

IN THE IOWA DISTRICT COURT FOR DUBUQUE COUNTY

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

Defendant submits the following revised proposed jury instructions and verdict form.

Defendant reserves the right to withdraw any proposed instruction or to submit additional or amended instructions.

1. No. 100.1 (Statement of the Case)
2. No. 100.2 (Duties of Judge and Jury, Instructions as Whole)
3. No. 100.3 (Burden of Proof, Preponderance of Evidence)
4. No. 100.4 (Evidence)
5. No. 100.5 (Deposition Testimony)
6. No. 100.9 (Credibility of Witnesses)
7. No. 100.12 (Opinion Evidence, Expert Witness)
8. No. 100.11 (Hypothetical Question, Expert Testimony) (if applicable)
9. No. 100.20 (Corporate Party)
10. Treat Defendant and CRNA Wieters as same
11. No. 1600.2 (Negligence-Duty of CRNA)
12. Expert Testimony as source of standard of care, breach and causation
13. No. 700.3 (Cause- Defined)
14. No. 1600.1 (Marshaling Instruction)
15. No. 700.8 (Accident does not constitute or raise presumption of negligence)
16. Conduct must not be viewed retrospectively or in hindsight
17. No. 200.14 (Elements – Death-Damages by Personal Representative)
18. No. 200.19 (Spousal Consortium)
19. No. 200.20 (Parental Consortium)
20. No. 200.35B (Definition of Present Value-Actions filed after July 1, 1997)
21. No. 200.38 (Quotient Verdict)

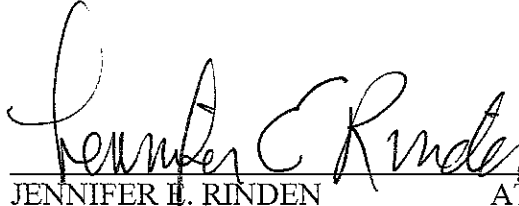
- 22. No. 100.18 (General Instruction to Jury)
- 23. No. 100.21 (Cautionary Instruction- Juror's notes)
- 24. No. 300.1 (Return of Verdict- Forms of Verdict)

Verdict Form (attached)

CERTIFICATE OF SERVICE
The undersigned hereby certifies that a copy of this document was served upon counsel of record for each party to the action in compliance with Iowa R.C.P. 1.442(b) on: Sept. 15 20 17

By: ☐ Overnight Courier	☐ FAX	☒ E mailed
☐ Hand Delivered	☐ U.S. Mail	☒ E filed
☐ Certified Mail	☐ Other	

Signature: Jeffrey Miller


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INSTRUCTION NO. 1

STATEMENT OF THE CASE

Members of the Jury: This is a medical malpractice case. Plaintiffs 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 Valley 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. 2

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

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

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

Your duty is to decide all fact questions.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. 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

Iowa Civil Jury Instruction 100.2 (Duties of Judge and Jury, Instructions as Whole) (not modified)

INSTRUCTION NO. 3

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

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

AUTHORITY

Iowa Civil Jury Instruction 100.3 (Burden of Proof, Preponderance of Evidence) (Not Modified)

INSTRUCTION NO. 4

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

Evidence is:

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

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

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

The following are not evidence:

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

AUTHORITY

Iowa Civil Jury Instruction 100.4 (Evidence) (Not Modified)

INSTRUCTION NO. 5

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

AUTHORITY

Iowa Civil Jury Instruction 100.5 (Deposition Testimony) (modified for videotape)

INSTRUCTION NO. 6

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

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

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

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

AUTHORITY

Iowa Civil Jury Instruction 100.9 (Credibility of Witnesses) (Not Modified)

INSTRUCTION NO. 7

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

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

AUTHORITY

Iowa Civil Jury Instruction 100.12 (Opinion Evidence, Expert Witness) (Not Modified)

INSTRUCTION NO. 8

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

AUTHORITY

Iowa Civil Jury Instruction 100.11 (Hypothetical Question, Expert Testimony) (Not Modified)

INSTRUCTION NO. 9

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

AUTHORITY

Iowa Civil Jury Instruction No. 100.20 (Corporate Party) (not modified).

INSTRUCTION NO. 10

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. 11

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 Instruction 1600.2 (Negligence - Duty Of Physician) (modified for CRNA)

INSTRUCTION NO. 12

You are to determine the standard of care, i.e. the degree of skill, care, and learning required of CRNA Wieters only from the opinions of the health care 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 health care 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 Plaintiffs' injury only from the opinions of health care providers who have testified in this case.

AUTHORITY

Kennis v. Mercy Hosp. Med. Ctr., 491 N.W.2d 161, 165 (Iowa 1992)

Cox v. Jones, 470 N.W.2d 23, 25-26 (Iowa 1991)

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

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

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

INSTRUCTION NO. 13

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

AUTHORITY

Iowa Civil Jury Instruction 700.3 (Cause – Defined) (not modified)

INSTRUCTION NO. 14

Plaintiffs claim that CRNA Wieters was negligent.

In order to prevail on this claim, Plaintiffs 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 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 in the following way:
 - (a) _____;
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 has proved all of these propositions, they are entitled to damages from CRNA Wieters in some amount.

