8.05 HEALTH CARE PROVIDER MALPRACTICE – MATERIAL RISK DEFINED

You have heard expert testimony on the existence, nature, and likelihood of the risk that the plaintiff contends the defendant failed to disclose. You must now determine whether that risk was material. A risk is material if a reasonable person in the patient’s position would have attached significance to the risk in deciding on treatment.

If you determine that the risk was not material, then you must return a verdict for the defendant on this claim. If you determine that the risk was material, then you must determine whether the (insert type of treatment or procedure) was a legal cause of the plaintiff’s harm.

# **Use Note**

Expert testimony is required to establish the existence and nature of the risk and the likelihood of its occurrence. Korman v. Mallin, 858 P.2d 1145, 1149 (Alaska 1993).

## Comment

This instruction is based on Korman v. Mallin, 858 P.2d at 1149, which sets out a two-step process for determining materiality. The first step is establishment of the existence, nature, and likelihood of the risk through expert testimony. The second step is a determination by the trier of fact as to whether the risk would have been significant to a reasonable person in the patient’s position in deciding on treatment. This second step does not require expert testimony.