

190.03.01 Nursing Home Care Act – Burden of Proof – Contributory Negligence an Issue

The plaintiff has the burden of proving each of the following propositions:

[First, that _____ was injured and sustained damages [while
name of resident
_____ was a resident of _____];
name of resident name of facility];

[Second, that the defendant[s] [was] [were] the [owner] [and] [licensee] of a covered facility];

Third, that the defendant[s] violated the Nursing Home Care Act in one of the ways claimed by the plaintiff as stated to you in these instructions;

Fourth, that the defendant’s violation of the Nursing Home Care Act was a proximate cause of the injury to the plaintiff.

If you find from your consideration of all the evidence that any of these propositions has not been proved, then your verdict shall be for the defendant. On the other hand, if you find from your consideration of all the evidence that each of these propositions has been proved, then you must consider the defendant’s claim that the plaintiff was contributorily negligent.

As to that claim, the defendant has the burden of proving both of the following propositions:

A. That _____ acted or failed to act in one of the ways claimed
name of resident
by the defendant as stated to you in these instructions and that in so acting, or failing to act,
_____ was negligent;
name of resident

B. That _____ negligence was a proximate cause of [his] [her]
name of resident
injury.

If you find from your consideration of all of the evidence that the plaintiff has proved all the propositions required of the plaintiff and that the defendant has not proved both of the propositions required of the defendant, then your verdict shall be for the plaintiff and you shall not reduce plaintiff’s damages.

If you find from your consideration of all the evidence that the defendant has proved both of the propositions required of the defendant, and if you find that _____
name of resident
contributory negligence was more than 50% of the total proximate cause of the injury or damage for which recovery is sought, then your verdict shall be for the defendant.

If you find from your consideration of all the evidence that the defendant has proved both of the propositions required of the defendant, and if you find that _____
name of resident
contributory negligence was 50% or less of the total proximate cause of the injury or damage for which recovery was sought, then your verdict shall be for the plaintiff and you shall reduce the plaintiff's damages in the manner stated to you in these instructions.

Instruction and Notes approved May 2014.

Notes on Use

This instruction should only be utilized if plaintiff's allegations involve negligent or reckless conduct and should be accompanied by IPI 10.01 and IPI 11.01 and/or IPI 14.01 and IPI 14.02 or IPI B14.03. Contributory negligence is not a defense to intentional acts and for this reason this instruction should not be utilized in cases where only intentional acts are alleged by the plaintiff. *Poole v. City of Rolling Meadows*, 167 Ill.2d 41, 656 N.E.2d 768, 212 Ill. Dec. 171 (1995). This instruction will need to be modified if the plaintiff is presenting to the jury theories of recovery that allege both purely intentional acts and acts that amount to negligent or reckless conduct. In such cases, this instruction should be modified so that the jury is instructed that there should be no reduction for those allegations involving intentional conduct.