

IN THE DISTRICT COURT OF POTTAWATTAMIE COUNTY, IOWA

CAITI BRADLEY, Individually and as	)	Case No. LACV113905
injured parent of ARIK PUETZ, ETHAN	)	
BRADLEY, MACLAINE BRADLEY, and	)	
CHARLI AYVAH BRADLEY, and	)	
BRANDON BRADLEY husband of Caiti	)	
Bradley,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
PATRICK AHRENS, M.D. and COUNCIL	)	
BLUFFS SURGICAL ASSOCIATES, P.C.,	)	
	)	
Defendants.	)	

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**DEFENDANTS' PATRICK AHRENS, M.D. and COUNCIL BLUFFS SURGICAL  
ASSOCIATES, P.C.'S PROPOSED JURY INSTRUCTIONS**

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

**STATEMENT OF THE CASE**

This case involves a claim seeking damages by the Plaintiffs against the Defendants, Patrick Ahrens, M.D., and Council Bluffs Surgical Associates, P.C. (“Defendants”) as a result of alleged malpractice of Defendants in caring for Plaintiff, Caiti Bradley (“Ms. Bradley”).

The Plaintiffs claim that the Defendant, Patrick Ahrens, was professionally negligent in his performance of a laparoscopic cholecystectomy on Caiti Bradley on January 30, 2014, specifically in failing to accurately identify the biliary ductal system and transecting the common bile duct during her cholecystectomy. The Plaintiffs claim that the Defendant, Patrick Ahrens’ employer, Council Bluffs Surgical Associates, P.C., is liable for its employee’s acts done in the scope of employment. As a result of Defendants alleged negligence, Plaintiff, Ms. Bradley claims she incurred pain and suffering, mental and emotional distress, medical costs, and future medical expenses. The Plaintiff, Brandon Bradley alleges loss of consortium from her spouse. The Plaintiffs, Arik Puetz, Ethan Bradley, MaClaine Bradley and Charli Ayvah Bradley allege loss of parental consortium from their mother. The Plaintiffs seek judgment against the Defendants for their injuries.

The Defendants deny negligence and affirmatively assert that the Defendants met the standard of care in their treatment and care of Ms. Bradley, that any injury or damage is the result of pre-existing conditions or the result of conditions over which these Defendants had no control or responsibility. The Defendants assert that the Plaintiffs’ injuries were not proximately caused by the actions of the Defendants. The Defendants also affirmatively allege that any medical care and treatment provided to Ms. Bradley was in accordance with accepted medical

practice. Finally, the Defendants affirmatively allege that the damages claimed by the Plaintiffs do not exist or do not to the degree alleged by the 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 to you.

Iowa Civil Instruction 100.1

**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 Instruction 100.2

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

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 Instruction 100.18

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

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or 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.

Iowa Civil Instruction 100.21

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

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

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

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

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

Iowa Civil Instruction 100.23



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

**ESSENTIALS FOR RECOVERY**

The Plaintiffs must prove all of the following propositions:

1. The Defendant, Dr. Patrick Ahrens, was negligent in one or more of the following ways:
  - a. Failing to accurately identify the biliary ductal system;
  - b. Failing to accurately identify the common bile duct;
  - c. Transecting the common bile duct; or
  - d. Cut, injuring and damaging the bile ducts
2. The negligence was the cause of damage to the Plaintiffs.
3. The amount of damages to the Plaintiffs.

If the Plaintiffs have failed to prove that any Defendant was negligent in the above enumerated ways, the Plaintiffs are not entitled to damages from that Defendant. If the Plaintiff proves that any Defendant was negligent, the jury may then consider the Defendants' defenses of lack of proximate cause, pre-existing conditions, and acts of others or conditions over which these Defendants had no control as explained in Instruction Nos. \_\_\_\_, \_\_\_\_, and \_\_\_\_.

