on August 30, 2016, by Iowa EDMS.

Dave Schrock

**By: /s/ Pressley Henningsen**

**List of Requested Stock Iowa Civil Jury Instructions (Any modifications of stock instructions are set forth below or before trial after motions, consultation with the counsel and presentation of the evidence.)**

100.1	Statement of the Case (Modified)
N/A	Altered Preliminary Instruction (Modified)
100.2	Duties of Judge and Jury, Instructions as Whole
100.3	Burden of Proof, Preponderance of Evidence (Modified)
100.4	Evidence (Modified)
100.5	Deposition Testimony
100.6	Interrogatories
100.7	Requests for Admissions
100.9	Credibility of Witnesses
100.11	Hypothetical Question, Expert Testimony
100.12	Opinions Evidence, Expert Witness
100.18	General Instruction to Jury
100.19	Clear Convincing and Satisfactory Evidence
100.21	Cautionary Instruction-Juror's Notes
200.15-25	Elements – Damages (Modified)
200.31	Consortium Damages
200.36	Mortality Tables – (Modified) (IRS 590 TABLE)
200.38	Quotient Verdict
200.39	Lost Chance of Survival - Definition
200.40	Lost Chance of Survival
210.1	Punitive Damages (Modified)
400.1	Fault – Defined
400.2	Comparative Fault
700.2	Ordinary Care – Common Law Negligence – Defined
N/A	General Negligence Marshaling Instruction (Modified)
700.1	Essentials for Recovery (Specific Negligence) (Modified)
700.3	Cause – Defined
700.3A	Scope of Liability – Defined
700.10	Safety Code – Negligence Per Se (Modified)
700.11	Safety Code/Custom – Evidence of Negligence (Modified)
730.1	Liability of Employer
730.2	Scope of Employment
1600.4	Negligence-Duty of Hospital-Professional Service
1600.5	Negligence-Duty of Hospital-Nonmedical, Admin., Ministerial or Routine Care
2400.1	Essentials for Recovery
2400.3	Existence of a Contract
2400.4	Consideration
2400.5	Terms - Interpretation
2400.6	Breach – Definition
300.1	Return of Verdict – Forms of Verdict (Modified)

**MODIFIED INSTRUCTIONS SET FORTH BELOW:**

### **STATEMENT OF THE CASE**

Members of the Jury: In this case, the Plaintiff, Kris Christensen, individually and on behalf of the Estate of her mother, Maria O'Brien, alleges that:

The Defendant, Good Shepherd Nursing Home Community, was negligent in its treatment of Maria O'Brien, which resulted in damages to Maria O'Brien, and eventually her death. The plaintiffs allege that Good Shepherd failed to provide sufficient care for Ms. O'Brien's needs and failed to transfer her to a higher level of care that could meet her needs. Plaintiffs also allege Good Shepherd breached its contract to care for and/or transfer Maria O'Brien.

As a result of Good Shepherd's negligence, Maria O'Brien's children, Stephanie Prohaski, Anthony Savas, Theodore Savas, Douglas Heppner, and Kris Christensen, allege they were deprived of the relationship with their mother.

Good Shepherd denies the above allegations, and denies that it contributed to Maria O'Brien's death. Further, Good Shepherd denies that it breached its agreement to care for Maria O'Brien.

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.

### **Authority**

*Iowa Civil Jury Instruction* No. 100.1

**REQUESTED INSTRUCTION NO.: \_\_ (Preliminary)**

You, as jurors, must decide this case based solely on the evidence presented here within the four walls of this courtroom. This means that during the trial you must not conduct any independent research about this case, the matters in the case, and the individuals involved in the case. In other words, you should not consult dictionaries or reference materials, search the internet, websites, blogs, or use any other electronic tools to obtain information about this case or to help you decide the case. Please do not try to find out information from any source outside the confines of this courtroom.

I know that many of you use cell phones or smart phones like Blackberries, iPhones, or Android phones, the internet, and other tools of technology. You must not talk to anyone about this case or use these tools to communicate electronically with anyone about the case. This includes your family and friends. You may not communicate with anyone about the case on your cell phone or smart phone, through e-mail, text messaging, or on Twitter, through any blog or website, through any internet chat room, or by way of any other social networking websites, including Facebook, MySpace, LinkedIn, and YouTube.

