

Medical Malpractice: Limits on Non-Economic Damages & Related Issues

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January 28, 2022



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What We Will Cover

G.S. § 90-21.19

Limit on Noneconomic Damages

Separating Economic and Noneconomic Damages

Exception to Limit on Noneconomic Damages

Birfurcation of Damages

Constitutional Issues

Limit on Non-economic Damages



G.S. § 90-21.19.

Liability limit for noneconomic damages

(a) Except as otherwise provided in subsection (b) of this section, in any medical malpractice action in which the plaintiff is entitled to an award of noneconomic damages, the total amount of noneconomic damages for which judgment is entered against all defendants shall not exceed five hundred thousand dollars (\$500,000). Judgment shall not be entered against any defendant for noneconomic damages in excess of five hundred thousand dollars (\$500,000) for all claims brought by all parties arising out of the same professional services. On January 1 of every third year, beginning with January 1, 2014, the Office of State Budget and Management shall reset the limitation on damages . . . In the event that any verdict or award of noneconomic damages stated pursuant to G.S. 90-21.19B exceeds these limits, the court shall modify the judgment as necessary to conform to the requirements of this subsection.

G.S. § 90-21.19.

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G.S. § 90-21.19.

Current Adjusted Limit

Except as otherwise provided . . . In any medical malpractice action in which the plaintiff is entitled to an award of noneconomic damages, the total amount . . . shall not exceed . . . (\$562,338).

Judgment shall not be entered against any defendant for noneconomic damages in excess of . . . (\$562,338) for all claims brought by all parties arising out of the same professional services.

On January 1 of every third year, beginning with January 1, 2014, the Office of State Budget and Management shall reset the limitation on damages . . .

G.S. § 90-21.19.

Jury Is Not Informed of the Cap

(d) Any award of damages in a medical malpractice action shall be stated in accordance with G.S. 90-21.19B. If a jury is determining the facts, the court shall not instruct the jury with respect to the limit of noneconomic damages under subsection (a) of this section, and neither the attorney for any party nor a witness shall inform the jury or potential members of the jury panel of that limit.

G.S. § 90-21.19B

Verdicts and awards of damages in medical malpractice actions; for

In any malpractice action, any verdict or award of damages, if supported by the evidence, shall indicate specifically what amount, if any, is awarded for noneconomic damages. If applicable, the court shall instruct the jury on the definition of noneconomic damages under G.S. 90-21.19(b).

Verdict Must:

Separate Economic & Noneconomic Damages

PLAINTIFF, Plaintiff, v. DEFENDANT, Defendant.	SAMPLE VERDICT FORM (for claims filed on or after 1 October 2011)
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We, the jury, by our unanimous verdict, answer the following issues:

ISSUE (For use with N.C.P.I.-Civil 809.142 et seq.)

What amount is the estate of (*name deceased*) entitled to recover for wrongful death?

Economic damages: \$ _____

Non-economic damages: \$ _____

TOTAL DAMAGES: \$ _____

ISSUE (For use with N.C.P.I.-Civil 809.100 et seq.)

What amount is the plaintiff entitled to recover for personal injury?¹

Economic damages: \$ _____

Non-economic damages: \$ _____

TOTAL DAMAGES: \$ _____

[NCPI 809.199 Medical Malpractice-Sample Verdict Form-Damages Issues](#)

Jury Instructions- Final Mandate

burden of proof, if you find by the greater weight of the evidence the amount of economic damages proximately caused by the negligence of the defendant, then, as I have instructed you, it would be your duty to write that amount in the blank space provided for "Economic Damages." If you find by the greater weight of the evidence the amount of non-economic damages proximately caused by the negligence of the defendant, then it would be your duty to write that amount in the blank space provided for "Non-economic Damages." You would then write the total of those two amounts of actual damages on the verdict sheet in the blank space provided for "Total Damages."



