



## WHAT STATES HAVE STATUTORY LIMITATIONS ON DAMAGES IN PERSONAL INJURY OR WRONGFUL DEATH ACTIONS?

**THE FOLLOWING STATES HAVE PLACED LIMITS ON EITHER NON-ECONOMIC DAMAGES, THE TOTAL AMOUNT RECOVERABLE AGAINST A HEALTHCARE PROVIDER OR INSTITUTION, OR PUNITIVE DAMAGES IN PERSONAL INJURY OR WRONGFUL DEATH ACTIONS:**

**Alaska:** ALASKA STAT. §09.55.549 (2007) limits total non-economic damages based on wrongful death or personal injury to \$250,000. If the damages include loss of consortium, the total recoverable damages are \$400,000.

**Arkansas:** ARK. CODE ANN. §16-55-208 (2007): In calculating the punitive damages, plaintiff may receive no more than the greater of \$250,000 or three times the amount of compensatory damages, not to exceed \$1 million (adjusted for inflation).

**California:** CA. CIV. CODE §3333.2 (2007) limits non-economic damages to \$250,000. This cap has been interpreted to extend to past and future non-economic damages reduced to a lump sum. *Salgado v. County of Los Angeles*, 967 P.2d 585 (1998).

**Colorado:** COLO. REV. ST. §13-64-302 (2007) limits all damages against healthcare providers to \$1 million and non-economic damages to \$250,000.

**Florida:** FLA. ST. §766.207 (2007) limits non-economic damages to \$250,000.

**Georgia:** GA. CODE ANN. §51-12-5.1 (2007) limits punitive damages to \$250,000 except in cases where the defendant acted intentionally or under the influence of drugs or alcohol, and here no limitations on punitive damages exist. Under §51-13-1, non-economic damages are limited to \$350,000 per medical provider or a single medical facility; if there is more than one medical facility, the total damages against multiple facilities may not exceed \$700,000.

**Hawaii:** HAW. REV. STAT. §663-8.7 (2007) caps pain and suffering damages at \$375,000.

**Idaho:** IDAHO CODE ANN. §6-1603 (2007) places a maximum \$250,000 limitation on non-economic damages (adjusted for inflation). Under §6-1604, punitive damages are limited to the greater of \$250,000 or three times the amount of compensatory damages awarded.

**Indiana:** IND. CODE §34-18-14-3 (2007) limits the total recovery of damages in wrongful death actions to \$1.25 million and the total portion of damages recoverable from a healthcare provider to \$250,000 if the act of malpractice occurs after June 30, 1999. Under IND. CODE §34-51-3-4 (2007), the plaintiff may recover maximum punitive damages of the greater of three times the amount of compensatory damages or \$50,000.

**Kansas:** KAN. STAT. ANN. §60-3701 (2007) limits exemplary and punitive damages to the lesser of \$5 million or defendant's highest gross annual income as calculated in the previous five years.

**Louisiana:** LA. REV. STAT. ANN. §40:1299.42 (2007) placed a statutory limitation on all medical damages recoverable for physical injury or wrongful death to \$500,000. *But see Arrington v. Galen-Med, Inc.*, 970 So.2d 540 (La. Ct. App. 2007) (constitutional challenge pending).

**Maine:** ME. REV. STAT. ANN. tit. 18-A, §2-804 (1997) caps non-economic damages for wrongful death at \$150,000, and punitive damages are limited to \$75,000.

**Maryland:** MD. CODE ANN., Cts. & Jud. Proc. §11-108 (1997) limits non-economic damages for any personal injury cause of action for medical malpractice to \$710,000 (increasing by \$15,000 every October 1). The statute applies to wrongful death cases as well as personal injury, with the total damages recovered by all beneficiaries limited to 150% of the cap.

**Massachusetts:** MASS. GEN. LAWS Ch. 231, §60H (2007) limits punitive damages to \$500,000 except for certain situations including permanent bodily loss or impairment or substantial disfigurement.

