

IN THE IOWA DISTRICT COURT FOR DUBUQUE COUNTY

JOANN PELLOCK, individually and as	)	
personal representative of the ESTATE OF	)	LAW NO. LACV103756
RICHARD J. PELLOCK, deceased, and	)	
MITCHELL PELLOCK individually,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
MISSISSIPPI VALLEY	)	PLAINTIFFS' AMENDED PROPOSED
ANESTHESIOLOGY, P.C.,	)	JURY INSTRUCTIONS AND VERDICT
	)	FORM
Defendant.	)	
	)	
	)	
	)	
	)	
	)	

COME NOW the Plaintiffs, by and through their undersigned counsel, and submit the following Proposed Amended Jury Instructions and Verdict Form:

STANDARD IOWA JURY INSTRUCTIONS

100.1	Statement of the Case
100.2	Duties of Judge and Jury, Instructions as Whole
100.3	Burden of Proof, Preponderance of Evidence
100.4	Evidence
100.5	Deposition Testimony
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200.20	Services- Parental Consortium
200.31	Elements – Spousal Consortium – Spouse’s Damage
200.31	Elements – Parental Consortium – Modified for Adult Child’s Damage
200.35B	Definition of Present Value – Actions filed on or after July 1, 1997
200.36	Mortality Tables – Death Cases

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200.38	Quotient Verdict
300.1	Return of Verdict – Forms of Verdict
300.4	Verdict – Single Plaintiff – Single Defendant – Cases Governed by Chapter 668
700.3	Cause Defined
730.1	Liability Of Employer
1600.1	Negligence – Marshaling Instruction
1600.2	Negligence – Duty of Physician (modified for CRNA)

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By /s/ Dominic F. Pechota

Dominic F. Pechota

AT0006175

ATTORNEY FOR PLAINTIFFS

INSTRUCTION NO. ____

STATEMENT OF THE CASE

Members of the Jury: This is a medical Malpractice case. Plaintiffs Joann Pellock and Mitchell Pellock allege that Certified Registered Nurse Anesthetist (CRNA) James Wieters was negligent in his care and treatment of Richard Pellock, and as a result of this alleged negligence, Plaintiffs were damaged.

Plaintiffs have sued CRNA Wieters' employer, Mississippi Valle Anesthesiology, P.C.

Defendant denies that CRNA Wieters was negligent or that anything he did caused any damage.

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 (modified)

INSTRUCTION NO. _____

Defendant Mississippi Valley anesthesiology, P.C. is liable for the negligence, if any, of CRNA Wieters in this case. When I refer to CRNA Wieters in these instructions, I am also referring to Defendant Mississippi Valley Anesthesiology, P.C.

INSTRUCTION NO. _____

A Certified Registered Nurse Anesthetist must use the degree of skill, care and learning ordinarily possessed and exercised by other Certified Registered Nurse Anesthetist's in similar circumstances.

A violation of this duty is negligence.

AUTHORITY

Iowa Civil Jury Instructions 1600.2 (Negligence – Duty Of Physician) (modified for CRNA)

INSTRUCTION NO. _____

Plaintiffs claim that CRNA James Wieters was negligent.

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

1. Standard of care, i.e., the degree of skill, care and learning ordinarily possessed and exercised by CRNAs similar to CRNA Wieters under circumstances similar to those presented in this case.
2. CRNA Wieters was negligent by failing to meet the standard of care.
3. CRNA Wieters' negligence, if any, was a cause of Plaintiffs' damages.
4. The amount of damage.

If Plaintiffs have failed to prove any of these propositions, Plaintiffs are not entitled to damages. If plaintiffs have proved all of these propositions, they are entitled to damages from CRNA Wieters in some amount.

AUTHORITY

Iowa Civil Jury Instructions 1600.1 (modified): see also No. 700.1

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.

Iowa Civil Jury Instruction 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.

Iowa Civil Jury Instruction 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.

Iowa Civil Jury Instruction 100.4

INSTRUCTION NO. ____

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

Iowa Civil Jury Instruction 100.5 Deposition testimony.

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.

Iowa Civil Jury Instruction 100.9

INSTRUCTION NO. ____

100.14 Contradictory Statements, Non-Party, Witness Under Oath. You have heard evidence claiming [name of witness]made statements before this trial while under oath which were inconsistent with what [name of witness]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 as if they had been made at this trial.