Jury Instructions- Final Mandate

809.120 Medical Malpractice Personal Injury Damages—Final Mandate. (Regular)

809.122 Medical Malpractice—Personal Injury Damages—Final Mandate. (Per Diem Argument by Counsel)

809.154 Medical Malpractice Wrongful Death Damages—Final Mandate. (Regular).

809.156 Medical Malpractice Wrongful Death Damages—Final Mandate. (Per Diem Argument by Counsel)

burden of proof, if you find by the greater weight of the evidence the amount of economic damages proximately caused by the negligence of the defendant, then, as I have instructed you, it would be your duty to write that amount in the blank space provided for "Economic Damages." If you find by the greater weight of the evidence the amount of non-economic damages proximately caused by the negligence of the defendant, then it would be your duty to write that amount in the blank space provided for "Non-economic Damages." You would then write the total of those two amounts of actual damages on the verdict sheet in the blank space provided for "Total Damages."

G.S. § 90-21.19.

You Modify Judgment if Necessary

(a) . . . In the event that any verdict or award of noneconomic damages stated pursuant to G.S. 90-21.19B exceeds these limits, the court shall modify the judgment as necessary to conform to the requirements of this subsection.

Issue Number Three:

What amount is the plaintiff, Melode Dickerson, entitled to recovery for personal injury?

Economic damages: \$ 3,242,554.00

Non-economic damages: \$ 4,000,000.00

TOTAL DAMAGES: \$ 7,242,554.00

Issue Number Four:

Did the plaintiff, Melode Dickerson suffer disfigurement, loss of use of part of the body, or permanent injury that was proximately cause by conduct of the defendant, Florias Andrew Morfesis, that was in reckless disregard of the rights of the plaintiff?

ANSWER: No

Issue Number Five:

Did the plaintiff, Melode Dickerson suffer disfigurement, loss of use of part of the body, or permanent injury that was proximately cause by conduct of the defendant, Kelly Van Fossen, that was in reckless disregard of the rights of the plaintiff?

ANSWER: No

Issue Number Six:

What amount is Gregory Dickerson entitled to recover for loss of consortium?

ANSWER: \$300,000.00

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That plaintiff, Melode Dickerson, have and recover of Defendants, jointly and severally, the following:

a. The sum of \$3,242,554.00 as actual economic damages; and,

2. That plaintiff, Melode Dickerson and plaintiff, Gregory Dickerson jointly have and recover of Defendants, jointly and severally, the following:

a. The sum of \$515,000.00 as actual non-economic damages pursuant to N.C. Gen. Stat. § 90-21.19 (2015).

This the 22nd day of October, 2015.



Hon. Gale M. Adams
Superior Court Judge, Presiding

Economic v. Non-economic

G.S. § 90-21.19.

Definition of Noneconomic Damages

(c)(2) Noneconomic damages.--Damages to compensate for pain, suffering, emotional distress, loss of consortium, inconvenience, and any other nonpecuniary compensatory damage. “Noneconomic damages” does not include punitive damages as defined in G.S. 1D-5.

SIDE NOTE:

Punitive Damages Limitation

Chapter 1D. Punitive Damages

- 1D NC ST Refs & Annos
- § 1D–1. Purpose of punitive damages
- § 1D–5. Definitions
- § 1D–10. Scope of the Chapter
- § 1D–15. Standards for recovery of punitive damages
- § 1D–20. Election of extracompensatory remedies
- § 1D–25. Limitation of amount of recovery
- § 1D–26. Driving while impaired; exemption from cap
- § 1D–30. Bifurcated trial
- § 1D–35. Punitive damages awards
- § 1D–40. Jury instructions
- § 1D–45. Frivolous or malicious actions; attorneys' fees
- § 1D–50. Judicial review of award

G.S. § 90-21.19.

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Economic v. Noneconomic?

Be mindful of which types of damages Plaintiff seeks.

