

809.100 MEDICAL MALPRACTICE - DAMAGES - PERSONAL INJURY
GENERALLY.¹

*(Use for claims filed on or after 1 October 2011. For
claims filed before 1 October 2011, use N.C.P.I.-Civil
810.00 et seq.)*

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 of the defendant.

Actual damages are the fair compensation to be awarded to a
person for any [past] [present] [future] injury proximately caused by the
negligence of another.

In determining the amount of actual damages you award the
plaintiff, if any, you will consider the evidence you have heard as to
economic and non-economic damages. You have heard evidence of the
following type(s) of economic damages:

[medical expenses]

[loss of earnings] [and]

[permanent injury for *(medical expenses) (loss of earnings)*]²

*[state any other type of economic damage supported by the evidence]*³.

You also have heard evidence as to the following type(s) of non-economic damages:

[pain and suffering]

[scars or disfigurement]⁴

[(partial) loss (of use) of part of the body]

[loss of consortium]⁵ [and]

[permanent injury for *(pain and suffering) (scars or disfigurement) (loss (of use) of part of the body) (loss of consortium)*]

[state any other type of non-economic damage supported by the evidence].

Your award of damages will be entered on your verdict sheet in two lump sums, by grouping economic damages (such as [medical expenses] (and) [lost earnings]) on one line on your verdict sheet, and grouping non-economic damages on a separate line on your verdict sheet. Non-economic damages are damages to compensate for pain, suffering, emotional distress, loss of consortium, inconvenience and any other nonpecuniary compensatory damage (, but not punitive damages).⁶

[NOTE WELL: Refer to punitive damages only if the issue of punitive damages has not been bifurcated pursuant to N.C. Gen. Stat. § 1D-30.]

In this case, you may consider only the following categories of non-economic damages: (*specify applicable types*).

I now will explain the law of damages as it relates to the types of Economic Damages about which you have heard evidence.

[Personal Injury Damages- Medical Expenses- N.C.P.I.-Civil 810.04A-D]

[Personal Injury Damages- Loss of Earnings- N.C.P.I.-Civil 810.06]

[Medical Malpractice- Permanent Injury- Economic Damages- N.C.P.I.-Civil 809.114]

[*Any other type of economic damage supported by the evidence*]

So, if you find by the greater weight of the evidence the amount of actual economic damages proximately caused by the negligence of the defendant, then you will enter that amount as one lump sum on the line on your verdict sheet under issue (*state number*) that reads "Economic Damages."

I now will explain the law of damages as it relates to the types of Non-economic Damages about which you have heard evidence.

[Personal Injury Damages- Pain and Suffering- N.C.P.I.-Civil 810.08]

[Personal Injury Damages-Scars or Disfigurement- N.C.P.I.-Civil 810.10]

[Personal Injury Damages- Loss (of Use) of Part of the Body- N.C.P.I.-Civil 810.12]

[Personal Injury Damages- Loss of Consortium- N.C.P.I.-Civil 810.30]

[Medical Malpractice-Permanent Injury- Non-Economic Damages- Civil 809.115]

[Any other type of non-economic damage supported by the evidence].

So, if you find by the greater weight of the evidence the amount of actual non-economic damages proximately caused by the negligence of the defendant, then you will enter that amount as one lump sum on the line on your verdict sheet under issue (*state number*) that reads "Non-Economic Damages."

NOTE WELL: At this point, conclude the personal injury damages instructions by giving one of the following mandates.

[Medical Malpractice- Personal Injury Damages- Final Mandate. (Regular) N.C.P.I.-Civil 809.120]

[Medical Malpractice- Personal Injury Damages- Final Mandate. (*Per Diem* Argument) N.C.P.I.-Civil 809.122]

1 *Bifurcation Note*: 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 *NOTE WELL: Permanent injury can be for either economic injury (medical expenses, earnings) or non-economic injury (pain, disfigurement, loss of use of part of the body). Be mindful of which category of permanent injury damages the plaintiff seeks for*

the purpose of having the verdict specify "what amount, if any, is awarded for noneconomic damages," as required by N.C. Gen. Stat. § 90-21.19B. To achieve this end, giving versions of the permanent injury instruction twice may be necessary: i.e., once for alleged permanent medical expenses and then again for alleged permanent pain and suffering. See N.C.P.I.-Civil 809.114 (permanent injury/economic) and N.C.P.I.-Civil 809.115 (permanent injury/non-economic).

3 Consider whether any other category included is economic or non-economic for the purpose of having the verdict specify "what amount, if any, is awarded for noneconomic damages," as required by N.C. Gen. Stat. § 90-21.19B.

4 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). Non-economic damages are defined as: "Damages to compensate for pain, suffering, emotional distress, loss of consortium, inconvenience, and *any other nonpecuniary compensatory damage*," but not punitive damages. N.C. Gen. Stat. § 90-21.19(c)(2) (emphasis added). Although not expressly listed as such in the statute, scarring and loss of use of part of the body are likely "non-economic damages" that are subject to the limit on non-economic damages, and have been treated that way in these instructions. The jury must not be instructed or told as to the existence of any limit. N.C. Gen. Stat. § 90-21.19(d). There is no limit, however, if BOTH: (1) the plaintiff suffered disfigurement, loss of use of part of the body, permanent injury or death; and (2) the defendant's acts or failures which proximately caused the injuries were committed in reckless disregard of the rights of others, grossly negligent, fraudulent, intentional or with malice. N.C. Gen. Stat. § 90-21.19(b)(1-2). This issue is submitted separately. See N.C.P.I.-Civil 809.160. If the jury verdict exceeds the \$515,000 limit on non-economic damages and the plaintiff does not meet the requirements for exemption from the limit, then the judgment entered should modify the verdict to comply with the \$515,000 limit. N.C. Gen. Stat. § 90-21.19(a).

5 The plaintiff can claim damages for loss of consortium of *his* spouse-provided the plaintiff's spouse does not make that claim. See *Nicholson v. Chatham Hosp.*, 300 N.C. 295, 303-04, 266 S.E.2d 818, 823 (1980); N.C.P.I.-Civil 102.97. However, the amount of damages for loss of consortium in favor of any plaintiff against a defendant must be considered as part of the total amount of non-economic damages arising out of the same professional services, which is subject to the \$515,000 limit on non-economic damages imposed by N.C. Gen. Stat. § 90-21.19(a), if applicable.

6 See N.C. Gen. Stat. § 90-21.19(c)(2) defines "noneconomic damages." N.C. Gen. Stat. § 90-21.19B states: "If applicable, the court shall instruct the jury on the definition of noneconomic damages under N.C. Gen. Stat. § 90-21.19(b)." In the rare case in which the plaintiff does not seek any non-economic damages, references to non-economic damages throughout this instruction may be deleted.