

PERIODIC PAYMENTS OF FUTURE ECONOMIC DAMAGES IN MEDICAL MALPRACTICE ACTIONS

“Future economic damages” are damages for future medical treatment, care or custody, loss of future earnings, loss of bodily function, and any other pecuniary damages of the plaintiff following the date of the judgment. Essentially, the future economic damages category consists of costs and losses that a plaintiff has not incurred yet, but that a jury predicts the plaintiff will incur as the plaintiff continues to live with the consequences of a negligently caused injury.

Under current North Carolina law, the full amount of a judgment is due to be paid to the plaintiff upon execution. This includes the portion of a judgment that is made up of future economic damages. Therefore, current law requires a defendant health care provider to pay for costs and losses have not been incurred as of the time the health care provider is required to make payment.

North Carolina law should be changed to allow for payment of future economic damages to be made periodically in medical malpractice actions, rather than all at once. Plaintiff patients would still receive full compensation for their future economic damages, but health care providers would be able to finance periodic payments of future economic damages with smaller amounts of present day dollars.

Under the proposed change, a health care provider who chooses to pay future economic damages through periodic payments would be required to establish a trust fund or purchase an annuity sufficient to make the periodic payments. This guarantees that the full amount of money that the jury deemed adequate compensation for future economic damages will be there if the plaintiff patient does suffer the predicted costs and losses.

However, the proposed change would also account for those situations in which the plaintiff patient does not suffer the predicted costs and losses at all. By definition, future economic damages are damages that a jury does not expect to occur until the future, *if ever*. Thus, as enacted presently, North Carolina law requires a health care provider to pay for damages that might never occur.

Under the proposed law, a health care provider’s obligation to make periodic payments would terminate upon the death of the plaintiff. To the extent that the jury overestimated the plaintiff’s lifespan and awarded more future economic damages than the plaintiff actually incurred in the plaintiff’s lifetime, the health care provider would be relieved of the obligation to make payments for damages that never arose.