PERSONAL INJURY

ECONOMIC DAMAGES

- medical expenses
- loss of earnings
- permanent injury*
- any other type of economic damage supported by the evidence

NONECONOMIC DAMAGES

- pain and suffering
- scars or disfigurement**
- (partial) loss (of use) of part of the body
- loss of consortium
- permanent injury*
- any other type of non-economic damage supported by the evidence

[NCPI 809.100 MEDICAL MALPRACTICE—DAMAGES—PERSONAL INJURY](#)

Economic v. Noneconomic?

Be mindful of which types of damages Plaintiff seeks.

PERSONAL INJURY

ECONOMIC DAMAGES

- medical expenses
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NONECONOMIC DAMAGES

- pain and suffering
- scars or disfigurement**
- (partial) loss (of use) of part of the body
- loss of consortium
- permanent injury*
- any other type of non-economic damage supported by the evidence

[NCPI 809.100 MEDICAL MALPRACTICE—DAMAGES—PERSONAL INJURY](#)

Economic v. Noneconomic?

Personal Injury:

Permanent Injury is further broken down into:

PERMANENT INJURY

ECONOMIC DAMAGES (NCPI 809.115 PERSONAL INJURY DAMAGES— PERMANENT INJURY--NON-ECONOMIC DAMAGES)

- medical expenses
- loss of earnings
- any other type of economic damage supported by the evidence

NONECONOMIC DAMAGES (NCPI 809.114 PERSONAL INJURY DAMAGES—PERMANENT INJURY--ECONOMIC DAMAGES)

- pain and suffering
- scars or disfigurement**
- (partial) loss (of use) of part of the body
- loss of consortium
- any other type of non-economic damage supported by the evidence

Economic v. Noneconomic?

Be mindful of which types of damages Plaintiff seeks.

WRONGFUL DEATH

ECONOMIC DAMAGES

- Expenses for care
- Treatment and hospitalization
- Reasonable funeral expenses
- Present monetary value of deceased to next of kin*
 - See [NCPI 809.150 PRESENT MONETARY VALUE OF DECEASED TO NEXT-OF-KIN—ECONOMIC DAMAGES](#)

NONECONOMIC DAMAGES

- Pain and suffering
- Present monetary value of deceased to next of kin*
 - See [NCPI 809.151 PRESENT MONETARY VALUE OF DECEASED TO NEXT-OF-KIN--NON-ECONOMIC DAMAGES](#)

[NCPI 809.142 DAMAGES--WRONGFUL DEATH GENERALLY](#)

Economic v. Noneconomic?

Be mindful of which types of damages Plaintiff seeks.

WRONGFUL DEATH

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[NCPI 809.142 DAMAGES--WRONGFUL DEATH GENERALLY](#)

Present Monetary Value: Loss of Services?

- Whether any services provided by the deceased may be categorized as economic damages is an open question
- Which services, if any, may be categorized as economic depends on the type and *whether the plaintiff has shown evidence of market value.*

**EXCEPTION to
Limit on
Non-economic
Damages**



G.S. § 90-21.19.

EXCEPTION TO LIABILITY LIMIT!

(b) Notwithstanding subsection (a) of this section, there shall be **no limit on the amount of noneconomic damages** for which judgment may be entered against a defendant if the trier of fact finds both of the following:

(1) The plaintiff suffered **disfigurement, loss of use of part of the body, permanent injury or death.**

(2) The defendant's acts or failures, which are the proximate cause of the plaintiff's injuries, were committed in **reckless disregard of the rights of others, grossly negligent, fraudulent, intentional or with malice.**

Jury Instructions

[NCPI Civil 809.160 No Limit on NonEconomic Damages](#)

[NCPI 809.199 Medical Malpractice-Sample Verdict Form-Damages Issues](#)

Page 2 of 2

N.C.P.I.—Civil 809.199
MEDICAL MALPRACTICE SAMPLE VERDICT FORM—DAMAGES ISSUES.
GENERAL CIVIL VOLUME
REPLACEMENT JUNE 2015

ISSUE (For use with N.C.P.I.-Civil 809.160)²

Did the plaintiff suffer (disfigurement) (loss of use of part of the body) (permanent injury) (death) that [was] [were] proximately caused by conduct of the defendant that was (in reckless disregard of the rights of others) (grossly negligent) (fraudulent) [or] (intentional) (with malice)?³

ANSWER: _____

¹ NOTE WELL: If the plaintiff seeks damages for both wrongful death and personal injury, this issue and the liability issue can be modified to include at the end the phrase "other than injuries that resulted in the death of the deceased."