AUTHORITY

Iowa Civil Jury Instruction 1600.1 (modified); see also No. 700.1

INSTRUCTION NO. 15

The mere fact that a party has suffered injury does not mean another party was negligent or at fault.

AUTHORITY

Iowa Civil Jury Instruction No. 700.8 (Accident does not constitute or raise presumption of negligence) (Non-substantive modification from uniform which states: “The mere fact an accident occurred or a party was injured does not mean a party was [negligent] [at fault].”)

INSTRUCTION NO. 16

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

AUTHORITY

Bryant v. Rankin, 332 F. Supp. 319, 322 (S.D. Iowa 1971), aff'd 468 F.2d 510 (8th Cir. 1972) (Iowa law) ("It is not enough for experts . . . to state in retrospect what might have been considered had the patient been under their care.")

Hagedorn v. Peterson, 690 N.W.2d 84, 90 (Iowa 2004) (quoting language in proposed instruction above, used in a malpractice case, not addressing its merits)

Keaton v. Greenville Hosp. System, 514 S.E.2d 570, 574-75 (S.C. 1999) (affirming instruction: "In considering whether a physician, a resident, or nurse has exercised reasonable judgment in a given case, you must consider such judgment in relation to the facts as they existed at the time the judgment was made, and not in light of what hindsight may reveal.")

Klisch v. Meritcare Med. Grp., 134 F.3d 1356, 1360 (8th Cir. 1998) (MN law) (affirming trial court's use of instruction that negligence is considered "in light of the information available at that time. Foresight, not hindsight, is the standard of negligence.")

East v. United States, 745 F. Supp. 1142, 1149 (D. Md. 1990) ("If a physician exercised a reasonable degree of care and skill under the circumstances as they existed, though not as seen in perfect hindsight, then the physician is not liable for malpractice.")

Boyce v. United States, 942 F. Supp. 1220, 1225-26 (E.D. Mo. 1996) (determination of negligence "must be made in light of the conditions as they existed prior to the treatment, not in the 20/20 vision of hindsight.")

Douzart v. Jones, 528 So. 2d 602, 603 (La. Ct. App. 1988) (physician is not to be "evaluated with the benefit of hindsight.")

INSTRUCTION NO. 17

If you find that JoAnn Pellock, as the personal representative of the Estate of Richard Pellock, is entitled to recover, it is your duty to determine the amount. In doing so you shall consider the following items in determining an amount which will fully compensate the Estate of Richard Pellock:

(Enter applicable elements from Instructions 200.19, 200.20)

The amount you assess for present value of 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 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 damage.

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

AUTHORITY

Iowa Civil Jury Instruction 200.14 (Elements – Death-Damages by Personal Representative)
(Non-substantive Modifications)

INSTRUCTION NO. 18

An item of damage may be the present value of the services which Richard Pellock would have performed for his spouse, 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 the spouse's or Richard Pellock's normal life expectancy.

AUTHORITY

Iowa Civil Jury Instruction 200.19 (Services - Spousal Consortium) (non-substantive modifications).

INSTRUCTION NO. 19

An item of damage may be the present value of the services which Richard Pellock would have performed for his adult children, but for his death. This is also known as loss of parental consortium.

"Parental consortium" is the relationship between parent and child and the right of the child to the benefits of companionship, comfort, guidance, affection and aid of the parent in every parental relationship, general usefulness, industry and attention within the family. It does not include the loss of financial support from the injured parent, nor mental anguish caused by the parent's death.

A child is not entitled to damages for loss of parental consortium unless the parent's death has caused a significant disruption or diminution of the parent-child relationship.

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

AUTHORITY

Iowa Civil Jury Instruction 200.20 (Services - Parental Consortium) (non-substantive modification)

INSTRUCTION NO. 20

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.

AUTHORITY

Iowa Civil Jury Instruction 200.35B (Definition Of Present Value - Actions Filed On Or After July 1, 1997) (not Modified)

INSTRUCTION NO. 21

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

Iowa Civil Jury Instruction 200.38 Quotient Verdict (not modified)

INSTRUCTION NO. 22

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

Iowa Civil Jury Instruction 100.18 (General Instruction To Jury) (not Modified)

INSTRUCTION NO. 23

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 Civil Jury Instruction 100.21 (Cautionary Instruction - Juror's Notes) (not Modified)

INSTRUCTION NO. 24

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

After deliberating for six hours from _____ 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

Iowa Civil Jury Instruction 300.1 (Return Of Verdict - Forms Of Verdict) (non-substantive modification)

IN THE IOWA DISTRICT COURT FOR DUBUQUE COUNTY

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

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

Question No. 1: Was CRNA Wieters negligent?

Answer "yes" or "no."

ANSWER: _____

[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 Plaintiffs?

Answer "yes" or "no."

ANSWER: _____

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

Question No. 3: State the amount of damages, if any, sustained by the Plaintiffs which were caused by the negligence of CRNA Wieters for each of the following items of

damage. If Plaintiffs have failed to prove any item of damage or have failed to prove that any item of damage was caused by the negligence of CRNA Wieters, enter 0 for that item.

a) \$ _____

b) \$ _____

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 thereto after six hours or more of deliberation.