

IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY

MARCIA ENGEL and EDWARD ENGEL,

Plaintiffs,

vs.

DR. JASON REXROTH and CEDAR
RAPIDS OB-GYN SPECIALISTS, P.C.;

Defendants.

Law No. LACV090408

**JOINT PROPOSED JURY
INSTRUCTIONS**

The parties submit the attached Proposed Jury Instructions and Verdict Forms.

The parties reserve the right to withdraw any instruction proposed or to submit additional or different instructions.

Disagreements between the parties are noted as follows:

- 1) Plaintiffs' proposed instructions labeled as "A"
- 2) Defendants' proposed instructions labeled as "B"
- 3) Instructions only proposed by one party are indicated

Instructions not labeled A or B and without further comments are agreed to by the parties.

Respectfully Submitted,

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/s/ Christine L. Conover

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ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2019, I filed the foregoing with the Clerk of Court using the electronic filing system which will send notification of such filing to the following:

/s/ Tonya M. Dicus

INSTRUCTION NO. 1
(Preliminary Instruction)

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 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.

AUTHORITY

CJI NO. 100.23 (modified to remove: "Do not visit or view any place discussed in this case" because of potential medical care issues)

INSTRUCTION NO. 2
(Preliminary Instruction)

Members of the Jury: This is a medical malpractice case. Plaintiffs Marcia Engel and Edward Engel have sued Dr. Jason Rexroth and Ob-Gyn Specialists, P.C., for damages they claim were caused by the care and treatment of Marcia Engel by Dr. Rexroth.

Dr. Rexroth denies that his care and treatment of Marcia Engel was in any way improper or that his care and treatment caused any damage to Plaintiffs.

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

CJI NO. 100.1 (modified)

INSTRUCTION NO. 3

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

CJI NO. 100.2 (not modified)

INSTRUCTION NO. 4

Defendants Dr. Jason Rexroth and Ob-Gyn Specialists, P.C., are to be treated as a single party for the purpose of determining Dr. Rexroth's negligence, if any, in this matter. When I refer to Dr. Rexroth in these instructions, I am referring to both Defendant Dr. Jason Rexroth and Defendant Ob-Gyn Specialists, P.C.

AUTHORITY

Iowa Code § 668.3(3)

CJI 400.2 (modified)

INSTRUCTION NO. 5

(Joint Instruction but Plaintiff wants read as preliminary instruction)

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

CJI NO. 100.3 (not modified)

INSTRUCTION NO. 6

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

CJI NO. 100.4 (not modified)

INSTRUCTION NO. 7

Certain testimony has been read into evidence from a deposition or shown on video 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

CJI NO. 100.5 (modified)

INSTRUCTION NO. 8

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

CJI NO. 100.6 (not modified)

INSTRUCTION NO. 9

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

CJI NO. 100.9 (not modified)

INSTRUCTION NO. 10

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

CJI NO. 100.12 (not modified)

INSTRUCTION NO. 11

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

CJI NO. 100.11 (not modified)

INSTRUCTION NO. 12
(Plaintiffs' instruction only)

You have heard evidence claiming [name of witness] made statements before this trial while not under oath which were inconsistent with what the witness said in this trial.

Because the witness did not make the earlier statements under oath, you may use them only to help you decide if you believe the witness.

Decide if the earlier statements were made and whether they were inconsistent with testimony given at trial. You may disregard all or any part of the testimony if you find the statements were made and they were inconsistent with the testimony given at trial, but you are not required to do so.

Do not disregard the testimony if other evidence you believe supports it or if you believe it for any other reason.

AUTHORITY

Iowa Civil Jury Instruction 100.13 (not modified)

INSTRUCTION NO. 13
(Plaintiffs' instruction only)

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

Iowa Civil Jury Instruction 100.14 (not modified)

INSTRUCTION NO. 14
(Plaintiffs' instruction only)

You have heard evidence claiming [name of party] made statements before this trial [while under oath] [and] [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 [name of party] had made it under oath during the trial.

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

AUTHORITY

Iowa Civil Jury Instruction 100.15 (not modified)

INSTRUCTION NO. 15
(Plaintiffs' instruction only)

[The witness (name of witness) has admitted he or she] [you have heard evidence claiming that the witness (name of witness)] was convicted of a crime.

You may use that evidence only to help you decide whether to believe the witness and how much weight to give their testimony.