**Michigan:** MICH. COM. LAWS §600.1483 (2007) caps non-economic damages recoverable in a medical malpractice action at \$280,000 for all the plaintiffs unless a specific situation is present (brain or spinal injury, permanent cognitive impairment, etc.).

**Mississippi:** MISS. CODE ANN. §11-1-60 (2007) limits any non-economic damages received in a suit filed after September 1, 2004, to \$1 million; any suit filed before September 1, 2004, will have non-economic damages limited to \$500,000. MISS. CODE ANN. §11-1-65 (2007) caps punitive damages on a sliding-scale method, with the cap decreasing as defendant's net worth decreases.

**Missouri:** MO. REV. STAT. §538.210 (1988) provides a statutory limit, adjusted every January 1, on a claimant's recovery of non-economic damages in any medical malpractice action.

**Montana:** MONT. CODE ANN. §25-9-411 (2007) caps non-economic damages per plaintiff at \$250,000 based on a single incident of malpractice against one or more healthcare providers. MONT. CODE ANN. §27-1-220 (2007) limits punitive damages to \$10 million or 3% of the defendant's net worth, whichever is less; however, this limitation does not apply in class action lawsuits.

**Nevada:** NEV. REV. STAT. §41A.035 (2007) caps non-economic damages at \$350,000 in injury or wrongful death actions against a healthcare provider. NEV. REV. STAT. §42.005 (2007) limits exemplary and punitive damages to three times the amount of recovered compensatory damages if those damages are greater than \$100,000, or if the compensatory damages are less than \$100,000, the exemplary and punitive damages awarded is capped at \$300,000.

**New Jersey:** N.J. STAT. ANN. §2A:15-5.14 (2007) limits the amount of punitive damages recoverable to either five times the amount of awarded compensatory damages or \$350,000, whichever is greater.

**New Mexico:** N.M. STAT. §41-5-6 (2007) limits the aggregate recoverable amount for all persons incident to injury or death as a result of malpractice to \$600,000. This amount, however, does not include punitive damages and medical care and related benefits. An individual healthcare provider's liability is limited to \$200,000.

**North Carolina:** N.C. GEN. STAT. §1D-25 (2007) caps punitive damages at the greater of \$250,000 or three times the amount of compensatory damages.

North Dakota: N.D. CENT. CODE §32-42-02 (2007) places total limitations of \$500,000 on punitive damages awards in physical injury or wrongful death actions against healthcare providers, regardless of the number of defendants or causes of action. N.D. CENT. CODE §26.1-14-11 (2007) places additional limitations concerning insured parties: If the insured has coverage with a limit of at least \$500,000, then the insured is not liable for damages in excess of these limits.

Ohio: OHIO REV. CODE ANN. §2323.43 (2008) limits non-economic damages to the greater of \$250,000 or three times the amount of economic loss. The statute also places a total cap of \$350,000 for each plaintiff or \$500,000 for each occurrence.

Oklahoma: OKLA. STAT. §1-1708.1F (2007) caps non-economic damages in medical malpractice actions, except wrongful death actions, to \$300,000, regardless of the number of defendants or number of actions brought.

Pennsylvania: 40 PA. STAT. ANN. §1303.505 (2007) limits punitive damages against a physician to 200% of compensatory damages, except in cases of intentional misconduct.

South Carolina: S.C. CODE ANN. §15-32-220 (2007) limits non-economic damages to \$350,000 per claimant for claims against a single healthcare provider. If the claim is against multiple healthcare providers, non-economic damages are limited to a total of \$1,050,000.

South Dakota: S.D. CODIFIED LAWS §21-3-11 (2007) limits non-economic damages in medical malpractice actions to \$500,000.

