

N.C.P.I.—Civil 810.00
PERSONAL INJURY DAMAGES—ISSUE AND BURDEN OF PROOF
GENERAL CIVIL VOLUME
JUNE 2012

PERSONAL INJURY DAMAGES—ISSUE AND BURDEN OF PROOF.¹

(For medical malpractice cases filed on or after 1 October 2011, use N.C.P.I.—Civil 809.100.)

The *(state number)* issue reads:

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

If you have answered the *(state number)* issue “Yes” (and the *(state number)* issue “No”) in favor of the plaintiff, then the plaintiff is entitled to recover nominal damages even without proof of actual damages. Nominal damages consist of some trivial amount such as one dollar in recognition of a technical injury to the plaintiff.

The plaintiff may also be entitled to recover actual damages. On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, the amount of actual damages [proximately caused by the negligence] [caused by the wrongful conduct] of the defendant.²

¹ Bifurcation Note: for actions commenced on or after 1 October 2011, N.C. R. Civ. P. 42(b)(3) specifies: “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.” N.C. R. Civ. P. 42(b)(3) (2011) (emphasis added).

² Care should be exercised in choosing the appropriate standard. Negligence cases require proximate cause. Intentional torts generally do not require proximate cause.

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NOTE WELL: If fault is admitted, stipulated or determined by summary judgment, the jury will still need to be instructed on (as appropriate) proximate cause or cause. In negligence cases, give N.C.P.I.—Civil 102.19 (“Proximate Cause—Definition—Multiple Causes”) and, as appropriate, such other causation instructions as are supported by the evidence (e.g., N.C.P.I.—Civil 102.20 to 102.28). In intentional tort cases, give instructions only on cause and, as appropriate, such other causation instructions as are supported by the evidence (e.g., N.C.P.I.—Civil 102.26, 102.27, 102.28 and 102.30).