

809.142 MEDICAL MALPRACTICE - DAMAGES - WRONGFUL DEATH
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
810.42 et seq.)*

The *(state number)* issue reads:

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

If you have answered the *(state number)* issue “Yes” (and the
(state number) issue “No”) in favor of the estate, then the estate 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 the technical damages incurred by the estate.

The estate may also be entitled to recover actual damages. On this
issue, the burden of proof is on the estate. This means the estate 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 the
estate for the death of *(name deceased)* proximately caused by the
negligence of the defendant. In determining the amount of actual
damages², you will consider the evidence you have heard as to economic
damages and non-economic damages. In this case, you have heard
evidence of the following type(s) of economic damages:

[expenses for care, treatment and hospitalization incident to the
injury resulting in death]

[reasonable funeral expenses] [and]

[the present monetary value of (*name deceased*) to *his* next-of-kin (from *his* net income) (from services that *he* provided for which you find a market value)]³.

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

[pain and suffering]⁴ [and]

[the present monetary value of (*name deceased*) to *his* next-of-kin (from *his* society, companionship, comfort, guidance, kindly offices, advice, protection, care or assistance) (from services, that *he* provided to *his* next-of-kin for which you do not find a market value)].

Your award of damages will be entered on your verdict sheet in two lump sums, by grouping economic damages (such as [medical expenses] [funeral expenses] [lost income]⁵ [lost value of services for which you find a market value]) 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: [pain and suffering] [the present monetary value of (*name deceased*) to *his* next-of-kin (from *his* society, companionship, comfort, guidance, kindly offices, advice, protection, care or assistance) [and] (from services that *he* provided for which you do not find a market value)].

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

[Wrongful Death Damages- Medical Expenses- N.C.P.I.-Civil 810.44A, 810.44B, 810.44C, 810.44D]

[Wrongful Death Damages- Funeral Expenses- N.C.P.I.-Civil 810.48A, 810.48B, 810.48C, 810.48D]

[Medical Malpractice- Wrongful Death Damages- Present Monetary Value Next-of-Kin- Economic Elements- N.C.P.I.-Civil 809.150]

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

[Wrongful Death Damages- Pain and Suffering- N.C.P.I.-Civil 810.48]

[Medical Malpractice- Wrongful Death Damages- Present Monetary Value Next-of-Kin-Non-Economic Elements- N.C.P.I.-Civil 809.151]

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 wrongful death medical malpractice damages instructions by giving one of the following final mandates.

[Medical Malpractice- Wrongful Death Damages- Final Mandate.
(Regular)- N.C.P.I.-Civil 809.154]

[Medical Malpractice- Wrongful Death Damages- Final Mandate. (*Per Diem*)- N.C.P.I.-Civil 809.156]

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 N.C. Gen. Stat. § 28A-18-2(b)(1)-(4) specifies the types of damages recoverable in wrongful death actions: a) medical expenses; b) funeral expenses; c) present monetary value of deceased to next-of-kin; and 4) pain and suffering.

3 *NOTE WELL: Damages for the present monetary value of the deceased comprises a hybrid of economic and non-economic damages. The verdict must specify "what amount, if any, is awarded for non-economic damages" as required by N.C. Gen. Stat. § 90-21.19B. Thus, the Court must instruct separately on those elements of damages that are economic (N.C.P.I.-Civil 809.150-Medical Malpractice Wrongful Death-Present Monetary Value of Deceased to Next-of-Kin-Economic) and those that are non-economic (N.C.P.I.-Civil 809.151-Medical Malpractice Wrongful Death-Present Monetary Value of Deceased to Next-of-Kin-Non-Economic). Whether any "services" by the deceased may be categorized as economic damages is an open question. See N.C.P.I.-Civil 809.150 (Note). If the Court is persuaded that the law and evidence warrant such a jury instruction, then the pattern jury instructions instructing the jury that some services provided by the deceased can be considered as "economic damages" provide a mechanism for doing so. See, e.g., id.*

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). 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

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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). These issues are to be submitted separately, as in 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 "Lost income" and "Lost value of services" are intended to capture portions of the Present Monetary Value of Deceased to Next-of-Kin where there is evidence of a market value.

6 See N.C. Gen. Stat. § 90-21.19(c)(2). 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.