### IDJI 4.22 – Direct battery

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

On plaintiff’s claim of battery, the plaintiff has the burden of proving each of the following propositions:

1. The defendant intentionally touched the plaintiff;

2. The plaintiff did not permit or consent to the touching;

3. The defendant knew the touching was not permitted; and

4. The touching was unlawful, harmful or offensive.

The intent means only an intent to touch without permission. It is not necessary to prove that the defendant intended the touching to be harmful or offensive.

You will be asked the following question on the jury verdict form: “Did the defendant commit a battery upon the plaintiff, as defined in the instructions?” If the plaintiff proves all of the propositions in this instruction, you should answer the question “Yes.” If any of these propositions has not been proved, you should answer the question “No.”

COMMENT:

The tort of battery is complete upon the completion of the prohibited act and the plaintiff is entitled to at least nominal damages. Bonner v. Roman Catholic Diocese of Boise, 128 Idaho 351, 913 P.2d 567 (1996); Pierson v. Brooks, 115 Idaho 529, 768 P.2d 792 (Ct.App. 1989). Elements of damage should be outlined in a separate instruction.

The intent required is intent to do the act constituting the battery, not intent to do harm to the plaintiff. Neal v. Neal, 125 Idaho 617, 873 P.2d 871 (1994); White v. University of Idaho, 118 Idaho 400, 797 P.2d 108 (1990); Rajspic v. Nationwide Mutual Insurance Co., 110 Idaho 729, 718 P.2d 1167 (1986).

#### Alternative for General Verdict

If the plaintiff proves all of the propositions contained in this instruction, you should consider the issue of damages. If any of the propositions has not been proved, your verdict should be for the defendant.