

IN THE IOWA DISTRICT COURT, ALLAMAKEE COUNTY

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MELANIE CAROLUS, MOTHER AND NEXT	)	LAW NO. LACV026467
FRIEND OF B.E., a minor,	)	
	)	
	)	<b>DEFENDANT CAMILLE</b>
	)	<b>OBERBROECKLING,</b>
vs.	)	<b>ARNP'S PROPOSED</b>
	)	<b>JURY INSTRUCTIONS</b>
CAMILLE OBERBROECKLING, ARNP,	)	
	)	
Defendant.	)	
	)	

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COMES NOW Defendant Camille Oberbroeckling, ARNP, and respectfully submits the following Statement of the Case and Jury Instructions. Defendant reserves the right to withdraw any instructions proposed or submit additional or different instructions.

Dated this 13<sup>th</sup> day of November, 2019.



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STATEMENT OF THE CASE

Plaintiff claims that Defendant Camille Oberbroeckling, ARNP, was negligent in failing to provide appropriate medical care and that such negligence was the proximate cause of injuries to minor child, B.E. As a result, Plaintiff claims B.E. is entitled to money damages.

Defendant denies that she was negligent in any manner, and claims that the care and treatment provided to this minor child was completely appropriate. Defendant also denies that any fault on their part was the cause of any injury or damage to the minor child.

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

INSTRUCTION NO. \_\_\_\_

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, MySpace, LinkedIn, YouTube, Twitter, email, etc.

Do not do any research or make any investigation about this case on your own. Do not visit or view any place discussed in this case, and do not use internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge. This includes using the internet to research events or people referenced in the trial.

This case will be tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by these rules.

It is important that we have your full and undivided attention during this trial.

100.23 Use of Electronic Devices.

New 9/11

INSTRUCTION NO. \_\_\_\_\_

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.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices or emotions.

AUTHORITY:

ICJI 100.2

INSTRUCTION NO. \_\_\_\_\_

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.

AUTHORITY:

ICJI 100.3

INSTRUCTION NO. \_\_\_\_\_

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, 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 these 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, question 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:

ICJI 100.4

INSTRUCTION NO. \_\_\_\_\_

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

AUTHORITY:

ICJI 100.5

INSTRUCTION NO. \_\_\_\_\_

During this trial, you have heard the word “interrogatory.” An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered in court.

AUTHORITY:

ICJI 100.6



INSTRUCTION NO. \_\_\_\_\_

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.

AUTHORITY:

ICJI 100.9

INSTRUCTION NO. \_\_\_\_\_

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.

AUTHORITY:

ICJI 100.11

INSTRUCTION NO. \_\_\_\_\_

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 opinions. 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.

AUTHORITY:

ICJI 100.12

INSTRUCTION NO. \_\_\_\_\_

You have heard evidence claiming a party made statements before this trial while under oath or while not under oath.

If you find such a statement was made, you may regard the statement as evidence in this case the same as if the party had made it under oath during the trial.

If you find such a statement was made and was inconsistent with a party's testimony during the trial you may also use the statement as a basis for disregarding all or any part of a party's testimony during the trial but you are not required to do so. You should not disregard a party's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

AUTHORITY:

ICJI 100.15

INSTRUCTION NO. \_\_\_\_\_

In these instructions I will be using the term “fault.” Fault means one or more acts or omissions towards the person which constitutes negligence.

AUTHORITY:

ICJI 400.1

INSTRUCTION NO. \_\_\_\_\_

Plaintiff claim that Defendant was at fault and that it was negligence. The grounds of fault have been explained to you in other instructions. For you to find in favor of the Plaintiff, the Plaintiff must prove all of the following propositions:

1. The standard of care, i.e., the degree of skill, care and learning ordinarily possessed and exercised by a doctor in similar circumstances;
2. Camille Oberbroeckling, ARNP, was negligent by failing to properly evaluate and diagnose B.E.'s condition in violation of the standard of care;
3. Defendant's fault, if any, was a proximate cause of the Plaintiff' damage;
4. The amount of damage.

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

AUTHORITY:

ICJI 400.5

INSTRUCTION NO. \_\_\_\_\_

A medical professional must use the degree of skill, care and learning ordinarily possessed and exercised by other medical professionals in similar circumstances. A violation of this duty is negligence.

AUTHORITY:

Estate of Hagedorn, 690 N.W.2d 84 (Iowa 2004)

ICJI 1600.2

INSTRUCTION NO. \_\_\_\_

The mere fact that a party has suffered injury does not mean that Defendant was negligent. A medical professional, in treating a patient, is not an insurer of favorable results.

AUTHORITY:

Perin v. Hayne, 210 N.W.2d 609 (Iowa 1973)

Wilson v. Corbin, 41 N.W.2d 702 (Iowa 1950)

Ramberg v. Morgan, 218 N.W. 492 (Iowa 1928)

ICJI 700.8



INSTRUCTION NO. \_\_\_\_\_

A medical professional's conduct must be viewed in light of the circumstances existing at the time of diagnosis and treatment and not retrospectively. If a medical professional exercised a reasonable degree of care and skill under the circumstances as they existed, though not as seen in perfect hindsight, then the medical professional is not liable for negligence.

AUTHORITY:

East v. United States, 745 F. Supp. 1142, 1149 (D. Md. 1990)

Boyce v. United States, 942 F. Supp. 1220, 1225-26 (E.D. Mo. 1996)

Hagedorn v. Peterson, 690 N.W.2d 84, 90 (Iowa 2004)

INSTRUCTION NO. \_\_\_\_\_

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct.

AUTHORITY:

ICJI 700.3

INSTRUCTION NO. \_\_\_\_\_

You must determine the standard of professional skill, care and learning required of medical professional in this case only from the opinions of the medical professionals who have testified as expert witnesses as to such standard.