Now, ladies and gentlemen, I want you to understand why these rules are so important:

Our law does not permit jurors to converse with anyone else about the case, or to permit anyone to talk to them about the case, because only jurors are authorized to render a verdict. Only you have been found to be fair and only you have promised to be fair - no one else has been so qualified.

Our law also does not permit jurors to converse among themselves about the case until the Court tells them to begin deliberations because premature discussions can lead to a premature final decision.

Our law also does not permit you to visit a place discussed in the testimony. First, you cannot always be sure that the place is in the same condition as it was on the day in question. Second, even if it were in the same condition, once you go to a place discussed in the testimony to evaluate the evidence in light of what you see, you become a witness, not a juror.

As a witness, you may now have an erroneous view of the scene that may not be subject to correction by either party. That is not fair.

Finally, our law requires that you not read or listen to any news accounts of the case, and that you not attempt to research any fact, issue, or law related to the case. Your decision must be based solely on the testimony and other evidence presented in this courtroom. It would not be fair to the parties for you to base your decision on some reporter's view or opinion, or upon information you acquire outside the courtroom.

These rules are designed to help guarantee a fair trial, and, our law accordingly sets forth serious consequences if the rules are not followed.

I trust you understand and appreciate the importance of following these rules and, in accord with your oath and promise, I know you will do so.

#### **AUTHORITY**

The Judicial Conference of the United States, January, 2010 (modified)

New York State Unified Court System, Crim. Jury Instructions 2d, General Charges, Jury Admonitions in Preliminary Instructions (rev. May 5, 2009).

**REQUESTED INSTRUCTION NO.:\_\_\_\_\_**

**Burden Of Proof, Preponderance Of Evidence.** Whenever a party must prove something they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that, when fully and fairly considered, produces a stronger impression on your mind and is more convincing. Preponderance means “the greater weight” of evidence. Preponderance means the evidence is more likely true than not true. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

**Authority**

Iowa Civil Jury Instruction 100.3 (modified)

Martinek v. Belmond-Klemme Cmty. Sch. Dist., 772 N.W.2d 758, 761 (Iowa 2009)

Moran v. Kean, 225 Iowa 329, 335, 280 N.W. 543, 546 (1938)

Mabrier v. A.M. Servicing Corporation of Raytown, 161 N.W.2d 180 (1968)

**REQUESTED INSTRUCTION NO.: \_\_\_\_**

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.

**Authority**

Iowa Civil Jury Instruction No. 100.4 (modified)  
Iowa Rules of Evidence.

**REQUESTED INSTRUCTION NO.: \_\_\_\_**

If you find the Estate of Maria O'Brien suffered damages, it is your duty to determine the amount. In doing so, you shall consider the following items in determining an amount that will fully compensate the Estate of Maria O'Brien for the damages incurred:

1. Present Worth Of The Value Of The Estate. The present value of the additional amounts Maria O'Brien would reasonably be expected to have accumulated as a result of her own effort if she had lived out the term of her natural life.

2. Burial Expenses. The interest on the reasonable burial expenses of Maria O'Brien from the time of death until the time when those expenses would be paid. The amount cannot exceed the reasonable cost of the burial.

3. Parental Consortium. The present value of the services which Maria O'Brien 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.

4. Pre-Death Medical Expenses. The reasonable cost of necessary medical services from the date of injury to the time of death.

5. Pre-Death Physical And Mental Pain And Suffering. Physical and mental pain and suffering from the date of injury to the date of death. Physical pain and suffering may include, but is not limited to, bodily suffering or discomfort. Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.

6. Pre-Death - Loss Of Full Mind And Body. Loss of function of the mind and body from the date of injury to the date of 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 the shorter of the child's or (decedent)'s normal life expectancy.