Texas: TEX. CIV. PRAC. & REM. CODE ANN. §74.301 (2007) limits non-economic damages in medical malpractice claims against healthcare providers and institutions to a total of \$250,000 per claimant, regardless of the number of actions asserted or the number of healthcare providers/physicians named. TEX. CIV. PRAC. & REM. §74.303 (2007) limits both economic and non-economic damages, including exemplary damages, to a total \$500,000, adjusted for inflation, with the addition of any necessary medical or custodial care costs in wrongful death actions. TEX. CIV. PRAC. & REM. CODE ANN. §41.008 (2007) limits exemplary damages to greater of: (1) two times the amount of economic damages plus an amount equal to non-economic damages; or, (2) \$200,000.

Utah: UTAH CODE ANN. §78-14-7.1 (2007) caps non-economic damages in medical malpractice actions at \$250,000.

Virginia: VA. CODE ANN. §8.01-581.15 (2008) places a cap on all damages in medical malpractice cases. For actions accruing before August 1, 1999, the cap is \$1 million; for actions accruing between August 1, 1999, and July 1, 2000, the cap is \$1.5 million; and for actions accruing after that date, the cap is increased annually every July 1 by \$50,000; for 2007, the increase is \$75,000; and the final increase will be \$75,000 on July 1, 2008 (bringing the cap to \$1.95 million).

West Virginia: W. VA. CODE §55-7B-8 (1994) limits non-economic damages to \$1 million in a medical malpractice action brought against a healthcare provider.

Wisconsin: WIS. STAT. ANN. §893.55 (1997) limits non-economic damages in any medical malpractice case, except wrongful death actions, from all healthcare providers to \$350,000, adjusted annually for inflation. WIS. STAT. ANN. §895.04 (1997) limits non-economic damages in wrongful death actions to \$350,000 for the death of an adult and \$500,000 for the death of a minor.

The following states have attempted to limit damages. In each case, the legislation was struck down when the state supreme court found it to be unconstitutional:

Alabama: ALA. CODE §6-5-547 (2007) provides an absolute limit to wrongful death actions against a healthcare provider to \$1 million. In *Mutual Assurance, Inc., v. Schulte*, 970 So.2d 292, 293 (Ala. 2007), however, the Supreme Court of Alabama held this provision violated the right to a jury trial as provided in the Alabama Constitution.

Illinois: Although 735 ILL. COMP. ST. 5/2-1115.1 (1997) limited non-economic damages, the Illinois Supreme Court held this provision arbitrary and not rationally related to the legislative interest in reducing state-wide tort litigation costs.<sup>1</sup> The Court also found the damages limitation violated the separation of powers doctrine by undercutting the judiciary's responsibility to reduce excessive judgments and by unduly expanding the remitter doctrine.<sup>2</sup>

New Hampshire: N.H. REV. STAT. ANN. §507-C:7 (2007) placed a limit of \$250,000 on non-economic damages; however, the Supreme Court of New Hampshire held this limitation unconstitutional in *Carson v. Maurer*, 424 A.2d 825 (N.H. 1980). The court found the limitation violated equal protection guarantees because it precluded only the most seriously injured victims of medical negligence from receiving full damages for their injuries.

Oregon: OR. REV. STAT. §31.710 (2007) was enacted to place a \$500,000 monetary cap on non-economic damages recoverable under tort actions; however, in *Lakin v. Senco Products, Inc.*, 987 P.2d 463 (Or. 1999), the Supreme Court of Oregon found this cap unconstitutional because it infringed on factual issues left to the jury and thus violated the right to a trial by jury as guaranteed by the Oregon Constitution.

Washington: WASH. REV. CODE ANN. §4.56.250 (1988) placed a limitation on non-economic damages; however, in *Sofie v. Fireboard Corp.*, 771 P.2d 711 (Wa. 1980), the Supreme Court of Washington held that the statute was an unconstitutional violation of the right to trial by jury.

The following states have placed no limitations on damages:

Arizona  
Connecticut  
Delaware  
Iowa  
Kentucky  
Minnesota  
Nebraska  
New York  
Tennessee  
Vermont  
Wyoming

<sup>1</sup> *Best v. Taylor Machine Works*, 689 N.E.2d 1057 (Ill. 1997).

<sup>2</sup> *Id.* at 1076-80.