

NO. 17-CI-002453

JEFFERSON CIRCUIT COURT  
DIVISION THREE (3)  
JUDGE MITCH PERRY

CAROLYN D. BOERSTE

PLAINTIFF

v.

**JURY INSTRUCTIONS**

UNIVERSITY MEDICAL CENTER, INC. et al.

DEFENDANTS

\*\* \*\* \*

- A. Immediately upon retiring to the jury room you shall select one person to serve as foreperson of the jury.
- B. To make an answer to any question, nine or more jurors must agree. The nine or more who agree on one determination, however, need not be the same jurors who agree on separate determinations. If all twelve jurors agree upon an answer, that answer must be signed only by the foreperson. If nine or more, but less than all jurors agree on any answer, then that answer must be signed by those jurors who agree upon the answer. When you have completed your answers as directed, notify the Bailiff that you are ready to return to the courtroom.

**INSTRUCTION NO. 1 – DEFINITIONS**

**Ordinary Care** – Means such care as the jury would expect an ordinarily prudent person or business engaged in the same type of business to exercise under similar circumstances.

**INSTRUCTION NO. 2 – DUTY OF UNIVERSITY OF LOUISVILLE**

It was the duty of the Defendant, University Medical Center, Inc., d/b/a University of Louisville Hospital, by and through its nursing staff and employees, in their treatment of Carolyn Boerste to exercise that degree of care and skill which is ordinarily exercised by a reasonably competent medical institution, by and through its nursing staff and employees, acting under the same or similar circumstances as those in this case.

University of Louisville Hospital, by and through its nursing staff and employees, have stipulated fault and have agreed that a laparotomy sponge was retained during the aortobifemoral bypass procedure performed on Plaintiff, Carolyn Boerste at the University of Louisville Hospital on March 10, 2011 and that such was a failure of the duty it owed Carolyn Boerste.

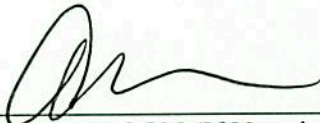
Do you believe from the evidence that the admitted failure of the Defendant, University of Louisville Hospital, by and through its nursing staff and employees, as explained in Instruction No. 2, was a substantial factor in causing the Plaintiff, Carolyn Boerste's injuries?

YES

Or

NO

(Please Circle One)

  
\_\_\_\_\_  
FOREPERSON (If Unanimous)

JURORS SO FINDING (If Not Unanimous):

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

PROCEED TO INSTRUCTION NO. 3.



**INSTRUCTION NO. 3 – DUTY OF MARVIN MORRIS, M.D.**

It was the duty of the Defendant, Marvin Morris, M.D., to exercise that degree of skill and care that is normally expected of a reasonably competent vascular surgeon acting under the same or similar circumstances as those in this case.

Do you believe from the evidence that Marvin Morris, M.D. failed to comply with his duties as explained in Instruction No. 3, and that such failure was a substantial factor in causing the Plaintiff, Carolyn Boerste's injuries?

YES

Or

NO

(Please Circle One)

\_\_\_\_\_  
FOREPERSON (If Unanimous)

JURORS SO FINDING (If Not Unanimous):

Charles K. Gray

Shannon B.

Harley B.

D.L. Tj

Ph. 2.

Kenneth M.

Paula Wilson

John D. Linn

Quinn Linn

\_\_\_\_\_

\_\_\_\_\_

PROCEED TO INSTRUCTION NO. 4.

**INSTRUCTION NO. 4 – DUTY OF MARK A. NUNLEY, M.D.**

It was the duty of the Defendant, Mark A. Nunley, M.D., to exercise that degree of skill and care that is normally expected of a reasonably competent emergency medicine physician acting under the same or similar circumstances as those in this case.

Do you believe from the evidence that Mark A. Nunley, M.D. failed to comply with his duties as explained in Instruction No. 4, and that such failure was a substantial factor in causing the Plaintiff, Carolyn Boerste's injuries?

YES

Or

NO

(Please Circle One)

\_\_\_\_\_  
FOREPERSON (If Unanimous)

JURORS SO FINDING (If Not Unanimous):

Chris R. O'H  
Shannon

Preetha Reddy  
Haley  
D.L. Tyl

Ph: 2.  
Paul Wilson  
Austin Green  
\_\_\_\_\_  
\_\_\_\_\_

PROCEED TO INSTRUCTION NO. 5.



**INSTRUCTION NO. 5 – DUTY OF KIMBERLY BRUMLEVE, M.D.**

It was the duty of the Kimberly Brumleve, M.D. to exercise that degree of skill and care that is normally expected of a reasonably competent primary care physician acting under the same or similar circumstances as those in this case.

Do you believe from the evidence that Kimberly Brumleve, M.D. failed to comply with her duties as explained in Instruction No. 5, and that such failure was a substantial factor in causing the Plaintiff, Carolyn Boerste's injuries?

YES

Or

NO

(Please Circle One)



\_\_\_\_\_  
FOREPERSON (If Unanimous)

JURORS SO FINDING (If Not Unanimous):

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

PROCEED TO INSTRUCTION NO. 6.