**AUTHORITY**



Iowa Civil Jury Instructions 200.14-200.25 (modified)  
*Iowa Des Moines National Bank v. Schwerman Trucking Co.*, 288 N.W. 2d 198 (Iowa 1980)  
*Hurtig v. Bjork*, 258 Iowa 155, 138 N.W.2d 62 (1965)  
Iowa Code section 613.15  
*Gail v. Clark*, 410 N.W.2d 662 (Iowa 1987)  
*Madison v. Colby*, 348 N.W.2d 202 (Iowa 1984)  
*Audubon-Exira Ready Mix, Inc. v. Illinois Central Gulf Railroad Company*, 335 N.W.2d 148 (Iowa 1983)  
*Pexa v. Auto Owners Insurance Company*, 686 N.W.2d 150 (Iowa 2004)  
*Muldowney v. Illinois Central Ry. Co.*, 36 Iowa 462 (1873)  
*Poyzer v. McGraw*, 360 N.W.2d 748 (Iowa 1985)  
*Lang v. City of Des Moines*, 294 N.W.2d 557 (Iowa 1980)  
*Holmquist v. Volkswagen of America, Inc.*, 261 N.W.2d 516 (Iowa App. 1977)  
*Schnebly v. Baker*, 217 N.W.2d 708 (Iowa 1974)  
Iowa Code section 613.15  
*Gail v. Clark*, 410 N.W.2d 662 (Iowa 1987)  
*Madison v. Colby*, 348 N.W.2d 202 (Iowa 1984)  
*Audubon-Exira Ready Mix, Inc. v. Illinois Central Gulf Railroad Company*, 335 N.W.2d 148 (Iowa 1983)

**REQUESTED INSTRUCTION NO.:\_\_\_\_\_**

**Mortality Tables - Personal Injury.** A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Maria O'Brien is \_\_\_\_\_ years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Maria O'Brien's prior health, habits, occupation, and lifestyle, when deciding issues of future damages.

**Authority**

Iowa Civil Jury Instruction 200.36 (modified)  
IRS Mortality Table I from Publication 590B (2015) attached hereto  
<https://www.irs.gov/publications/p590b/>  
Anderson v. State of Iowa, 680 N.W.2d 378 (Iowa Ct. App. 2004).  
Ehlinger v. State, 237 N.W.2d 784 (Iowa 1976)  
Ruud v. Grimm, 252 Iowa 1266, 110 N.W.2d 321 (1961)  
Newman v. Blom, 249 Iowa 836, 89 N.W.2d 349 (1958)

**REQUESTED INSTRUCTION NO.:\_\_\_\_\_**

Punitive damages may be awarded if the plaintiff has proven by a preponderance of clear, convincing and satisfactory evidence the defendant's conduct constituted a willful and wanton disregard for the rights or safety of another and caused actual damage to the plaintiff.

Punitive damages are not intended to compensate for injury but are allowed to punish and discourage the defendant and others from like conduct in the future. You may award punitive damages only if the defendant's conduct warrants a penalty in addition to the amount you award to compensate for plaintiff's actual injuries.

There is no exact rule to determine the amount of punitive damages, if any, you should award. You may consider the following factors:

1. The nature of defendant's conduct that harmed the plaintiff.
2. The amount of punitive damages which will punish and discourage like conduct by the defendant. You may consider the defendant's financial condition or ability to pay. You may not, however, award punitive damages solely because of the defendant's wealth or ability to pay.
3. The plaintiff's actual damages. The amount awarded for punitive damages must be reasonably related to the amount of actual damages you award to the plaintiff.
4. The existence and frequency of prior similar conduct. *If applicable, add:* Although you may consider harm to others in determining the nature of defendant's conduct, you may not award punitive damages to punish the defendant for harm caused to others, or for out-of-state conduct that was lawful where it occurred, or for any conduct by the defendant that is not similar to the conduct which caused the harm to the plaintiff in this case.

**Authority**

Iowa Code section 668A.1

Philip Morris USA v. Williams, 127 S.Ct. 1057 (2007)

State Farm Mutual Auto Ins. Co. v. Campbell, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003)

Larson v. Great West Cas. Co., 482 N.W.2d 170 (Iowa App. 1992)

Suss v. Schammel, 375 N.W.2d 252 (Iowa 1985)

Nelson v. Restaurants of Iowa, Inc., 338 N.W.2d 881 (Iowa 1983)

*Iowa Civil Jury Instruction* No. 210.1

**Comment**

*Note: See Iowa Civil Jury Instruction 100.19 for definition of clear, convincing and satisfactory evidence.*

**REQUESTED INSTRUCTION NO.:\_\_\_\_\_**

**General Negligence / Ordinary Care.** Plaintiff alleges Good Shepherd failed to use ordinary care. Plaintiff must prove all three of the following propositions to recover for a claim of failure to use ordinary care:

1. Good Shepherd failed to use ordinary care; and
2. Good Shepherd failure to use ordinary care was a cause of damage to Maria O'Brien; and
3. The amount of the damage.