² NOTE WELL: N.C. Gen. Stat. § 90-21.19(a) imposes a limit on "noneconomic damages." As of January, 1, 2014, that limit is \$515,000. See N.C. Gen. Stat. § 90-21.19(a) (limit on damages for non-economic loss reset every three years to reflect change in Consumer Price Index). This issue is relevant only if the plaintiff seeks entry of judgment that includes non-economic damages greater than \$515,000, and therefore would displace the current limit on non-economic damages.

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a. The sum of \$515,000.00 as actual non-economic damages pursuant to N.C. Gen. Stat. § 90-21.19 (2015).

This the 22nd day of October, 2015.



Hon. Gale M. Adams
Superior Court Judge, Presiding

Rule 42(b)(3) Bifurcation

Bifurcation: Rule 42(b)(3)

(3) Upon motion of any party in an action in tort wherein the plaintiff seeks damages exceeding one hundred fifty thousand dollars (\$150,000), the court shall order separate trials for the issue of liability and the issue of damages, unless the court for good cause shown orders a single trial. Evidence relating solely to compensatory damages shall not be admissible until the trier of fact has determined that the defendant is liable. The same trier of fact that tries the issues relating to liability shall try the issues relating to damages.

Bifurcation: Rule 42(b)(3)

Shall unless good cause not to...

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Bifurcation: Rule 42(b)(3)

(3) ... Evidence relating solely to compensatory damages shall not be admissible until the trier of fact has determined that the defendant is liable. ...

Arguably, ..., whether there is a statutory cap on non-economic damages ... would be tried in the second phase of the case. NCPI 809.160 NOTE 2

Bifurcation: Rule 42(b)(3)

Standards of Review

Plaintiff is not arguing on appeal that the trial court erred in granting a bifurcated trial, which would merit an abuse of discretion review.

Hill v. Boone, 2021-NCCOA-490

[W]e review de novo whether a trial court complied with a statutory mandate, in this case the prohibition in N.C.G.S. § 1A-1, Rule 42(b)(3) of the admission of damages evidence during the liability portion of a bifurcated trial.

Hill v. Boone, 2021-NCCOA-490

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Hill v. Boone, 2021-NCCOA-490

Constitutional Challenges in Other States

****Some Theories****

- Right to Jury
- Open Courts
- Equal Protection
- Takings Clause
- Separation of Powers

N.C. Const. Art. I, § 25.

Right of jury trial in civil cases

In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and shall remain sacred and inviolable.

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The right to have punitive damages assessed is, therefore, not property. The right to recover actual or compensatory damages *is property*.

Rhyne v. K-Mart Corp., 358 N.C. 160, 177 (2004) (finding punitive damages cap did not violate Art. I, § 25).

Three-Judge Panel for Facial Challenges to the Validity of an Act of the General Assembly

N.C. Gen. Stat. § 1-267.1(a1)

“[A]ny facial challenge to the validity of an act of the General Assembly shall be transferred pursuant to G.S. 1A-1, Rule 42(b)(4), to the Superior Court of Wake County and shall be heard and determined by a three-judge panel of the Superior Court of Wake County, organized as provided by subsection (b2) of this section.”

NC Rule of Civil Procedure 42(b)(4)

“. . . the court shall, on its own motion, transfer that portion of the action challenging the validity of the act of the General Assembly to the Superior Court of Wake County for resolution by a three-judge panel **if, after all other matters in the action have been resolved,** a determination as to the facial validity of an act of the General Assembly must be made in order to completely resolve any matters in the case.”

THANK YOU SO MUCH!

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