You may also use these statements to help you decide if you believe [name of non-party witness]. 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

A prior inconsistent statement of a witness given under oath is substantive evidence which may be considered for any purpose. State v. Thompson, 397 N.W.2d 679, 683 n.2 (Iowa 1986): Iowa R. Evid., 5.801(d)(1)(A).

Iowa Civil Jury Instruction 100.14

See also Iowa Civil Jury Instruction 100.15 (Statements By A Party Opponent)

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 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.

Iowa Civil Jury Instruction 100.12 Opinion Evidence, Expert Witness.

INSTRUCTION _____

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.

Iowa Civil Jury Instruction 100.11 (Hypothetical Question, Expert Testimony).

Authority

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

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.

Iowa Civil Jury Instruction 100.21

INSTRUCTION NO. ____

200.19 Services - Spousal Consortium. The present value of the services which Richard Pellock would have performed for his wife Joann Pellock, but for his death. This is also known as loss of spousal consortium.

"Spousal consortium" is the fellowship of a husband and wife and the right of each to the benefits of company, cooperation, affection, the aid of the other in every marital relationship, general usefulness, industry and attention within the home and family. It does not include loss of financial support nor mental anguish caused by the spouse's death.

Damages for spousal consortium are limited in time to the shorter of the spouse's or Richard Pellock's normal life expectancy.

Iowa Civil Jury Instruction 200.19

INSTRUCTION NO. ____

200.20 Services - Parental Consortium. The present value of the services which Richard Pellock would have performed for his adult son Mitchell Pellock, but for his death. This is also known as loss of parental consortium.

"Parental consortium" is the relationship between parent and adult child and the right of the adult 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 nor mental anguish caused by the parent's death.

An adult 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-adult child relationship.

Damages for loss of parental consortium are limited in time to the shorter of the adult child or Richard Pellock's normal life expectancy.

Iowa Civil Jury Instruction 200.20

INSTRUCTION NO. ____

200.31 Elements - Spousal Consortium - Spouse's Damage. "Spousal consortium" is the fellowship of a husband and wife and the right of each other to the benefits of company, cooperation, affection, the aid of the other in every marital relationship, general usefulness, industry and attention within the home and family. It does not include loss of financial support nor mental anguish caused by the spouse's death.

If you find Joann Pellock is entitled to recover damages, it is your duty to determine the amount. In doing so, you shall consider the following items:

1. The reasonable value of loss of spousal consortium which Joann Pellock would otherwise have received from the date of Richard Pellock's death.
2. The present value of loss of spousal consortium which Joann Pellock would otherwise have received in the future.

Damages for loss of spousal consortium are limited in time to the shorter of Joann Pellock's or Richard Pellock's normal life expectancy.

In determining the value for loss of spousal consortium you may consider:

1. The circumstances of Richard Pellock's life.
2. Richard Pellock's and Joann Pellock's ages at the time of Richard's death.
3. Richard Pellock's health, strength, character and life expectancy.
4. Richard Pellock's capabilities and efficiencies in performing the duties of a spouse.
5. Richard Pellock's skills and abilities in providing instructions, guidance, advice and assistance.
6. Joann Pellock's needs.
7. All other facts and circumstances bearing on this issue.

The amount you assess for past, present, and future loss of spousal consortium 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 the defendant 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.

Iowa Civil Jury Instruction 200.31

INSTRUCTION NO. ____

"Parental consortium" is the relationship between parent and adult child and the right of the adult 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 nor mental anguish caused by the parent's death.

If you find Mitchell Pellock is entitled to recover damages, it is your duty to determine the amount. In doing so, you shall consider the following items:

1. The reasonable value of loss of parental consortium which Mitchell Pellock would otherwise have received from the date of Richard Pellock's death.
2. The present value of loss of parental consortium which Mitchell Pellock would otherwise have received in the future.

Damages for loss of parental consortium are limited in time to the shorter of Mitchell Pellock's or Richard Pellock's normal life expectancy.

In determining the value for loss of parental consortium you may consider:

1. The circumstances of Richard Pellock's life.
2. Richard Pellock's and Mitchell Pellock's ages at the time of Richard's death.
3. Richard Pellock's health, strength, character and life expectancy.
4. Richard Pellock's capabilities and efficiencies in performing the duties of a spouse.
5. Richard Pellock's skills and abilities in providing instructions, guidance, advice and assistance.
6. Mitchell Pellock's needs.
7. All other facts and circumstances bearing on this issue.

