

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION**

SHARON BERTROCHE, M.D.,

Plaintiff,

vs.

MERCY PHYSICIAN ASSOCIATES,  
INC.,

Defendant.

No. 18-CV-59-CJW

**JURY INSTRUCTIONS**

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Members of the Jury:

In the next few moments, I am going to give you instructions about this case and about your duties as jurors. I will also give you additional instructions at a later time. Unless I specifically tell you otherwise, all instructions—both those I give you now and those I give you later—are equally binding on you and must be followed.

The instructions I am about to give you now are in writing and will be available to you in the jury room.

## **INSTRUCTION NO. 1**

You must follow all instructions I give you, whether written or oral. You must not single out some instructions and ignore others, because *all* are important. The written instructions I give you now and at the end of the trial will be available to you in the jury room. I emphasize, however, that written instructions are not more important than oral ones. Again, *all* instructions, whenever given and whether in writing or not, must be followed. In considering these instructions, do not attach any significance to the order of these instructions.

## **INSTRUCTION NO. 2**

Your duty is to decide what the facts are from the evidence. You are allowed to consider the evidence in the light of your own observations, experiences and common sense. After you have decided what the facts are, you will have to apply those facts to the law that I give you in these and in my other instructions. Only you will decide what the facts are. You must follow my instructions, however, whether you agree with them or not.

### **INSTRUCTION NO. 3**

This is a civil case brought by plaintiff, Dr. Sharon Bertroche, against defendant Mercy Physician Associates, or “MPA.” Dr. Bertroche, a female family practice physician, has brought claims against her former employer, Mercy Physician Associates. Dr. Bertroche claims that MPA unlawfully paid her less than it paid male family practice physicians for performing substantially equal work. Dr. Bertroche also claims that MPA failed to timely pay her wages due for work she had performed. Dr. Bertroche additionally claims that MPA breached its employment contract with her. MPA denies that it unlawfully paid Dr. Bertroche less than it paid male family practice physicians for performing substantially equal work, denies that it failed to timely pay her wages due for work she had performed, and denies that it breached its employment contract with her.

Do not consider this summary as proof of any claims or defenses. Rather, it will be your duty to decide from the evidence whether Dr. Bertroche is entitled to a verdict against MPA. Do not let sympathy, or your own likes or dislikes, influence you. The law requires you to come to a just verdict based only on the evidence, your common sense, the law that I give you in my instructions, and nothing else.

Nothing I say or do during this trial is meant to suggest what I think of the evidence or what I think your verdict should be.

The fact that MPA is a corporation and Dr. Bertroche is an individual should not affect your decision. A corporation is considered a “person” under the law and all persons and companies, whether large or small, are entitled to the same fair and conscientious consideration by you, just as any other person would be entitled to.

**(continued)**

**INSTRUCTION NO. 3 (continued)**

A corporation acts only through its agents or employees and any agent or employee of a corporation may bind the corporation by acts and statements made while acting within the scope of the authority delegated to the agent by the corporation, or within the scope of his or her duties as an employee of the corporation.

Each party has several lawyers and company representatives who have been and will be involved in this case. Not all of those persons may appear in this courtroom, or appear at all times in this courtroom, during the course of this trial. You should give no consideration to who does or does not appear for a party in this courtroom at any given time. If a lawyer or representative is not present in, or comes and goes from the courtroom during this trial, it is with the Court's permission.

## **INSTRUCTION NO. 4**

When I use the word “evidence,” I mean the testimony of witnesses; documents and other things I receive as exhibits; any facts that I may tell you the parties have agreed are true; and any other facts that I tell you to accept as true.

Some things are not evidence. I will tell you now what is not evidence:

1. Lawyers’ statements, arguments, questions, and comments are not evidence.

2. Documents or other things that might be in court or talked about, but that I do not receive as exhibits, are not evidence.

3. Objections are not evidence. The parties have a right—and sometimes a duty—to object when they believe something should not be a part of the trial. Do not be influenced one way or the other by objections. If I sustain a party’s objection to a question or an exhibit, that means the law does not allow you to consider that information. When that happens, you must ignore the question, answer, or exhibit, and you must not try to guess what the information might have been.

4. Testimony and exhibits that I strike from the record, or tell you to disregard, are not evidence, and you must not consider them.

