

Missouri Revised Statutes

Chapter 538 **Tort Actions Based on Improper Health Care** **Section 538.220**

August 28, 2008

Damages, how paid--security required for future damage payments, when, duration--attorney's fees--death of judgment creditor, effect.

538.220. 1. In any action against a health care provider for damages for personal injury or death arising out of the rendering of or the failure to render health care services, past damages shall be payable in a lump sum.

2. At the request of any party to such action made prior to the entry of judgment, the court shall include in the judgment a requirement that future damages be paid in whole or in part in periodic or installment payments if the total award of damages in the action exceeds one hundred thousand dollars. Any judgment ordering such periodic or installment payments shall specify a future medical periodic payment schedule, which shall include the recipient, the amount of each payment, the interval between payments, and the number of payments. The duration of the future medical payment schedule shall be for a period of time equal to the life expectancy of the person to whom such services were rendered, as determined by the court, based solely on the evidence of such life expectancy presented by the plaintiff at trial. The amount of each of the future medical periodic payments shall be determined by dividing the total amount of future medical damages by the number of future medical periodic payments. The court shall apply interest on such future periodic payments at a per annum interest rate no greater than the coupon issue yield equivalent, as determined by the Federal Reserve Board, of the average accepted auction price for the last auction of fifty-two-week United States Treasury bills settled immediately prior to the date of the judgment. The judgment shall state the applicable interest rate. The parties shall be afforded the opportunity to agree on the manner of payment of future damages, including the rate of interest, if any, to be applied, subject to court approval. However, in the event the parties cannot agree, the unresolved issues shall be submitted to the court for resolution, either with or without a post-trial evidentiary hearing which may be called at the request of any party or the court. If a defendant makes the request for payment pursuant to this section, such request shall be binding only as to such defendant and shall not apply to or bind any other defendant.

3. As a condition to authorizing periodic payments of future damages, the court may require a judgment debtor who is not adequately insured to post security or purchase an annuity adequate to assure full payment of such damages awarded by the judgment. Upon termination of periodic payments of future damages, the court shall order the return of this security or so much as remains to the judgment debtor.

4. If a plaintiff and his attorney have agreed that attorney's fees shall be paid from the award, as part of a contingent fee arrangement, it shall be presumed that the fee will be paid at the time the judgment becomes final. If the attorney elects to receive part or all of such fees in periodic or installment payments from future damages, the method of payment and all incidents thereto shall be a matter between such attorney and the plaintiff and not subject to the terms of the payment of future damages, whether agreed to by the parties or

determined by the court.

5. Upon the death of a judgment creditor, the right to receive payments of future damages, other than future medical damages, being paid by installments or periodic payments will pass in accordance with the Missouri probate code unless otherwise transferred or alienated prior to death. Payment of future medical damages will continue to the estate of the judgment creditor only for as long as necessary to enable the estate to satisfy medical expenses of the judgment creditor that were due and owing at the time of death, which resulted directly from the injury for which damages were awarded, and do not exceed the dollar amount of the total payments for such future medical damages outstanding at the time of death.

6. Nothing in this section shall prevent the parties from contracting and agreeing to settle and resolve the claim for future damages. If such an agreement is reached by the parties, the future periodic payment schedule shall not apply.

(L. 1986 S.B. 663 § 7, A.L. 2005 H.B. 393)

CROSS REFERENCE:

Applicability of statute changes to cases filed after August 28, 2005, RSMo 538.305

(1992) Statute does not violate the equal protection nor does it violate due process. Statute is rationally related to the general goal of preserving adequate, affordable health care for all Missourians by permitting defendants to satisfy judgments for future damages in periodic or installment payments. *Adams v. The Children's Mercy Hospital*, 832 S.W.2d 898 (Mo.banc).

(1992) Medical malpractice cases are exempted from provisions of section 408.040, RSMo, which establish post-judgment interest on damages at nine percent. Section gives the circuit court, in the absence of a court-approved agreement between the parties, discretion in establishing the plan for future payments. *Vincent v. Johnson*, 833 S.W.2d 859 (Mo.banc).

(1993) Where medical malpractice suit was brought by patient and her spouse, provision of statute regarding future payments if total award of damages in action exceeds one hundred thousand dollars applies to each plaintiff's award separately; contingent attorney's fees are payable at time of judgment together with all past damages; statute provision permitting payment plan for future damages does not require payments be made over patient's entire life expectancy; and patient may accept an annuity but is not required to accept an annuity as satisfaction of judgment. *Roesch v. Ryan*, 841 F.Supp. 288 (E.D.).

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