If Good Shepherd has failed to prove any of these numbered propositions, Maria O'Brien is not entitled to damages for general negligence. However, Maria O'Brien does not need to prove specific negligence, as explained to you in instruction \_\_\_\_\_, in order to recover under general negligence.

**Authority**

Iowa Civil Jury Instruction 700.2 (modified)  
Bartlett v. Chebuhar, 479 N.W. 2d 321 (Iowa 1992)  
Schalk v. Smith, 224 Iowa 904, 27.7 N.W. 303 (1938)  
Balcom v. City of Independence, 178 Iowa 685 (1916)

**REQUESTED INSTRUCTION NO.:\_\_\_\_\_**

**[To Follow Instruction on General Negligence – 700.2]**

**Specific Negligence.** In addition to a failure to use ordinary care, Plaintiffs separately allege Good Shepherd was specifically negligent. Maria O’Brien must prove all of the following three propositions to recover for specific negligence:

- (1) Good Shepherd was specifically negligent in one or more of the following ways:
  - A. Failure to ensure proper medical attention or adequate medical supervision, or;
  - B. Failure to provide appropriate care and staffing including complete and full nursing assessments and nursing interventions, or;
  - C. Failure to assure urgent access to hospital and medical care as needed and failure to transfer to an appropriate level of care in a timely manner, or;
  - D. Failure to accurately document changes in condition or to notify physicians of changes in condition, or;
  - E. Failure to prevent injuries, and in so doing, failure to prevent accidents from occurring, or;
  - F. Failure to provide complete, accurate, and reliable charting, or;
  - G. Failure to communicate with family members regarding urgent and important health matters affecting Maria O’Brien, or;
  - H. Failure to abide by all relevant state and federal regulations, administrative codes, regulations, and laws, or;
  - I. Failure to follow policy and procedures, or;
  - J. Failure to respect and protect Maria O’Brien’s rights, or;
  - K. Violating Maria O’Brien’s dignity, or;
  - L. Failure to follow the care plan, or;
  - M. Failure to follow the facility’s contractual agreement, or;
  - N. Failure to provide sufficient or appropriate care and staffing to meet the needs of the resident, or;
  - O. Failure of facility administration to assure the resident’s needs were met, or;
  - P. False advertising, or;
  - Q. Negligently hiring, retaining, and supervising personnel, or;

- R. Inadequate training of staff, or;
- S. Covering-up adult abuse / neglect / negligence

(2) The negligence was a cause of damage to Maria O'Brien; and

(3) The amount of damage.

If Maria O'Brien has failed to prove any of these numbered propositions, Maria O'Brien is not entitled to damages for specific negligence. However, Maria O'Brien does not need to prove general negligence as explained in instruction \_\_\_\_ in order to recover under specific negligence.

#### **Authority**

*Coker v. Abell-Howe Co.*, 491 N.W.2d 143 (Iowa 1992)  
*Rinkleff v. Knox*, 375 N.W.2d 262 (Iowa 1985)  
*Bauman v. City of Waverly*, 164 N.W.2d 840 (Iowa 1969)  
*Iowa Civil Jury Instruction* No. 700.1 (Modified)

**REQUESTED INSTRUCTION NO.:\_\_\_\_\_**

Certain State and Federal codes are designed to protect the residents at care facilities such as those at Good Shepherd. Maria O'Brien was a member of that class these laws and regulations were designed to protect. If you find that Good Shepherd failed to meet any of the following, you must find that Good Shepherd was negligent.