AUTHORITY

Iowa Civil Jury Instruction 100.17 (not modified)

INSTRUCTION NO. 16

Ob-Gyn Specialists, P.C., is a corporation. The fact that a plaintiff or defendant is a corporation should not affect your decision. All person 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

CJI NO. 100.20 (modified)

PRELIMINARY INSTRUCTION NO. 17
(Plaintiffs' instruction only and want read as preliminary instruction)

In a claim for medical negligence, the Plaintiffs must prove the following things:

1. The Defendant was negligent;
2. The Defendant's negligence was a cause of the Plaintiffs' damage; and
3. The amount of damage.

AUTHORITY

Iowa Civil Jury Instruction No. 700.1 (modified)

INSTRUCTION NO. 18A

Plaintiffs claim Dr. Rexroth was at fault for Marcia Engel's injury and Plaintiffs' damages. In order to prevail on this claim, Plaintiffs must prove all of the following propositions:

1. Dr. Rexroth was negligent in one of the following ways:
 - a. Positioning Marcia Engel correctly for surgery;
 - b. Ensuring that Marcia Engel remained in the correct position throughout the surgery; or
 - c. Injuring Marcia Engel's sciatic nerve with a stitch or surgical instrument.
2. The negligence was a cause of Plaintiffs' damages.
3. 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, Plaintiffs are entitled to damages in some amount.

AUTHORITY

Iowa Civil Jury Instruction No. 700.1 and 1600.1 (modified)

INSTRUCTION NO. 18B

Plaintiffs claim that Dr. Jason Rexroth was negligent.

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

1. The standard of care as explained in Instructions ____;
2. That Dr. Rexroth was negligent by failing to meet the standard of care in his care and treatment of Ms. Engel in the following manner _____;
3. That Dr. Rexroth's negligence, if any, was a cause of damage to Plaintiffs;
4. The amount of damage caused to Plaintiffs.

If Plaintiffs have failed to prove any of the propositions, Plaintiffs are not entitled to damages from Dr. Rexroth. If Plaintiffs have proved all of these propositions, Plaintiffs are entitled to damages in some amount from Dr. Rexroth.

AUTHORITY

CJI NO. 1600.1 and 700.1 (modified)

INSTRUCTION NO. 19

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

AUTHORITY

CJI 400.1 (modified)

INSTRUCTION NO. 20
(Plaintiffs' instruction only)

Plaintiffs claim Dr. Rexroth failed to obtain an informed consent from Plaintiff Marcia Engel before performing pelvic organ prolapse surgery.

Plaintiffs must prove all of the following propositions:

1. The existence of material information concerning the pelvic organ prolapse surgery.
2. Material information concerning the pelvic organ prolapse surgery was unknown to Plaintiff Marcia Engel.
3. The Defendant failed to disclose material information concerning the pelvic organ prolapse surgery to Plaintiff Marcia Engel.
4. Disclosure of material information concerning the pelvic organ prolapse surgery would have led a reasonable patient in Plaintiff Marcia Engel's position to choose a different course of treatment.
5. The failure to obtain an informed consent was a cause of Plaintiffs' damage.
6. The nature and 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, Plaintiffs are entitled to damages in some amount. [If an affirmative defense is submitted, delete the second sentence and insert the following: If Plaintiffs have proved all of these propositions, then you will consider the defense of _____ as explained in Instruction No. _____.]

AUTHORITY

Iowa Civil Jury Instruction 1600.10 (modified)

INSTRUCTION NO. 21
(Plaintiffs' instruction only)

Plaintiffs can prove their claim for failure to obtain informed consent even if you conclude that Dr. Rexroth was not negligent as described in Instruction No. ____ above if Plaintiffs prove all of the propositions contained in Instruction No. ____.

AUTHORITY

Andersen v. Khanna, 913 N.W.2d 526, 547-48 (Iowa 2018)

INSTRUCTION NO. 22
(Plaintiffs' instruction only)

A physician is required to obtain an informed consent from a patient prior to performing any procedure upon the patient. To obtain an informed consent, a physician must disclose to the patient all known material information concerning the pelvic organ prolapse surgery that would be significant to a reasonable patient's decision to consent to the procedure. Material information can include the alternatives to the procedure or treatment or information regarding the physician's training and experience with a particular procedure.

AUTHORITY

Iowa Civil Jury Instruction 1600.12 (modified)

Andersen v. Khanna, 913 N.W.2d 526, 541-42 (Iowa 2018) (holding a physician's experience or training or lack thereof can be a basis for a claim of lack of informed consent and that it is for the jury to determine that information concerning training and experience is material to the patient's decision)

Doe v. Johnston, 476 N.W.2d 28, 31-32 (Iowa 1991) ("we believe any kind of truly informed consent must be based on knowledge of reasonably available treatment alternatives. Just as with determining whether a risk is 'material,' the decision about 'reasonable availability' is best left for the jury...")

