

IN THE DISTRICT COURT OF IOWA, IN AND FOR ALLAMAKEE COUNTY

MELANIE CAROLUS, MOTHER AND NEXT FRIEND OF B.E., a minor Plaintiff, vs. CAMILLE OBERBROECKLING, ARNP Defendants.	LAW No. LACV026467 PLAINTIFF'S PROPOSED JURY INSTRUCTIONS AND VERDICT FORM
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COMES NOW the Plaintiff, Melanie Carolus, Mother and Next Friend of B.E., a Minor, by and through her attorney, and submits the following Proposed Jury Instructions and Verdict Form. Plaintiff further reserves the right to make any additions or modifications to the proposed instructions.

DATED this 13th day of November, 2019.

**PUTNAM AND THOMPSON
LAW OFFICE, P.L.L.C.**

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ATTORNEY FOR PLAINTIFF

STATEMENT OF THE CASE

Members of the Jury: This is a medical malpractice case. In this case, Plaintiff, Melanie Carolus, Mother and Next Friend of B.E., a Minor has sued the Defendant, Camille Oberbroeckling, ARNP for damages she claims were caused by the care and treatment of B.E. on October 28, 2015.

The Defendant denies that the care and treatment of B.E. was in any way improper or that the care and treatment caused any damage to B.E.

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:

ICJI 100.1

INSTRUCTION No. _____

Duties Of Judge And Jury, Instructions As Whole. 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. Because you are making very important decisions in this case, you are to evaluate the evidence carefully and avoid decisions based on generalizations, gut feelings, prejudices, sympathies, stereotypes, or 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.

Authority:

Roushar v. Dixon, 231 Iowa 993, 2 N.W.2d 660 (1942).
ICJI 100.2

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 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:

Mabrier v. A.M. Servicing Corporation of Raytown, 161 N.W.2d 180 (1968).
ICJI 100.3

INSTRUCTION No. _____

Evidence. 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.

Authority:

Iowa Rules of Evidence.
ICJI 100.4

INSTRUCTION No. _____

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

Authority:

Iowa R. Civ. P. 1.704

Farley v. Seiser, 316 N.W.2d 857 (Iowa 1982).

ICJI 100.5

INSTRUCTION No. _____

Interrogatories. 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 here in court.

Authority:

Iowa R. Civ. P. 1.509

ICJI 100.6

INSTRUCTION No. _____

Credibility Of Witnesses. 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:

Burger v. Omaha & C.B. St. Ry. Co., 139 Iowa 645, 117 N.W.35 (1908).
ICJI 100.9

INSTRUCTION No. _____

Opinion Evidence, Expert Witness. 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.

Authority:

Crouch v. National Livestock Remedy Co.,
210 Iowa 849, 231 N.W. 323 (1930).
ICJI 100.12

INSTRUCTION No. _____

Prior Statements of Party. You have heard evidence claiming a party made statements before this trial while under oath. If you find such statement ere made, you may regard the statements as evidence in this case the same as if they had made them under oath during the trial.

If you find such statements were made and were inconsistent with his or her testimony during the trial you may also use the statement as a basis for disregarding all or any part of his or her testimony during the trial but you are not required to do so. You should not disregard his or her 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. _____

Prior Statements of Non-Parties. You have heard evidence claiming some witnesses made statements before this trial while under oath which were inconsistent with what they said in this trial. If you find these statements were made and were inconsistent, then you may consider them as part of the evidence, just if they had been made at this trial.

You may also use these statements to help you decide if you believe the testimony of those witnesses. You may disregard all or any part of the testimony if you find the statements were made and were inconsistent with the testimony given at trial, but you are not required to do so. Do not disregard the trial testimony if other evidence you believe supports it, or if you believe it for any other reason.

Authority:

State v. Thompson, [397 N.W.2d 679](#), 683 n.2 (Iowa 1986):

Iowa R. Evid., 5.801(d)(1)(A).

ICJI 100.14

INSTRUCTION No. _____

Hypothetical Question, Expert Testimony. 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:

Cody v. Toller Drug Co., [232 Iowa 475](#), [5 N.W.2d 824](#) (1942).