[Insert Numbered Paragraphs Pursuant to State and Federal Codes Established in Trial]

**Authority**

*Clausen v. R. W. Gilbert Construction Co., Inc.*, 309 N.W.2d 462 (Iowa 1981)  
*Koll v. Manatt's Transportation Co.*, 253 N.W.2d 265 (Iowa 1977)  
*Wagner v. Northeast Farm Service Co.*, 177 N.W.2d 1 (Iowa 1970)  
*Iowa Civil Jury Instruction No. 700.10* (Modified)

**REQUESTED INSTRUCTION NO.:\_\_\_\_\_**

You have received evidence of the customs applicable to Nursing Home facilities and the codes found in \_\_\_\_\_ of \_\_\_\_\_ Code. Following the customs and codes is evidence that Good Shepherd was not negligent and failure to follow the customs and codes is evidence that Good Shepherd was negligent.

**Authority**

*Langner v. Caviness*, 238 Iowa 774, 28 N.W.2d 421 (1947)  
*Gipson v. State*, 419 N.W.2d 369 (Iowa 1988)  
*Porter v. Iowa Power and Light Co.*, 217 N.W.2d 221 (Iowa 1974)  
*Iowa Civil Jury Instruction* No. 700.11



**REQUESTED INSTRUCTION NO.: \_\_\_\_**

A Nursing Home Facility must use the degree of skill, care, and learning ordinarily possessed and exercised by Nursing Home Facilities in similar circumstances.

A violation of this duty is negligence.

**Authority**

Kastler v. Iowa Methodist Hospital, 193 N.W.2d 98 (Iowa 1971)  
Dickinson v. Mailliard, 175 N.W.2d 588 (Iowa 1970)  
Clites v. State, 322 N.W.2d 917 (Iowa 1982)  
Iowa Civil Jury Instruction No. 1600.4

**REQUESTED INSTRUCTION NO.: \_\_\_\_**

A Nursing Home Facility must use the degree of ordinary care and attention that the known mental and physical condition of a patient requires.

A violation of this duty is negligence.

**Authority**

Kastler v. Iowa Methodist Hospital, 193 N.W.2d 98 (Iowa 1971)  
Iowa Civil Jury Instruction No. 1600.5

**REQUESTED INSTRUCTION NO.:\_\_\_\_\_**

Plaintiff must prove all of the following propositions to recover for breach of contract:

- (1) The parties were capable of contracting.
- (2) The existence of a contract.
- (3) The consideration.
- (4) The terms of the contract.
- (5) The Plaintiffs have done what the contract requires.
- (6) Good Shepherd has breached the contract.
- (7) The amount of any damages Good Shepherd has caused.

If the Plaintiff has failed to prove any of these propositions, the Plaintiff is not entitled to damages for breach of contract.

**Authority**

*Powell v. McBlain*, 222 Iowa 799, 269 N.W. 883 (1936)  
*Port Huron Machinery Co. v. Wohlers*, 207 Iowa 826, 221 N.W.843 (1928)  
*Iowa Civil Jury Instruction* No. 2400.1

**TO BE TAILORED DEPENDING ON DEFENDANT'S EVIDENCE REGARDING CONTRACT**

**REQUESTED INSTRUCTION NO.:\_\_\_\_\_**

The existence of a contract requires a meeting of the minds on the material terms. This means the parties must agree upon the same things in the same sense. You are to determine if a contract existed from the words and acts of the parties, together with all reasonable inferences you may draw from the surrounding circumstances.

**Authority**

*Severson v. Elberon Elevator, Inc.*, 250 N.W.2d 417 (Iowa 1977)  
*Service Emp., Intern. Local No. 55 v. Cedar Rapids Comm. School Dist.*, 222 N.W.2d 403 (Iowa 1974)  
*Fortgang Bros., Inc. v. Cowles*, 249 Iowa 73, 85 NoW.2d 916 (1957)  
*In Re McKeon's Estate*, 227 Iowa 1050, 289 N.W. 915 (1940)  
*Iowa Code section 554.2204*  
*Iowa Civil Jury Instruction No. 2400.3*

**ONLY SUBMITTED IF DEFENDANTS CONTEST THE EXISTENCE OF A CONTRACT**

**REQUESTED INSTRUCTION NO.:\_\_\_\_\_**

“Consideration” is either a benefit given or to be given to the person who makes the promise or a detriment experienced or to be experienced by the person to whom the promise is made. Where the contract provides for mutual promises, each promise is a consideration for the other promise.