5. Anything you see or hear about this case outside the courtroom is not evidence, and you must not consider it.

Also, I might tell you that you can consider a piece of evidence for one purpose only, and not for any other purpose. If that happens, I will tell you for what purpose or purposes you can and cannot consider the evidence.

## **INSTRUCTION NO. 5**

There are two types of evidence from which you may properly find the truth as to the facts of this case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witnesses to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

## **INSTRUCTION NO. 6**

During the trial, I will sometimes need to talk privately with the lawyers. I may talk with them here at the bench while you are in the courtroom, or I may call a recess and let you leave the courtroom while I talk with the lawyers. Either way, please understand that while you are waiting, we are working. We have these conferences to make sure that the trial is proceeding according to the law and to avoid confusion or mistakes. We will do what we can to limit the number of these conferences and to keep them as short as possible.



## **INSTRUCTION NO. 7**

At the end of the trial, you will have to make your decision based on what you recall of the evidence. You will not have a written copy of the testimony for reference during deliberations. Because of this, you have to pay close attention to the testimony and other evidence as it is presented here in the courtroom.

If you wish, however, you may take notes to help you remember what witnesses say. If you do take notes, do not show them to anyone until you and your fellow jurors go to the jury room to decide the case after you have heard and seen all of the evidence. And do not let taking notes distract you from paying close attention to the evidence as it is presented.

During deliberations, in any conflict between your notes, a fellow juror's notes, and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was.

Before the opening statements, we will give each juror an envelope with a pad and pen in it. The envelopes are numbered according to your seat in the jury box. When you leave for breaks or at night, please put your pad and pen in the envelope and leave the envelope on your chair. Your notes will be secured, and they will not be read by anyone. At the end of trial and your deliberations, your notes should be left in the jury room for destruction.

## INSTRUCTION NO. 8

To ensure this trial is fair to both parties, you must follow the following rules:

*First*, do not talk or communicate among yourselves about this case, or about anyone involved with it, until the end of the trial when you go to the jury room to consider your verdict.

*Second*, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

*Third*, when you are outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it until the trial has ended and your verdict has been accepted by me. If someone tries to talk to you about the case during the trial, please report it to the Court Security Officer.

*Fourth*, during the trial, do not talk with or speak to any of the parties, lawyers, or witnesses in this case—not even to pass the time of day. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the case sees you talking to a person from the other side—even if it is simply to pass the time of day—an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party, or witness does not speak to you when you pass in the hall or the like, it is because they are not supposed to talk or visit with you.

*Fifth*, you may need to tell your family, close friends, and other people that you are a part of this trial. You can tell them when you have to be in court, and you can warn them not to ask you about this case, tell you anything they know or think they know about this case, or talk about this case in front of you. But, you must not communicate with anyone or post information in any manner about the parties, witnesses, participants, claims, evidence, or anything else related to this case.

**(continued)**

### **INSTRUCTION NO. 8 (continued)**

You must not tell anyone anything about the jury's deliberations in this case until after I accept your verdict or until I give you specific permission to do so. If you talk about the case with someone besides the other jurors during deliberations, it may appear as if you might already have decided the case or that you might be influenced in your verdict by their opinions. That would not be fair to the parties, and it might result in the verdict being thrown out and the case having to be tried over again. During the trial, while you are in the courthouse and after you leave for the day, do not give any information to anyone, by any means, about this case. For example, do not talk face-to-face or use any electronic device, such as a telephone, cell phone, smart phone, Blackberry, PDA, computer, or computer-like device to discuss this case. Likewise, do not use the Internet or any Internet service; do not text or send instant messages; do not go on or use any Internet or other medium, including an Internet chat room, blog, or other websites such as Facebook, MySpace, YouTube, or Twitter about this case. In other words, do not communicate with anyone about this case—except for the other jurors during deliberations—until I accept your verdict.

*Sixth*, do not do any research—on the Internet, in libraries, newspapers, or otherwise—and do not investigate this case on your own. Do not visit or view any place discussed in this case, and do not use the Internet or other means to search for or view any place discussed in the testimony. Also, do not look up any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge.