ICJI 100.11

INSTRUCTION No. _____

Essentials For Recovery. Plaintiff, Melanie Carolus, Mother and Next Friend of B.E., claims that Camille Oberbroeckling, ARNP was negligent. To prevail on this claim, she must prove all of the following propositions:

1. The standard of care expected of a similarly situated doctor under similar circumstances.
2. Camille Oberbroeckling, ARNP was negligent in her care of B.E. in the following particular:
 - a. On October 28, 2015, Camille Oberbroeckling failed to properly evaluate, examine or treat B.E. for a laceration to the palmer aspect of his left hand.
3. Camille Oberbroeckling's negligence was the cause of damage to B.E. and
4. The amount of damage caused to B.E.

If Melanie Carolus, Mother and Next Friend of B.E., has failed to prove any of these propositions, she is not entitled to damages from Camille Oberbroeckling. If Melanie Carolus, Mother and Next Friend of B.E., has proved all of these propositions, she is entitled to damages in some amount from Camille Oberbroeckling.

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).

Thompson v. Kaczinski, [774 N.W.2d 829](#), 836-39 (Iowa 2009) (causation).
ICJI 700.1

INSTRUCTION No. _____

Standard of Care – Camille Oberbroeckling. A physician must use the degree of skill, care and learning ordinarily possessed and exercised by other physicians in similar circumstances.

A violation of this duty is negligence.

Authority:

Speed v. State, 240 N.W.2d 901 (Iowa 1976).

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

ICJI 1600.2

INSTRUCTION No. _____

Standard of Care – Camille Oberbroeckling. You are to determine the standard of care, i.e. the degree of skill, care and learning required only from the opinions of the medical providers who have testified as to the standard.

You are also to determine the failure to meet the standard of care, if any, only from the opinions of the medical providers who have testified as to such a 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 B.E.'s injuries only from the opinions of the medical providers who have testified as experts in this case.

Authority:

INSTRUCTION No. _____

Standard of Care – Not Retrospective. A medical provider's conduct must be viewed in light of the circumstances existing at the time of diagnosis and treatment and not retrospectively. If a medical provider exercised a reasonable degree of care and skill under the circumstances as they existed, though not as seen in hindsight or in light of facts later discovered, then the medical provider was not negligent.

Authority:

INSTRUCTION No. _____

Injury Does Not Constitute or Raise Presumption of Negligence. The mere fact that a party has suffered injury does not mean another party was negligent or at fault.

Authority:

ICJI 700.8

INSTRUCTION No. _____

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

Authority:

Iowa Code § 668.1
ICJI 400.1

INSTRUCTION No. _____

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

Authority:

Thompson v. Kaczinski, 774 N.W.2d 829, 836-39 (Iowa 2009)

Royal Indemnity Co. v. Factory Mut. Ins. Co., ___ N.W.2d ___, ___,

No. 07-1324 slip. op. at 19 (Iowa June 11, 2010)

Restatement (Third) of Torts: Liability for Physical and Emotional Harm, § 26
ICJI 700.3

INSTRUCTION No. _____

Damages. If you find that Melanie Carolus, Mother and Next Friend of B.E., is entitled to recover damages, you shall consider the following items:

1. Loss of function of the body from the date of injury to the present time. Loss of body is the inability of a particular part of the body to function in a normal manner. **(Loss Of Full Mind And Body – Past)**
2. 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. **(Physical And Mental Pain And Suffering - Past.)**
3. The present value of future loss of function of the body. **(Loss Of Full Mind And Body – Future)**
4. The present value of future physical and mental pain and suffering. **(Physical And Mental Pain And Suffering – Future)**

The amount you assess for 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 out of prejudice for or against the parties. Your judgment must be based on a fair, intelligent and impartial consideration of the evidence.

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

Add together the amounts, if any, you find for each item awarded and the total will be used to answer the special verdict give to you.

