### IDJI 2.26 – Res Ipsa Loquitur

INSTRUCTION NO. \_\_\_

If the plaintiff proves that the instrumentality or mechanism which caused the injury or damage in this case was under the control or management of the defendant, and further proves that in the normal course of events the injury or damage would not have happened in the absence of negligence, then you may find from these facts that the defendant was negligent in causing the injury or damage in this case.

Comment:

The Supreme Court has clarified LePelley v. Grefenson*,* 101 Idaho 422, 614 P.2d 962 (1980), to clearly state that *res ipsa loquitur* is not available in a medical malpractice case at all; *see*, Kolln v. St. Luke’s Regional Medical Center, 130 Idaho 323, 940 P.2d 1142 (1997).