

N.C.P.I.-Civil. 809.154
MEDICAL MALPRACTICE WRONGFUL DEATH DAMAGES - FINAL MANDATE
(REGULAR).
GENERAL CIVIL VOLUME
JUNE 2012

809.154 MEDICAL MALPRACTICE WRONGFUL DEATH DAMAGES - FINAL
MANDATE (REGULAR).

*(Use for medical malpractice wrongful death claims
filed on or after 1 October 2011. If a per diem
argument is made, use N.C.P.I.-Civil 809.156. For all
wrongful death claims filed before 1 October 2011, use
N.C.P.I.-Civil 810.54 or 810.56.)*

I instruct you that your findings on the (*state number*) issue must be based on the evidence and the rules of law I have given you with respect to the measure of damages.¹ You are not required to accept the amount of damages suggested by the parties or their attorneys.

Your award must be fair and just. You should remember that you are not seeking to punish either party, and you are not awarding or withholding anything on the basis of sympathy or pity.

Finally, as to the (*state number*) issue on which the estate has the 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 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."

If, on the other hand, you fail to find any amount of actual damages, then it would be your duty to write a nominal sum such as "One Dollar" in the blank space on the issue sheet for "Total Damages."

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1. Damages may not be based on sheer speculation, see *Stetson v. Easterling*, 274 N.C. 152, 161 S.E.2d 531 (1968) and *Gay v. Thompson*, 266 N.C. 394, 146 S.E.2d 425 (1966), but, by necessity, some speculation is necessary to determine damages, see *Beck v. Carolina Power & Light Co.*, 57 N.C. App. 373, 291 S.E.2d 897, *aff'd*, 307 N.C. 267, 297 S.E.2d 397 (1982), and this is acceptable as long as there are sufficient facts to support necessary speculation, *Gay, supra*, and *Beck, supra*.