Authority:

Brant v Bockholt, [532 N.W.2d 801](#) (Iowa 1995)
Schnebly v. Baker, [217 N.W.2d 708](#) (Iowa 1974)
Poyzer v. McGraw, [360 N.W.2d 748](#) (Iowa 1985)
Holmquist v. Volkswagen of America, Inc., [261 N.W.2d 516](#) (Iowa App. 1977)
Iowa Code section [624.18\(2\)](#), [668.3\(b\)](#)
ICJI 200.10, 200.12, 200.11B, 200.13B

INSTRUCTION No. _____

Definition of Present Value. Future damages must be reduced to present value. "Present value" is a sum of money paid now in advance which, together with interest earned at a reasonable rate of return, will compensate B.E. for future losses.

Authority:

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

Schnebly v. Baker, 217 N.W.2d 708 (Iowa 1974)

In Re Millard Estate, 251 Iowa 1282, 105 N.W.2d 95 (1960)

ICJI 200.35B

INSTRUCTION No. _____

Mortality Tables - Personal Injury. A Standard Mortality Table indicates the normal life expectancy of people who are the same age as B.E. is 66.13 years.

The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about B.E.'s health, habits, occupation, and lifestyle, when deciding issues of future damages.

Authority:

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)

ICJI 200.37

INSTRUCTION No. _____

Quotient Verdict. 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:

Moose v. Rich, 253 N.W.2d 565 (Iowa 1977)

Sheker v. Jensen, 241 Iowa 583, 41 N.W.2d 679 (1950)

Manna v. McIntosh, 519 N.W.2d 815 (Iowa App. 1994)

ICJI 200.38

INSTRUCTION No. _____

General Instruction To Jury. Upon retiring 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.

Authority:

ICJI 100.18

INSTRUCTION No. _____

Cautionary Instruction - Juror's Notes. 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.

Authority:

Iowa R. Civ. P. 1.926 (1)
ICJI 100.21

INSTRUCTION No. _____

Use of Electronic Devices. 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. [Failure to follow these instructions may result in the case having to be retried and could result in you being held in contempt and punished.]

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

INSTRUCTION No. _____

Questions From Jury. Occasionally, after a jury retires to the jury room, the members have questions. Usually questions about instructions can be answered by carefully re-reading them. If, however, any of you feel it is necessary to ask a question, you must do so in writing and deliver the question to the court attendant. I cannot communicate with you without first discussing your question and potential answer with the parties and lawyers. This process naturally takes considerable time to assemble the parties and lawyers before I can reply. Keep the question and response and return it to the court with the verdict.

INSTRUCTION No. _____

Return Of Verdict - Forms Of Verdict. I am giving you one verdict form. 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 must be signed by your foreman or forewoman.

After deliberating 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 must be signed by all seven jurors who agree.

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

Authority:

ICJI 300.1

Comment

Note: *Use if a juror has been excused during the trial.

IN THE DISTRICT COURT OF IOWA, IN AND FOR ALLAMAKEE COUNTY

**MELANIE CAROLUS, MOTHER AND
NEXT FRIEND OF
B.E., a minor**

Plaintiff,

vs.

CAMILLE OBERBROECKLING, ARNP

Defendants.

LAW No. LACV026467

VERDICT FORM

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

Question No. 1: Was Camille Oberbroeckling ARNP negligent in the care of B.E.?

Answer "yes" or "no."

ANSWER: _____

[If your answer is "no," do not answer any further questions.]

Question No. 2: Was Camille Oberbroeckling's ARNP negligence a cause of any damages incurred by B.E.?

Answer "yes" or "no."

ANSWER: _____

[If your answer is "no", do not answer any further questions.]

Question No. 3: State the amount of damages sustained by B.E. as to each of the following items of damage. If B.E. has failed to prove any item of damage, or has failed to prove that any item of damage was caused by the care on October 28, 2015, enter 0 for that item.

- | | |
|---|----------|
| 1. Past loss of function of the full body | \$ _____ |
| 2. Future loss of function of the full body | \$ _____ |
| 3. Past pain and suffering | \$ _____ |
| 4. Future pain and suffering | \$ _____ |

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

FOREMAN or FOREWOMAN*

* To be signed only by the foreperson if the verdict is unanimous.

** If the verdict is not unanimous but is agreed by 7 out of 8 of the jurors after 6 hours, the seven in agreement shall sign on the following lines.

Juror **

Juror **

Juror **

Juror **

Juror **

Juror **

Juror **