**INSTRUCTION NO. 6 – DUTY OF FRANCISCAN HEALTH CARE CENTER**

It was the duty of Franciscan Health Care Center, by and through its employees, in its treatment of Carolyn Boerste to exercise that degree of care and skill which is ordinarily exercised by a reasonably competent nursing and rehabilitation institution acting under the same or similar circumstances as those in this case.


Do you believe from the evidence that Franciscan Health Care Center, by and through its employees, failed to comply with its duties as explained in Instruction No. 6, and that such failure was a substantial factor in causing the Plaintiff, Carolyn Boerste's injuries?

YES

Or

NO

(Please Circle One)

  
\_\_\_\_\_  
FOREPERSON (If Unanimous)

JURORS SO FINDING (If Not Unanimous):

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

PROCEED TO INSTRUCTION NO. 7



**INSTRUCTION NO. 7 – APPORTIONMENT**

If you answered “Yes” to any of the jury instruction questions in Instruction No.’s 2, 3, 4, 5, or 6, you will now determine from the evidence and indicate in the following blank spaces what percentage of the total fault was attributable to each of the parties. If you answered “No” to any of the jury instruction questions in Instruction No.’s 2, 3, 4, 5, or 6, you will enter a zero (“0”) on that corresponding line.

In determining the percentages of fault you should consider both the nature of the conduct of each party at fault and the extent of the causal relation between his or her conduct and the damages claimed.

University of Louisville Hospital  
by and through its nursing staff  
and employees

60 %

Marvin Morris, M.D.

10 %

Mark A. Nunley, M.D.

0 %

Kimberly Brumleve, M.D.

15 %

Franciscan Health Care  
Center

15 %

**TOTAL**

**100%**

  
\_\_\_\_\_  
FOREPERSON (If Unanimous)

JURORS SO FINDING (If Not Unanimous):

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

PROCEED TO INSTRUCTION NO. 8

**INSTRUCTION NO. 8 – DAMAGES**

If you find for Carolyn Boerste, you will now determine from the evidence and award the Plaintiff the following damages you believe she has sustained as a direct result of her injuries. You should not consider fault in your calculations, only the total amount of damages claimed that you believe from the evidence.

- |   |   |
|---|---|
| 1. Past medical expenses                                    | \$ <u>550,000.00</u><br>(not to exceed \$744,539.70)      |
| 2. Future medical expenses                                  | \$ <u>875,000.00</u><br>(not to exceed \$1,860,000.00)    |
| 3. Carolyn Boerste's mental and physical pain and suffering | \$ <u>8,075,000.00</u><br>(not to exceed \$10,000,000.00) |
| <b>TOTAL</b>  | \$ <u>9,500,000.00</u><br>(not to exceed \$12,604,539.70) |

\_\_\_\_\_  
FOREPERSON (If Unanimous)

\_\_\_\_\_  
JURORS SO FINDING (If Not Unanimous):

Chris S. King  
Shannon  
Haley  
Dick  
Ph. 2.0  
Kevin on call

Justin Walker  
Paul Wilson  
John D. Davis

PROCEED TO INSTRUCTION NO. 9.



### **INSTRUCTION NO. 9 – PUNITIVE DAMAGES**

If you find for Carolyn Boerste and award her a sum or sums in damages under Instruction No. 8, and if you are further satisfied by clear and convincing evidence that in failing to comply with the standard of care that University of Louisville Hospital, by and through its nursing staff and employees (“University of Louisville Hospital”), acted with wanton or reckless disregard for the life and/or wellbeing of Carolyn Boerste you may in your discretion award punitive damages against University of Louisville Hospital in addition to the damages awarded under Instruction No. 8.

“Punitive damages” are damages awarded against a Defendant, here University of Louisville Hospital, by and through its nursing staff and employees, for the purpose of punishing the Defendant for its misconduct in this case and deterring it and others from engaging in similar conduct in the future.

Whether you make an award of punitive damages, in addition to the compensatory damages previously awarded in Instruction No. 8, is a matter exclusively within your discretion. If, however, you award punitive damages, in determining the amount thereof, you should consider the following factors:

- (a) The likelihood at the time of such misconduct by Defendant that serious harm would arise from it;
- (b) The degree of Defendant’s awareness of that likelihood;
- (c) The profitability of the misconduct to Defendant;
- (d) The duration of the misconduct and any concealment of it by Defendant; and

If you award punitive damages, they must be fixed with calm discretion and sound reason, and must never be either awarded or fixed in amount, because of any sympathy, or bias, or prejudice with respect to any party to the case.

University of Louisville Hospital  
by and through its nursing staff  
and employees

\$ 1,000,000.00  
(punitive damages not to exceed \$5,000,000)

\_\_\_\_\_  
FOREPERSON (If Unanimous)

JURORS/NO FINDING (If Not Unanimous):

Chris [Signature]  
Hannon [Signature]  
Andy [Signature]  
D.L. [Signature]  
p. 2. 2.  
John [Signature]

Kevin [Signature]  
Paul [Signature]  
John D. [Signature]  
\_\_\_\_\_  
\_\_\_\_\_

These are the instructions of the Court.

A handwritten signature in black ink, appearing to read "Mitch Perry", written over a horizontal line.

HON. MITCH PERRY, JUDGE

Date: 12/13/19