You are also to determine the failure to meet the standard of care, if any, only from the opinions of the medical professionals who have testified as to such failure or lack thereof.

Furthermore, you are to determine whether the alleged failure to meet the standard of care, if any, was the cause of Plaintiff' injuries only from the opinions of the medical professionals who have testified in this case.

AUTHORITY:

Wilson v. Corbin, 41 N.W.2d 702, 705 (1950)

Bryant v. Rankin, 332 F. Supp 319, 322 (S.D. Iowa 1971)

Perin v. Hayne, 210 N.W. 2d 609, 613 (Iowa 1973)

Buckroyd v. Bunten, 237 N.W.2d 808, 811 (Iowa 1976)

Meirick by Meirick v. Weinmeister, 461 N.W.2d 348, 350 (Iowa Ct. App. 1990)

Kennis v. Mercy Hospital Medical Center, 491 N.W.2d 161, 165 (Iowa 1992)

INSTRUCTION NO. \_\_\_\_\_

If you find Plaintiff is entitled to recover damages you shall consider the following items:

1. Past pain and suffering: Physical and mental pain and suffering from the date of injury to the present time. 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.
2. Past Loss of Use of Full Body. Loss of use of the body from the date of injury to the present time. Loss of use of the body is the inability of a particular part of the body to function in a normal manner.

The amount you assess for physical pain and suffering 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 Defendants 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 damages.

Add together the amounts, if any, you find for each of the above items and the total will be used to answer the special verdict.

AUTHORITY:

Pexa v. Auto Owners Insurance Company, 686 N.W.2d 150 (Iowa 2004)  
Worez v. Des Moines City Ry. Co., 175 Iowa 1, 156 N.W. 867 (1916)  
Elzig v. Bales, 135 Iowa 208, 112 N.W. 540 (1907)  
Holmquist v. Volkswagen of America, Inc., 261 N.W.2d 516 (Iowa Ct. App. 1977).  
Bergquist v. Mackay Engines, Inc., 538 N.W.2d 655 (Iowa App. 1995)  
Truscheff v. Abell-Howe Company, 239 N.W.2d 116 (Iowa 1976)  
Ehlinger v. State, 237 N.W.2d 784 (Iowa 1976)  
Brant v Bockholt, 532 N.W.2d 801 (Iowa 1995)

Iowa Code sections 624.18(2), 668.3(b)

Poyzer v. McGraw, 360 N.W.2d 748 (Iowa 1985)

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)

Fuller v. Buhrow, 292 N.W.2d 672 (Iowa 1980)

Acuff v. Schmit, 248 Iowa 272, 78 N.W.2d 480 (1956)

ICJI 200.1, 200.9, 200.10, 200.11B, 200.12, 200.31

INSTRUCTION NO. \_\_\_\_

In Plaintiff's action for damages for personal injury against a provider based on the alleged negligence of the provider in the practice of the provider's profession, the damages awarded shall not include the cost of reasonable and necessary medical care, rehabilitation services, and custodial care, and any loss of earned income, to the extent that those losses are replaced or indemnified by insurance, or by governmental, employment or service benefit programs, or from any other source except the assets of the damaged party or the members of the damaged party's immediate family.

AUTHORITY:

Iowa Code § 147.136

Peters v. Vander Kooi, 494 N.W.2d 708, 714 (Iowa 1993)

INSTRUCTION NO. \_\_\_\_\_

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.

AUTHORITY:

ICJI 200.38

INSTRUCTION NO. \_\_\_\_\_

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 impression 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.

AUTHORITY:

ICJI 100.21



INSTRUCTION NO. \_\_\_\_\_

Upon retiring you shall select a foreman or forewoman. It will be his or her duty to see that discussion is carried on in an orderly fashion, that 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 you are judges – judges of facts. Your sole interest is to find truth and do justice.

AUTHORITY:

ICJI 100.18

INSTRUCTION NO. \_\_\_\_

I am giving you a verdict form and 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 deliberations for six hours from \_\_\_\_ o'clock \_\_\_\_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, tell the Court Attendant.

AUTHORITY:

ICJI 300.1

IN THE IOWA DISTRICT COURT, ALLAMAKEE COUNTY

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MELANIE CAROLUS, MOTHER AND NEXT	)	LAW NO. LACV026467
FRIEND OF B.E., a minor,	)	
	)	
Plaintiff,	)	<b>SPECIAL VERDICT FORM</b>
	)	
vs.	)	
	)	
CAMILLE OBERBROECKLING, ARNP,	)	
	)	
Defendant.	)	
	)	

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

**Question No. 1:** Was Cami Oberbroeckling, ARNP, negligent?

Answer "yes" or "no."

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

[If your answer to Question 1 is "no," then have this form signed and return it to the judge. If you answer to Question 1 is "yes," then proceed to Question 2.]

**Question No. 2:** Was any negligence by Cami Oberbroeckling, ARNP, a cause of damage to the Plaintiff?

Answer "yes" or "no."

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

(If your answer to either Question 1 or 2 is "no," then have this form signed and return it to the judge. If your answer to both Questions 1 and 2 is "yes," then proceed to Question 3.)

**Question No. 3:** State the amount of damages sustained by Plaintiff proximately caused by Defendant's fault as to each of the following items of damage. If Plaintiff has failed to prove any item of damage, or has failed to prove that any item of damage was proximately caused by Defendant's fault, enter 0 for that item.

1.	\$ _____
2.	\$ _____
TOTAL (add the separate items of damage)	\$ _____

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

\*To be signed only if verdict is unanimous

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

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

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

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

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Juror\*\*

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

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

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