**(continued)**

## **INSTRUCTION NO. 8 (continued)**

*Seventh*, do not send, read or otherwise receive any information, including any news stories or Internet articles or blogs that are about the case, or about anyone involved with it. Do not listen to any radio or television reports, or digital streaming, about the case or about anyone involved with it. In fact, until the trial is over, I suggest that you reduce or limit reading or receiving any digital streaming or any newspapers or news journals, and avoid listening to any television or radio newscasts at all. I do not know whether there will be news reports about this case, but if there are, you might accidentally find yourself reading or listening to something about the case. If you want, you can have someone collect information or clip out any stories and set them aside to give to you after the trial is over. I can assure you, however, that by the time you have heard all the evidence in this case, you will know what you need to return a just verdict.

The parties have a right to have you decide their case based only on evidence admitted here in court. If you research, investigate, experiment on your own, or get information from other sources, your verdict might be influenced by inaccurate, incomplete, or misleading information. Witnesses here in court take an oath to tell the truth, and the accuracy of their testimony is tested through cross-examination. All of the parties are entitled to a fair trial and an impartial jury, and you have to conduct yourselves in a way that assures the integrity of the trial process. If you decide a case based on information not admitted in court, you will deny the parties a fair trial. You will deny them justice. Remember, you have taken an oath to follow the rules, and you must do so.

*Eighth*, do not make up your mind during the trial about what your verdict should be. Keep an open mind until after you and your fellow jurors have discussed all of the evidence.

## **INSTRUCTION NO. 9**

The trial will proceed in the following manner:

First, Dr. Bertroche's lawyer may make an opening statement. Next, MPA's lawyer may make an opening statement. An opening statement is not evidence, but it is a summary of the evidence the parties expect you will see and hear during the trial.

Second, after opening statements, Dr. Bertroche's lawyer will then present evidence. MPA's lawyer will have a chance to cross-examine Dr. Bertroche's witnesses. After Dr. Bertroche has finished presenting her case, MPA may present evidence, and Dr. Bertroche's lawyer will have a chance to cross-examine MPA's witnesses.

Third, after you have seen and heard all of the evidence from both sides, the lawyers will make closing arguments that summarize and interpret the evidence. Just as with opening statements, closing arguments are not evidence.

Fourth, after the closing arguments, I will instruct you further on the law.

Finally, after the closing arguments and after my instructions you will go to the jury room to deliberate and decide on your verdict.

## **INSTRUCTION NO. 10**

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

You may consider a witness's intelligence; the opportunity the witness had to see or hear the things testified about; a witness's memory, knowledge, education, and experience; any reasons a witness might have for testifying a certain way; how a witness acted while testifying; whether a witness said something different at another time; whether a witness's testimony sounded reasonable; and whether or to what extent a witness's testimony is consistent with other evidence you believe.

In deciding whether to believe a witness, remember that people sometimes hear or see things differently and sometimes forget things. You will have to decide whether a contradiction is an innocent misrecollection, or a lapse of memory, or an intentional falsehood; that may depend on whether it has to do with an important fact or only a small detail.

### **INSTRUCTION NO. 11**

You may hear testimony from one or more witnesses who, by knowledge, skill, training, education or experience, have become expert in some field. These witnesses may state their opinions on matters in that field and may also state the reasons for their opinion. This testimony should be considered by you just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

## **INSTRUCTION NO. 12**

You will have to decide whether certain facts have been proved by the greater weight of the evidence, also referred to as “the preponderance of the evidence.” A fact has been proved by the preponderance of the evidence if you find that it is more likely true than not true. You decide that by considering all of the evidence and deciding what evidence is more believable. The preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

You have probably heard the phrase “proof beyond a reasonable doubt.” That is a stricter standard than the preponderance of the evidence standard. The proof beyond a reasonable doubt standard applies in criminal cases, but not in this civil case; so put it out of your mind.



### **INSTRUCTION NO. 13**

The parties may introduce charts and summaries into evidence as exhibits. You may use those charts and summaries as evidence, even though the underlying documents and records may not be in the courtroom. The opposing party may, however, challenge the accuracy of those charts and summaries. It is for you to decide how much weight, if any, you will give to them. In making that decision, you should consider all of the testimony you heard about the way they were prepared.

The parties may also introduce charts and summaries in order to help explain the facts disclosed by the books, records, or other underlying evidence in this case. Those charts are used for convenience. They are not themselves evidence or proof of any facts. I will inform you if a chart is being used as a summary and is not itself being offered as evidence and will instruct you to not consider it evidence.

