



ENDING THE CONFUSION: *Economic, Non-Economic and Punitive Damages*

A great deal of debate has surrounded a medical liability reform provision that limits non-economic damages to \$250,000. Numerous misrepresentations have been made caused by the confusion over the difference between punitive, non-economic and economic damages. The following will help clarify the distinctions between the different types of damages surrounding health care liability claims.

DEFINITIONS

Economic damages refers to compensation for objectively verifiable monetary losses such as past and future medical expenses, loss of past and future earnings, loss of use of property, costs of repair or replacement, the economic value of domestic services, loss of employment or business opportunities.

Non-economic damages refers to compensation for subjective, non-monetary losses such as pain, suffering, inconvenience, emotional distress, loss of society and companionship, loss of consortium, and loss of enjoyment of life.

Punitive damages refers to damages awarded for the purpose of punishment -- to deter intentional or reckless behavior or actions motivated by malice. Punitive damages are *neither economic nor non-economic damages*, as they are not awarded to compensate any loss.

HCLA'S PRINCIPLES FOR REFORM

Injured Patients are Entitled to Full and Unlimited Compensation for All Economic Losses.

Every person is entitled to receive health care services from a physician or other provider that are at least equal to the “community standard of care”. If the patient is injured by substandard care and suffers economic losses, the patient is entitled to recover those losses completely.

In cases where a patient has been severely disabled as the result of a health care injury, a “typical” award for lost wages, health care expenses, rehabilitation costs or other economic losses alone can have a present value of five to eight million dollars.

Non-Economic Damages Reform will Ensure Fair, but Not Excessive Compensation

Almost everyone in society – providers, patients, lawyers, judges – agrees that losses due to substandard care should be compensated ... but not excessively. Health care liability claims are

known to involve extremely high stakes. Seventy percent of such claims are won by the defendant, dismissed or dropped because they have no merit, but when juries do award damages they give health care injury claimants significantly more for their “pain and suffering” than persons who have incurred the same kinds of injuries in car accidents or other settings.

All consumers of health care end up paying the cost of these awards through their health insurance premiums or from out-of-pocket charges. Without a ceiling on non-quantifiable losses, a domino effect occurs. Medical liability insurance premiums and medical product liability costs skyrocket. Physicians and other providers are forced to drop insurance coverage, or, in order to minimize the risk, stop performing high-risk procedures such as delivering babies. And access to care diminishes because physicians, hospitals, pharmaceutical sellers and medical device manufacturers limit the scope of their activity to “low risk” services and products.

A \$250,000 cap on non-economic loss makes the insurance risk manageable; stabilizes the insurance market and provides for affordable coverage; assures that health care providers will buy coverage; and assures that a pool of money is available through the insurance mechanism to compensate injured patients fully for their economic losses.