The amount you assess for past, present, and future loss of parental consortium 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 the defendant 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.

Iowa Civil Jury Instruction 200.31 (Modified for Loss of Parental Consortium)

INSTRUCTION NO. ____

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Richard Pellock at the time of his death is 7.49 years.

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Joann Pellock is 12.34 years.

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Mitchell Pellock is 23.94 years.

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

Iowa Civil Jury Instruction 200.36 Mortality Tables - Death Cases.

Iowa Civil Jury Instruction 200.37 Mortality Tables - Personal Injury

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.

Iowa Civil Jury Instruction 100.23

INSTRUCTION NO. ____

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

Iowa Civil Jury Instruction 700.3

INSTRUCTION No. _____

An employer is liable for the negligent acts of an employee if the acts are done in the scope of the employment.

At all relevant times, James Wieters was an employee of Defendant Mississippi Valley Anesthesiology, P.C. and his acts were done in the scope of the employment.

ICJI 730.1 Liability Of Employer

INSTRUCTION NO. _____

If you find that the Plaintiffs Joann Pellock and Mitchell Pellock are entitled to recover damages, it is your duty to determine the amount. In doing so, you shall consider the following items:

Loss of spousal consortium (past and future): The present value of the services which Richard Pellock would have performed for his spouse Joann Pellock, but for his death. This is also known as loss of spousal consortium.

"Spousal consortium" is the fellowship of a husband and wife and the right of each to the benefits of company, cooperation, affection, the aid of the other in every marital relationship, general usefulness, industry and attention within the home and family. It does not include loss of financial support from the injured spouse, nor mental anguish caused by the spouse's death.

Damages for spousal consortium are limited in time to the shorter of Joann Pellock's or Richard Pellock's normal life expectancy.

Loss of parental consortium (past and future): The present value of the services which Richard Pellock would have performed for his adult son Mitchell Pellock, but for his death. This is also known as loss of parental consortium.

"Parental consortium" is the relationship between parent and adult child and the right of the adult 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.

Damages for loss of parental consortium are limited in time to the shorter of Mitchell Pellock's or Richard Pellock's normal life expectancy.

The amount you assess for past loss of spousal consortium, future loss of spousal consortium, past loss of parental consortium, and future loss of parental consortium 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 verdict form.

Iowa Civil Jury Instruction 200.1

INSTRUCTION NO. ____

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 the plaintiff for future losses.

Iowa Civil Jury Instruction 200.35B

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.

Iowa Civil Jury Instruction 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.

Iowa Civil Jury Instruction 100.18

INSTRUCTION NO. ____

Return Of Verdict - Forms Of Verdict. I am giving you ____ verdict forms [and questions]. 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 answers to questions] 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) (six)* of you agree upon the answers to the questions. In that case, the verdict [and questions] must be signed by all (seven) (six)* jurors who agree.

When you have agreed upon the verdict [and answers to questions] and appropriately signed it, tell the Court Attendant.

Iowa Civil Jury Instruction 300.1

IN THE IOWA DISTRICT COURT FOR DUBUQUE COUNTY

JOANN PELLOCK, individually and as	)	
personal representative of the ESTATE OF	)	LAW NO. LACV103756
RICHARD J. PELLOCK, deceased, and	)	
MITCHELL PELLOCK individually,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
MISSISSIPPI VALLEY	)	PLAINTIFFS' AMENDED PROPOSED
ANESTHESIOLOGY, P.C	)	VERDICT FORM
	)	
Defendant.	)	
	)	
	)	
	)	
	)	
	)	

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

Question No: 1: Was CRNA James Wieters negligent?

Answer "yes" or "no"

ANSWER: _____

[If your answer is "yes", answer Question No. 2. If your answer is "no", do not answer any more questions.]

Question No: 2: Was the negligence of CRNA Wieters a cause of damage to the Plaintiffs?:

Answer "yes" or "no"

ANSWER: _____

[If you answered “yes” to both Question Numbers 1 and 2, answer Question No. 3. If your answer is “no”, do not answer any more questions.]

Question No: 3: State the amount of damages sustained by the Plaintiffs.

1. Past loss of spousal consortium	\$ _____
2. Future loss of spousal consortium	\$ _____
3. Past loss of parental consortium	\$ _____
4. Future loss of parental consortium	\$ _____
TOTAL (add the separate items of damage)	\$ _____

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.