INSTRUCTION NO. 23
(Plaintiffs' instruction only)

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

Iowa Civil Jury Instruction 1600.2 (not modified)

INSTRUCTION NO. 24A

Duty of Specialist. Physicians who hold themselves out as specialists must use the degree of skill, care and learning ordinarily possessed and exercised by specialists in similar circumstances, not merely the average skill and care of a general practitioner.

A violation of this duty is negligence.

AUTHORITY

Iowa Civil Jury Instruction 1600.3 (not modified)

INSTRUCTION NO. 24B

Physicians who hold themselves out as gynecologists must use the degree of skill, care and learning ordinarily possessed and exercised by gynecologists in similar circumstances.

A violation of this duty is negligence.

AUTHORITY

CJI No. 1600.3 (modified)

INSTRUCTION NO. 25
(Defendants' instruction only)

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 Plaintiffs' injuries only from the opinions of the medical providers who have testified as experts in this case.

AUTHORITY

Llewellyn v. Genesis Med. Ctr., 695 N.W.2d 443 (Table), 2004 WL 2579741, at *5 (Iowa Ct. App. Nov. 15, 2004)

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, 811-12 (Iowa 1976)

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

INSTRUCTION NO. 26
(Defendants' instruction only)

A physicians' conduct must be viewed in light of the circumstances existing at the time of care and treatment and not retrospectively. If a physician 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 nurse was not negligent.

AUTHORITY

Bryant v. Rankin, 332 F. Supp. 319, 322 (S.D. Iowa 1971), *aff'd* 465 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. Sys., 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., Inc., 134 F.3d 1356, 1360 (8th Cir. 1998) (Minn. 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 doctor exercised a reasonable degree of care and skill under the circumstances as they existed, though not as seen in perfect hindsight, then the doctor 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. 27A

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct. There can be more than one cause of an injury or damage.

AUTHORITY

Iowa Civil Jury Instruction 700.3 (modified)

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

Royal Indemnity Co. v. Factory Mut. Ins. Co., 786 N.W. 2d 839, 849-850

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

INSTRUCTION NO. 27B

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

AUTHORITY

CJI 700.3 (not modified)

INSTRUCTION NO. 28
(Defendants' instruction only)

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

AUTHORITY

CJI NO. 700.8 (modified)

INSTRUCTION NO. 29A

If you find Marcia Engel is entitled to recover any damages, you shall consider the following items:

1. Loss of function of the body from the date of injury to the present time.
2. Future loss of function of the body.
3. Physical and mental pain and suffering from the date of injury to the present time.
4. Future physical and mental pain and suffering from the date of the injury.

Loss of use of the body is the inability of a particular part of the body to function in a normal manner.

Physical pain and suffering includes bodily suffering, sensation or discomfort.

Mental pain and suffering includes mental anguish, anxiety, embarrassment, loss of enjoyment of life, a feeling of uselessness or other emotional distress.

The amount you assess for physical and mental pain and suffering and loss of function of the body 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 special verdicts.

Future damages must be reduced to the 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 Plaintiffs for future losses.

AUTHORITY

Iowa Civil Jury Instructions 200.1; 200.10, 200.12; and 200.35B (modified)

Estate of Pearson ex rel. Latta v. Interstate Power & Light Co., 700 N.W.2d 333, 346-47 (Iowa 2005) (for description of the elements of pain and suffering damages)

INSTRUCTION NO. 29B

If you find that Plaintiff Marcia Engel is entitled to recover damages, you shall consider the following items:

1. [insert as appropriate]

The amount you assess for physical and mental pain and suffering in the past and future, and loss of function of the mind and body in the past and future 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 Dr. Jason Rexroth, if any, 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. Similarly, damages awarded to one party shall not be included in any amount awarded to another party.

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

AUTHORITY

CJI NO. 200.1-14 (modified)

Note: further modifications to this proposed Instruction will be necessary after the Court determines what elements of damages, if any, are supported by sufficient evidence to be submitted to the jury

INSTRUCTION NO. 30A

"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 from the injured spouse, nor mental anguish caused by the spouse's injury.

If you find Edward Engel 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 Edward Engel would otherwise have received from the date of injury until the present time.
2. The present value of loss of spousal consortium which Edward Engel would otherwise have received in the future.

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

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

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

The amount you assess for 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 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. [Similarly, damages awarded to one party shall not be included in any amount awarded to another party.]

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 200.31 (modified)

INSTRUCTION NO. 30B

"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 from the injured spouse, nor mental anguish caused by the spouse's injury.