**Authority**

*Matter of Guardianship of Collins*, 327 N.W.2d 230 (Iowa 1982)  
*Powell v. McBlain*, 222 Iowa 199, 269 N.W. 883 (1937)  
*Wilson v. Airline Coal Co.*, 215 Iowa 855, 246 N.W. 753 (1933)  
*Iowa Code section 537A.2*  
*Iowa Civil Jury Instruction No. 2400.4*

**ONLY SUBMITTED IF DEFENDANTS CONTEST THE EXISTENCE OF A CONTRACT**

**REQUESTED INSTRUCTION NO.:\_\_\_\_\_**

In determining the terms of the contract, you may consider the following:

- (1) The intent of the parties along with a reasonable application of the surrounding circumstances.
- (2) The intent expressed in the language used prevails over any secret intention of either party.
- (3) The intent may be shown by the practical construction of a contract by the parties and by the surrounding circumstances.
- (4) You must attempt to give meaning to all language of a contract. Because an agreement is to be interpreted as a whole, assume that all of the language is necessary. An interpretation which gives a reasonable, effective meaning to all terms is preferred to an interpretation which leaves a part of the contract unreasonable or meaningless.
- (5) The meaning of a contract is the interpretation a reasonable person would give it if they were acquainted with the circumstances both before and at the time the contract was made.
- (6) Ambiguous language in a written contract is interpreted against the party who selected it.
- (7) Where general and specific terms in the contract refer to the same subject, the specific terms control.

**Authority**

*First Nat. Bank in Creston v. Smith*, 331 N.W.2d 120 (Iowa 1983)  
*Broyles v. Iowa Dept. of Social Services*, 305 N.W.2d 718 (Iowa 1981)  
*Village Supply Co, Inc. v. Iowa Fund, Inc.*, 312 N.W.2d 551 (Iowa 1981)  
*First Northwestern Nat. Bank, Denison, v. Crouch*, 287 N.W.2d 151 (Iowa 1980)  
*Lyon v. Willie*, 288 N.W.2d 884 (Iowa 1980)  
*Fashion Fabrics of Iowa, Inc. v. Retail Investors Corp.*, 266 N.W.2d 22 (Iowa 1978)  
*Lovlie v. Plumb*, 250 N.W.2d 56 (Iowa 1977)  
*Mopper v. Circle Key Life Ins. Co.*, 172 N.W.2d 118 (Iowa 1969)  
*Carson v. Great Lakes Pipe Line Co.*, 238 Iowa 50, 25 N.W.2d 855 (1947)  
*Iowa Code section 622.22*  
*Iowa Civil Jury Instruction No. 2400.5*

**TO BE TAILORED DEPENDING ON DEFENDANT'S EVIDENCE REGARDING  
CONTRACT**

**REQUESTED INSTRUCTION NO.:\_\_\_\_\_**

A breach of the contract occurs when a party fails to perform a term of the contract.

**Authority**

*Metropolitan Transfer Station, Inc. v. Design Structures, Inc.*, 328 N.W.2d 532 (Iowa App. 1982)  
*Sheer Const., Inc. v. W. Hodgman and Sons, Inc.*, 326 N.W.2d 328 (Iowa 1982)  
*Iowa Civil Jury Instruction* No. 2400.6

IN THE IOWA DISTRICT COURT IN AND FOR CERRO GORDO COUNTY

---

KRISTINE CHRISTENSEN, Individually	)	
and as Executor of the Estate of MARIA	)	
O'BRIEN, STEPHANIE PROHASKI,	)	LAW NO. LACV069306
Individually, ANTHONY SAVAS,	)	
Individually, and THEODORE SAVAS,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	<b>PLAINTIFFS' PROPOSED VERDICT</b>
	)	<b>FORM</b>
	)	
GOOD SHEPHERD GERIATRIC CENTER,	)	
INC. d/b/a GOOD SHEPHERD HEALTH	)	
CENTER, INC. also d/b/a GOOD	)	
SHEPHERD, INC., DIANE HORNING,	)	
Individually, MIKE SVEJDA, Individually,	)	
IAN STOCKBERGER, Individually, and	)	
NURSES "JANE DOE" 1-3,	)	
	)	
Defendant.	)	
	)	

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We find the following verdict on the questions submitted to us:

**I. PLAINTIFFS' CLAIM**

**Question No. 1:** Was Good Shepherd Nursing Home negligent?

Answer "yes" or "no."