## **INSTRUCTION NO. 14**

Testimony may be presented to you in the form of depositions. A deposition is the recorded answers a witness made under oath to questions asked by lawyers before trial. The deposition testimony to be offered may be recorded in writing and be read to you, or it may be recorded by video and be played for you. You should consider the deposition testimony, and judge its credibility, as you would that of any witness who testifies here in person. If deposition testimony is read by one of the lawyers, you should not place any significance on the manner or tone of voice used to read the witness's answers to you.

Testimony may also be presented to you in the form of live video by witnesses living in remote locations in the United States. When parties agree, and the Court approves it, testimony may be presented in this manner. You should consider the video testimony, and judge its credibility, as you would that of any witness who testifies here in person.

## **INSTRUCTION NO. 15**

For Dr. Bertroche to prevail on her claim that MPA violated the Equal Pay Act, Dr. Bertroche must prove all of the following elements by a preponderance of the evidence:

*First*, MPA employed Dr. Bertroche and one or more members of the opposite sex in positions requiring substantially equal skill, effort, and responsibility; and

*Second*, Dr. Bertroche and one or more members of the opposite sex performed their positions under similar working conditions; and

*Third*, that Dr. Bertroche was paid a lower wage rate than members of the opposite sex who were performing substantially equal work under similar working conditions.

Dr. Bertroche cannot show a lower wage rate by comparing, alone, the difference in total compensation that she and a male physician received.

If Dr. Bertroche fails to prove any one or more of these elements, or if defendant proves that the difference in pay was based on a system which measures earnings by quantity or quality of production in which sex played no part or a differential based on any other factor other than sex, your verdict must be for MPA and you need not proceed further in considering this claim.

**(continued)**

## **INSTRUCTION NO. 15 (continued)**

In determining whether MPA's conduct was improper, you should determine whether Dr. Bertroche and members of the opposite sex performed substantially equal work under similar working conditions and whether Dr. Bertroche was paid a lower wage rate for the work.

"Substantially equal" means equal or nearly equal in the essential aspects of the job. In considering whether two jobs are substantially equal, you should compare the skill, effort, and responsibility required in performing the job. You should consider the actual job requirements, as opposed to job classifications, job descriptions, or job titles. In addition, you should consider the job overall, as opposed to individual segments of the job. You may disregard any superficial differences required to perform the job.

"Similar working conditions" means similar surroundings and hazards. It does not require that work be performed in the same department or that it be performed at the same time.

"Wages" generally includes all forms of compensation made to an employee as remuneration for employment. It includes all compensation irrespective of the time of payment, whether paid periodically or deferred until a later date, and whether called wages, salary, profit sharing, expense account, monthly minimum, bonuses, or similar labels. All are deemed remuneration for employment and therefore wage payments that must be considered.

"Wage rate" refers to the standard by which an employee's wage is determined when the variables that are used to determine the standard are taken into consideration.

## **INSTRUCTION NO. 16**

If you find that Dr. Bertroche proved all three elements of an Equal Pay Act claim by a preponderance of the evidence under Instruction No. 15, you must next consider whether the defendant has proved that the difference in compensation was based on a system which measures earnings by quantity or quality of production in which sex played no part, or a differential based on any other factor other than sex. If you find the defendant has proved that the difference in compensation was based on a system which measures earnings by quantity or quality of production in which sex played no part or a differential based on any other factor other than sex, then your verdict must be for the defendant.

A system that measures earnings by quantity or quality of production refers to one in which two employees receive the same pay rate, but one receives more total compensation because he or she produces more or performs higher quality work. Similarly, an employee who generates more profits can be paid more than an employee of the opposite sex who generates less.

### **INSTRUCTION NO. 17**

For Dr. Bertroche to prevail on her claim under the Iowa Wage Payment Collection Law, Dr. Bertroche must prove all of the following elements by a preponderance of the evidence:

*First*, that the plaintiff was employed by the defendant; and

*Second*, that the defendant failed to pay Dr. Bertroche all wages due on or after November 3, 2014.

