

REASONABLE LIMITATION OF NONECONOMIC DAMAGES IN MEDICAL MALPRACTICE ACTIONS

In North Carolina a plaintiff's noneconomic damages include "all damages to compensate mental anguish; emotional distress; emotional pain and suffering; loss of consortium; loss of society, companionship, comfort, guidance, kindly offices or advice; pain and suffering; inconvenience; disfigurement; physical impairment; and any other nonpecuniary damages."

Unlike economic damages, such as past and future medical expenses, lost wages and lost earning capacity, noneconomic damages are inherently subjective and cannot be objectively quantified. For example, jurors can be presented a bill for medical services a plaintiff was forced to obtain as a result of an injury. Those same jurors cannot be presented a bill documenting the cost of a plaintiff's emotional pain and suffering.

Due to the uncertain nature of noneconomic damages, jury awards of noneconomic damages are extremely unpredictable. Uncertainty and unpredictability in jury awards are undesirable for all businesses, but are especially unattractive to those insurance companies who write medical malpractice insurance in North Carolina and to the health care providers who pay critically high premiums for medical malpractice insurance.

Nonetheless, current North Carolina law establishes no ceiling above which a jury's award for noneconomic damages cannot go. Twenty-three (23) other states have enacted legislation to limit the award of noneconomic damages. Such legislation reins in runaway verdicts because laws limiting the amount a jury can award in noneconomic damages limit the subjective, unpredictable kind of damages.

By limiting those damages that are uncertain and incapable of calculation, laws limiting the amount a jury can award in noneconomic damages make sure that jury awards are reasonable, rational and more in line with the amount of damages that can be proved. For these reasons, North Carolina law should be changed to limit the total amount of all noneconomic damages in medical malpractice actions to two hundred fifty thousand dollars (\$250,000) per plaintiff.

North Carolina's plaintiff patients would still be able to recover one hundred percent of their economic damages under the proposed change. Laws limiting the amount a jury can award in noneconomic damages do not prevent plaintiffs from receiving full compensation for economic damages, as those damages have sufficient certainty.

However, if North Carolina's law is changed to limit noneconomic damages, health care providers would no longer have to pay premiums that insurers calculated based upon the ever-present, current risk that a jury will award astronomical amounts for subjective damages like mental anguish, emotional distress or loss of consortium.