ANSWER: \_\_\_\_\_

[If your answer is "no," skip to question 7. If your answer is "yes" answer question 2]

**Question No. 2:** Was the negligence of Good Shepherd Nursing Home a cause of any damage to Maria O'Brien?

Answer "yes" or "no".

ANSWER: \_\_\_\_\_

[If your answer is "no," skip to question 7. If your answer is "yes" answer question 3]



**Question No. 3:** State the amount of damages sustained by Maria O'Brien and/or her children caused by Good Shepherd Nursing Home's fault as to each of the following items of damage. If the Plaintiff has failed to prove any item of damage, or have failed to prove that any item of damage was caused by Good Shepherd Nursing Home's fault, enter 0 for that item.

- |    |  |          |
|----|--|----------|
| 1. | Pre-death medical expenses                                       | \$ _____ |
| 2. | Pre-death pain and suffering                                     | \$ _____ |
| 3. | Pre-death loss of full mind and body                             | \$ _____ |
| 4. | Loss of Value to the Estate of Maria O'Brien                     | \$ _____ |
| 5. | Interest on Burial Expenses                                      | \$ _____ |
| 6. | Stephanie Prohaski's loss of her relationship with Maria O'Brien | \$ _____ |
| 7. | Anthony Savas' loss of his relationship with Maria O'Brien       | \$ _____ |
| 8. | Theodore Savas' loss of his relationship with Maria O'Brien      | \$ _____ |
| 9. | Kris Christensen's loss of her relationship with Maria O'Brien   | \$ _____ |

TOTAL (add the separate items of damage) \$ \_\_\_\_\_

**Question 4:** Do you find by a preponderance of clear, convincing and satisfactory evidence the conduct of the Good Shepherd constituted willful and wanton disregard for the rights or safety of Maria O'Brien?

Answer "yes" or "no."

ANSWER: \_\_\_\_\_

[If your answer is "yes", please answer question 5. If your answer is "no", skip to question 7.]

**Question No. 5:** What amount of punitive damages, if any, do you award?

ANSWER: \$ \_\_\_\_\_

**Question No. 6:** Was the conduct of the Defendant directed specifically at Maria O'Brien?

Answer "yes" or "no."

ANSWER: \_\_\_\_\_

**Question No. 7:** Did a contract exist between Maria O'Brien and Good Shepherd?

Answer "yes" or "no."

ANSWER: \_\_\_\_\_

[If your answer is "no," do not answer any further questions. If your answer is "yes" then answer question 8]

**Question No. 8:** Did Good Shepherd breach its contract with Maria O'Brien?

Answer "yes" or "no."

ANSWER: \_\_\_\_\_

[If your answer is "no," do not answer any further questions. If your answer is "yes" then answer question 9]

**Question No. 9:** State the amount of damages sustained by the Plaintiff caused by the Defendant's breach of contract. If the Plaintiff has failed to prove that the Defendant's breach of contract caused any damage, enter 0 for that item.

Breach of Contract damages \$ \_\_\_\_\_

\_\_\_\_\_  
FOREMAN OR FOREWOMAN\*

\*To be signed only if verdict is unanimous.

\_\_\_\_\_  
Juror\*\*

\_\_\_\_\_  
Juror\*\*

\_\_\_\_\_  
Juror\*\*

\_\_\_\_\_  
Juror\*\*

\_\_\_\_\_  
Juror\*\*

\_\_\_\_\_  
Juror\*\*

\_\_\_\_\_  
Juror\*\*

\*\*To be signed by the jurors agreeing to it after six hours or more of deliberation.

**Authority**

*Iowa Civil Jury Instruction No. 300.6*

*Iowa Code section 668.3(8)*

*Johnson vs. Knoxville Comm. Sch. Dist. 570 N.W.2d 633, 644 (Iowa 1997)*

*Iowa Civil Jury Instruction No. 300.4*