If Dr. Bertroche fails to prove any one or more of these elements, your verdict must be for MPA on the Iowa Wage Payment Collection Law claim. If Dr. Bertroche proves both of these elements, then Dr. Bertroche is entitled to recover the amount you find to be due as explained in Instruction No. 19.

**INSTRUCTION NO. 18**

For Dr. Bertroche to prevail on her claim that MPA breached their contract, Dr. Bertroche must prove all of the following elements by a preponderance of the evidence:

*First*, the existence of a contract between Dr. Bertroche and MPA. The parties agree that MPA's written employment agreement with Dr. Bertroche, including exhibits, is a contract, and that this issue is proven and not in dispute.

*Second*, the terms of the contract. Dr. Bertroche and MPA agree that the terms are those set forth in MPA's written employment agreement with Dr. Bertroche, including exhibits, and that this issue is proven and not in dispute.

*Third*, that Dr. Bertroche has performed and done what the terms of the contract required her to do.

*Fourth*, that MPA has not performed and has not done what the terms of the contract required it to do.

*Fifth*, the amount of any damage defendant has caused.

If Dr. Bertroche fails to prove any one or more of these elements, your verdict must be for MPA on Dr. Bertroche's breach of contract claim.

November 4, 2019

Date



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C.J. Williams  
United States District Judge  
Northern District of Iowa

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION**

SHARON BERTROCHE, M.D.,

Plaintiff,

vs.

MERCY PHYSICIAN ASSOCIATES,  
INC.,

Defendant.

No. 18-CV-59-CJW

**FINAL JURY INSTRUCTIONS**

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Members of the jury, the instructions I gave at the beginning of the trial and during the trial are still in effect. Now I am going to give you some additional instructions.

You have to follow all of my instructions—the ones I gave you earlier, as well as those I give you now. Do not single out some instructions and ignore others, because they are all important. You will have copies of all of the instructions, those that I gave you at the beginning of trial and those I am giving you now, in the jury room.



### **INSTRUCTION NO. 19**

During the course of the trial you may have heard reference to requests for admissions. A request for admission is a statement of fact that one party asks the other party to confirm or deny. You must regard as proved any fact admitted by a party.

## **INSTRUCTION NO. 20**

It is my duty to instruct you about damages. By instructing you on damages, I do not mean to suggest what your verdict should be on any claim.

If you find for Dr. Bertroche on one or more of her claims, then you must determine what, if any, damages to award. “Damages” are the amount of money that will fairly and adequately compensate Dr. Bertroche for any injury that you find she suffered as a result of MPA’s conduct. Dr. Bertroche must prove any damages by a preponderance, or greater weight, of the evidence.

If you find for Dr. Bertroche on more than one of her claims, then you must determine what, if any, damages to award on each claim independently. You cannot determine a single award and apportion the amount between two claims. If you find for Dr. Bertroche on more than one claim, you cannot award damages twice for the same harm.

In arriving at an amount of damages to compensate Dr. Bertroche for any damages you find Dr. Bertroche sustained, the amount of damages cannot be based on a desire to penalize MPA or anyone else. In arriving at an amount of damages, you must not engage in speculation, guess, or conjecture, and you must not award any damages as a result of prejudice or sympathy. You cannot determine the amount of damages by taking down each juror’s estimate and agreeing in advance that the average of those estimates will be your damages award.

The measure of damages on Dr. Bertroche’s Equal Pay Act claim is the sum that will compensate Dr. Bertroche for the difference between what Dr. Bertroche was paid and what a member of the opposite sex performing substantially equal work under similar working conditions was paid.

## **INSTRUCTION NO. 20 (continued)**

If you find in favor of the plaintiff on her Equal Pay Act claim under Instruction No. 15, then you must decide whether the defendant's conduct was "willful." The defendant's conduct was willful if it has been proved that either the defendant knew it was violating the Equal Pay Act or that the defendant recklessly disregarded its obligations under the Equal Pay Act. The defendant acted "recklessly" if it was aware of and consciously disregarded a risk that it was violating the Act.

The plaintiff is not required to prove that the defendant intended to compensate her less than it compensated male family practice physicians for performing substantially similar work.

The measure of damages on Dr. Bertroche's breach of contract claim is an amount that would place Dr. Bertroche in as good a position as she would have enjoyed if the Employment Agreement had been performed. In arriving at an amount of damages you must not engage in any speculation, guess, or conjecture.