If you find Edward Engel 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 Edward Engel would otherwise have received from the date of injury until the present time.
2. The present value of loss of spousal consortium which Edward Engel would otherwise have received in the future.

Damages for loss of spousal consortium are limited in time to the shorter of the Edward Engel's or Marcia Engel's normal life expectancy.

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

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

The amount you assess for loss of spousal consortium in the past or future 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 damage. Similarly, damages awarded to one party shall not be included in any amount awarded to another party.

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

AUTHORITY

CJI 200.31 (modified)

INSTRUCTION NO. 31
(Defendants' instruction only)

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 Plaintiffs for future losses.

AUTHORITY

CJI NO. 200.35B (not modified)

INSTRUCTION NO. 32

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Marcia Engel is 17.12 additional years. The normal life expectancy of people who are the same age as Edward Engel is 13.32 additional years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Marcia Engel and Edward Engel's health, habits, occupation, and lifestyle, when deciding issues of future damages.

AUTHORITY

CJI NO. 200.37 (modified)

INSTRUCTION NO. 33

In arriving at an item of damage or percentage of fault, you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage or a percentage of fault, and agreeing in advance that the average of those estimates shall be your item of damage or percentage of fault.

AUTHORITY

CJI NO. 200.38 (not modified)

INSTRUCTION NO. 34

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

CJI NO. 100.18 (not modified)

INSTRUCTION NO. 35

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

CJI NO. 100.21 (not modified)

INSTRUCTION NO. 36

I am giving you verdict forms. 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.

AUTHORITY

CJI NO. 300.1 (not modified)

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

IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY

<p>MARCIA ENGEL and EDWARD ENGEL,</p> <p>Plaintiffs,</p> <p>vs.</p> <p>DR. JASON REXROTH and CEDAR RAPIDS OB GYN SPECIALISTS, P.C.,</p> <p>Defendants.</p>	<p>Law No. LACV090408</p> <p>A - PLAINTIFFS' PROPOSED SPECIAL VERDICT FORM</p>
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We find the following verdict on the questions submitted to us:

QUESTION NO. 1: Was Defendant Dr. Jason Rexroth at fault for Marcia Engel's injuries?

Answer "yes" or "no"

YES _____ NO _____

[If your answer to this question is YES, please answer Question No. 2 and proceed to Question No. 3 to determine the amount of Marcia Engel's damages. If your answer to this question is NO, please proceed to Question No. 2.]

QUESTION NO. 2: Did Dr. Jason Rexroth fail to obtain informed consent for the November 2, 2016 pelvic organ prolapse surgery?

Answer "yes" or "no"

YES _____ NO _____

[If your answer to this question is YES, please proceed to Question No. 3 to determine the amount of Plaintiffs' damages. If your answer to this question and to Question No. 1 is NO, please sign the verdict form where indicated.]

QUESTION NO. 3: State the amount of damages sustained by Plaintiffs Marcia and Edward Engel for each of the following items of damage. If the Plaintiffs have failed to prove any item of damage was caused by Defendants, enter 0 for that item.

- | | | |
|----|--|----------|
| 1. | Past Loss of Function of the Body | \$ _____ |
| 2. | Future Loss of Function of the Body | \$ _____ |
| 3. | Past Pain and Suffering | \$ _____ |
| 4. | Future Pain and Suffering | \$ _____ |
| 5. | Edward Engel's Past Loss of Spousal Consortium | \$ _____ |
| 6. | Edward Engel's Future Loss of Spousal Consortium | \$ _____ |

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.

IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY

MARCIA ENGEL and EDWARD
ENGEL,

Plaintiffs,

vs.

DR. JASON REXROTH and CEDAR
RAPIDS OB-GYN SPECIALISTS, P.C.;

Defendants.

Law No. LACV090408

**B - DEFENDANTS' PROPOSED
VERDICT FORM**

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

QUESTION NO. 1: Was Dr. Jason Rexroth negligent?

ANSWER: _____ (Answer "Yes" or "No")

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

QUESTION NO. 2: Was Dr. Jason Rexroth's negligence the cause of any damage to the Plaintiffs?

ANSWER: _____ (Answer "Yes" or "No")

[If your answer is "Yes", proceed to Question No. 3; if your answer is "No", do not answer any more questions.]

QUESTION NO. 3: State the amount of damages sustained by Plaintiffs for each of the following elements of damages. 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 Defendants, enter "0" for that item.

1. _____ \$ _____
2. _____ \$ _____

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

FOREPERSON*

* 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 (6) hours or more of deliberation.