Iowa Civil Jury Instruction 700.1; 1600.1

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

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

Preponderance of the evidence is evidence that is more convincing than opposing evidence.

Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

Iowa Civil Instruction 100.3

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

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

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted (e.g. answers to interrogatories, matters which judicial notice was taken, 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 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 in writing. Consider that testimony as if it had been given in court.

Iowa Civil Instruction 100.5

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

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

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

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

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

Iowa Civil Instruction 100.9

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

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.

Iowa Civil Instruction 1600.2

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

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.

Iowa Civil Instruction 1600.3

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

A health care professional'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 professional exercised a reasonable degree of care and skill under the circumstances as they existed, though not as seen in perfect hindsight, then the health care professional is not liable for medical negligence.

*Estate of Hagedorn ex rel Hagedorn v. Peterson*, 690 N.W.2d 84 (Iowa 2004)

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

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



**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 Instruction 100.12

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

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

Iowa Civil Instruction 100.11

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

You have heard evidence claiming certain non-party witnesses 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.

Iowa Civil Instruction 100.13

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

You have heard evidence claiming a party made statements before this trial both 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 the party had made it under oath during the trial.

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

Iowa Civil Instruction 100.14

Iowa Civil Instruction 100.15

**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 Instruction 700.3

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

The mere fact that an accident occurred or a party was injured does not mean a party was at fault or that the standard of care was breached.

Iowa Civil Instruction 700.8

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

There is evidence that Caiti Bradley presented to Dr. Ahrens with severe cholecystitis with extensive inflammation in her biliary ductal system, and had previously opted not to have surgery when her symptoms were less emergent. The Defendants are only liable for any damages that you find to be proximately caused by the alleged negligent acts.

*Hagen v. Texaco Refining & Marketing, Inc.*, 526 N.W.2d 531, 537-38 (Iowa 1995)

*Ruden v. Jenk*, 543 N.W.2d 605, 612 (Iowa 1996)

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

The defendants claim the sole proximate cause of the plaintiffs' damages was a condition not under the control of any party, namely, the adherent cystic and bile ducts, and the inflammatory condition of the biliary tract. Sole proximate cause means the only proximate cause. The defendant must prove both of the following propositions:

1. The existence of a condition not under the control of any party occurred.
2. The existence of a condition not under the control of any party was the only proximate cause of plaintiff's damage.

If the defendants have failed to prove either of these propositions, the defendants have failed to prove the defense of sole proximate cause. If the defendants have proved both of these propositions, the defendants have proved the defense of sole proximate cause and you must find the fault of the defendants, if any, was not a proximate cause of plaintiff's damages when you answer the special verdicts.



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

The fact that a defendant 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.

Iowa Civil Instruction 100.20

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

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

Iowa Civil Instruction 730.1

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

If you find that the plaintiffs are entitled to recover damages, you shall consider the evidence of past medical costs, physical and mental pain and suffering, the loss of spousal consortium and the loss of parental consortium.

The amount you assess for physical and mental pain and suffering, spousal consortium, and 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.

Iowa Civil Instruction 200.1

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

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.

Iowa Civil Instruction 200.1

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

Physical and mental pain and suffering includes that from the date of injury to the present time and the present value of any future physical and mental pain and suffering.

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.

Iowa Civil Instruction 200.12

Iowa Civil Instruction 200.13B

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

"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.

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

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

“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 losses have caused a significant disruption or diminution of the parent-child relationship.

Damages for loss of parental consortium are limited in time to Caiti Bradley’s life expectancy.

Iowa Civil Instruction 200.20

**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 Instruction 200.35B



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

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.

Iowa Civil Instruction 200.38

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

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Caiti and Brandon Bailey, and children Arik Puetz, Ethan Bradley, Maclaine Bradley, and Charli Ayvah Bradley. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Caiti Bradley, Brandon Bailey, Arik Puetz, Ethan Bradley, Maclaine Bradley, and Charli Ayvah Bradley's health, habits, occupation, and lifestyle, when deciding issues of future damages.