The nature and terms of the contract determine the damages recoverable. Damages must have some nexus with the breach, meaning that damages recoverable for breach of contract are limited to the losses that plaintiff actually suffered because of the breach and must be related to the nature and purpose of the contract.

## INSTRUCTION NO. 21

In conducting your deliberations and returning your verdicts, there are certain rules you must follow. I shall list those rules for you now.

*First*, you will select a foreperson. That person will preside over your discussions and speak for you here in court.

*Second*, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement, if you can do this without going against what you believe to be the truth, because all jurors have to agree on the verdict. Each of you must come to your own decision, but only after you have considered all of the evidence, discussed the evidence fully with your fellow jurors, and listened to the views of your fellow jurors. Do not be afraid to change your mind if the discussion persuades you that you should. But do not come to a decision just because other jurors think it is right, or just to reach a verdict. Remember you are not for or against any party. You are judges—judges of the facts. Your only job is to study the evidence and decide what is true.

*Third*, if you need to communicate with me during your deliberations, send me a note signed by one or more of you. Give the note to the Court Security Officer and I will answer you as soon as I can, either in writing or here in court. While you are deliberating, do not tell anyone—including me—how many jurors are voting for any side.

*Fourth*, your verdict has to be based only on the evidence and on the law that I have given to you in my instructions. Nothing I have said or done was meant to suggest what I think of the evidence or what I think your verdict should be. The verdict is entirely up to you.

## INSTRUCTION NO. 22

Attached to these instructions you will find the Verdict Forms. The Verdict Forms are simply the written notices of the decisions that you reach in this case. The answers to the Verdict Forms must be the unanimous decisions of the Jury.

You will take the Verdict Forms to the jury room, and when you have completed your deliberations and each of you has agreed to the answers to the Verdict Forms, your foreperson will fill out the Verdict Forms, sign and date them, and advise the Court Security Officer that you are ready to return to the courtroom. Your foreperson should place the signed Verdict Forms in the blue folder, which I will provide you, and then your foreperson will bring the blue folder when returning to the courtroom.

Finally, members of the Jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return the Verdict Forms in accord with the evidence and these instructions.

\_\_\_\_\_  
Date

\_\_\_\_\_  
C.J. Williams  
United States District Judge  
Northern District of Iowa

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION**

SHARON BERTROCHE, M.D.,

Plaintiff,

vs.

MERCY PHYSICIAN ASSOCIATES,  
INC.,

Defendant.

No. 18-CV-59-CJW

**Verdict Form**

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**I. BREACH OF CONTRACT**

1. On the Breach of Contract claim of plaintiff against defendant we find in favor of:

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Plaintiff Sharon Bertroche, M.D. or Defendant Mercy Physician Associates, Inc.

*If you found in favor of plaintiff in question 1, proceed to question 2. Otherwise, proceed to question 3.*

2. What were the resulting damages?

\$ \_\_\_\_\_

*Proceed to Question 3.*

## II. EQUAL PAY ACT

3. Has Dr. Bertroche proved her Equal Pay Act claim against MPA?

\_\_\_\_\_ Yes \_\_\_\_\_ No

*If you answered this question "yes," then proceed to question 4. If you answered this question "no," then do not answer any other questions and proceed to sign the verdict form.*

4. Has Defendant proved that the difference in payment between Plaintiff and persons of a different sex was made pursuant to a system which measures earnings by quantity or quality of production, or on a differential based on any other factor other than sex?

\_\_\_\_\_ Yes \_\_\_\_\_ No

*If you answered No to question 4, proceed to question 5. Otherwise, answer no further questions and proceed to sign the verdict form.*

5. Has the plaintiff proved that the defendant either knew it was violating the Equal Pay Act or acted with reckless disregard of the Equal Pay Act?

\_\_\_\_\_ Yes \_\_\_\_\_ No

*If you answered Yes to question 5, proceed to question 6. Otherwise, answer no further questions and proceed to sign the verdict form.*

6. We find that the plaintiff should be awarded damages for her Equal Pay Act claim in the amount of:

\$ \_\_\_\_\_

Note: The time period for which plaintiff is claiming a violation of the Equal Pay Act is from November 3, 2014, to April 29, 2016.

*Proceed to sign the verdict form.*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Foreperson