

78B-3-414 Periodic payment of future damages in malpractice actions.

- (1) In any malpractice action against a health care provider, as defined in Section 78B-3-403, the court shall, at the request of any party, order that future damages which equal or exceed \$100,000, less amounts payable for attorney fees and other costs which are due at the time of judgment, shall be paid by periodic payments rather than by a lump sum payment.
- (2) In rendering a judgment which orders the payment of future damages by periodic payments, the court shall order periodic payments to provide a fair correlation between the sustaining of losses and the payment of damages.
 - (a) Lost future earnings shall be paid over the judgment creditor's work life expectancy.
 - (b) The court shall also order, when appropriate, that periodic payments increase at a fixed rate, equal to the rate of inflation which the finder of fact used to determine the amount of future damages, or as measured by the most recent Consumer Price Index applicable to Utah for all goods and services.
 - (c) The present cash value of all periodic payments shall equal the fact finder's award of future damages, less any amount paid for attorney fees and costs.
 - (d) The present cash value of periodic payments shall be determined by discounting the total amount of periodic payments projected over the judgment creditor's life expectancy, by the rate of interest which the finder of fact used to reduce the amount of future damages to present value, or the rate of interest available at the time of trial on one year U.S. Government Treasury Bills.
- (3) Before periodic payments of future damages may be ordered, the court shall require a judgment debtor to post security which assures full payment of those damages. Security for payment of a judgment of periodic payments may be in one or more of the following forms:
 - (a) a bond executed by a qualified insurer;
 - (b) an annuity contract executed by a qualified insurer;
 - (c) evidence of applicable and collectable liability insurance with one or more qualified insurers;
 - (d) an agreement by one or more qualified insurers to guarantee payment of the judgment; or
 - (e) any other form of security approved by the court.
- (4) Security which complies with this section may also serve as a supersedeas bond, where one is required.
- (5) A judgment which orders payment of future damages by periodic payments shall specify the recipient or recipients of the payments, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made. Those payments may only be modified in the event of the death of the judgment creditor.
- (6) If the court finds that the judgment debtor, or the assignee of his obligation to make periodic payments, has failed to make periodic payments as ordered by the court, it shall, in addition to the required periodic payments, order the judgment debtor or his assignee to pay the judgment creditor all damages caused by the failure to make payments, including court costs and attorney fees.
- (7) The obligation to make periodic payments for all future damages, other than damages for loss of future earnings, shall cease upon the death of the judgment creditor. Damages awarded for loss of future earnings may not be reduced or payments terminated by reason of the death of the judgment creditor, but shall be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately prior to his death. In that case the court which rendered the original judgment may, upon petition of any party in interest, modify the judgment to award and apportion the unpaid future damages in accordance with this section.

- (8) If security is posted in accordance with Subsection (3), and approved by a final judgment entered under this section, the judgment is considered to be satisfied, and the judgment debtor on whose behalf the security is posted shall be discharged.

Renumbered and Amended by Chapter 3, 2008 General Session