Iowa Civil Instruction 200.37

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

Occasionally, after a jury retires to the jury room, the members have questions. I have prepared the instructions after carefully considering this case with the parties and lawyers. I have tried to use language which is generally understandable. Usually questions about instructions can be answered by carefully re-reading them. If however, any of you feel it 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 time and deliberation before I can reply. The foreperson shall read my response to the jury. Keep the written question and response and return it to the Court with the verdict.

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

I am giving you five questions in one Verdict Form. By agreement of the parties and with the consent of the Court, you are instructed to return a sealed verdict in this case. 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 Form must be signed by your foreperson.

After deliberating for six hours from \_\_\_\_ o'clock p.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 Form must be signed by all seven jurors who agree.

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

IN THE DISTRICT COURT OF POTTAWATTAMIE COUNTY, IOWA

CAITI BRADLEY, Individually and as )  
injured parent of ARIK PUETZ, ETHAN )  
BRADLEY, MACLAINE BRADLEY, and )  
CHARLI AYVAH BRADLEY, and )  
BRANDON BRADLEY husband of Caiti )  
Bradley, )

Plaintiffs, )

vs. )

PATRICK AHRENS, M.D. and COUNCIL )  
BLUFFS SURGICAL ASSOCIATES, P.C., )

Defendants. )

Case No. LACV113905

**VERDICT FORMS**

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

**Question No. 1:** Was defendant, Dr. Patrick Ahrens, negligent?

*Answer "yes" or "no."*

**ANSWER:**

[If your answer is "no," do not answer Question No. 2.]

**Question No. 2:** Was the fault of defendant, Dr. Patrick Ahrens, a proximate cause of any item of damage to the plaintiffs?

*Answer "yes" or "no."*

**ANSWER:**

[If your answer to either Question No. 1 or No. 2 is "no," then you shall not assign any fault to Dr. Patrick Ahrens or Council Bluffs Surgical Associates, P.C.]

[If your answer to Question No. 1 and No. 2 is "yes", then your assignment of fault shall also apply to Council Bluffs Surgical Associates, P.C.]

(To be answered only if you answered "yes" to Questions 1 and 2) State the amount of damages sustained by the plaintiffs proximately caused by defendants' fault as to each of the following items of damage. Do not take into consideration any reduction of damages due to plaintiffs' fault or failure to mitigate damages. If the plaintiffs have failed to prove any item of damage, or have failed to prove that any item of damage was proximately caused by defendants' fault, enter 0 for that item.

1. Past Medical Costs	\$ _____
3. Pain and Suffering	\$ _____
4. Mental and Emotional Distress	\$ _____
TOTAL \$ _____	

**Question No. 4:** (To be answered only if you answered “yes” to Questions 1, 2, and 3). State the amount of damages sustained by Plaintiff, Brandon Bradley, for the following item of damage that was proximately caused by the fault of Defendants. If the Plaintiff failed to prove this item of damage, or has failed to prove that this item of damage was proximately caused by fault of the Defendants, enter 0 for that item.

1. Loss of Spousal Consortium \$ \_\_\_\_\_

**Question No. 5:** (To be answered only if you answered “yes” to Questions 1, 2, and 3). State the amount of damages sustained by Plaintiffs, Arik Puetz, Ethan Bradley, Maclaine Bradley, and Charli Ayvah Bradley, for the following item of damage that was proximately caused by the fault of Defendants. If the Plaintiffs failed to prove this item of damage, or has failed to prove that this item of damage was proximately caused by fault of the Defendants, enter 0 for that item.

2. Loss of Parental Consortium \$ \_\_\_\_\_

\_\_\_\_\_  
Foreperson

\_\_\_\_\_  
Juror

\_\_\_\_\_  
Juror

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Juror

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Juror

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Juror