§ 5031. Basis for determining judgment to be entered. In order to determine what judgment is to be entered on a verdict in an action to recover damages for medical, dental, or podiatric malpractice, or damages for wrongful death as a result of medical, dental, or podiatric malpractice, the court shall proceed as follows:

(a) The court shall apply to the findings of past and future damages any applicable rules of law regarding additurs and/or remittiturs, and adjust the verdict accordingly.

(b) Awards for all past damages, all damages for future loss of services, all damages for future loss of consortium, all damages in wrongful death actions, and damages for future pain and suffering of five hundred thousand dollars or less shall be paid in a lump sum. In any case in which all damages are to be paid in lump sums, the judgment shall be entered on the total of the lump sums, without further regard to this section.

(c) As to any award of damages for future pain and suffering in excess of five hundred thousand dollars, the court shall determine the greater of thirty-five percent of such damages or five hundred thousand dollars and such amount shall be paid in a lump sum. The remaining amount of the award for damages for future pain and suffering shall be paid in a stream of payments over the period of time determined by the trier of fact or eight years, whichever is less. The stream of payments for future pain and suffering shall be calculated by dividing the remaining amount of damages for future pain and suffering by the number of years over which such payments shall be made to determine the first year's payment and the payment due in each succeeding year shall be computed by adding four percent to the previous year's payment. The court shall determine the present value of the stream of payments by applying a discount rate to the stream of payments.

(d) The findings of future economic and pecuniary damages except in wrongful death actions, shall be used to determine a stream of payments for each such item of damages by applying (i) the growth rate, to the (ii) annual amount in current dollars, for the (iii) period of years, all of such items as determined by the finder of fact for each such item of damages. The court shall determine the present value of the stream of payments for each such item of damages by applying a discount rate to the stream of payments. After determining the present value of the

stream of payments for future economic and pecuniary damages, thirty-five percent of that present value shall be paid in a lump sum, and the stream of payments for future economic and pecuniary damages shall be adjusted accordingly by proportionately reducing each item of the remaining stream of payments for future economic and pecuniary damages and paying those amounts over time in the form of an annuity in accordance with the provisions set forth in subdivision (g) of this section, subject to the adjustments and deductions specified in subdivision (f) of this section.

(e) The discount rate to be used in determining the present value of all streams of payments for periods of up to twenty years shall be the rate in effect for the ten-year United States Treasury Bond on the date of the verdict. As to any streams of payments for which the period of years exceeds twenty years, the discount rate to be used in determining the present value shall be calculated by averaging, on an annual basis, the rate in effect for the ten-year United States Treasury Bond on the date of the verdict for the first twenty years and two percentage points above the rate in effect for the ten-year United States Treasury Bond on the date of the verdict for the years after twenty years.

(f) After making the applicable calculations set forth above:

(1) The court shall apply any set-offs for comparative negligence and settlements by deducting them proportionately from each item of the damages awards, including the lump sum payments specified in subdivisions (b), (c), and (d) of this section, and the present value of the streams of payments specified in such subdivisions (c) and (d). After such deductions, the streams of payments specified in such subdivisions (c) and (d) and their present value shall be adjusted accordingly.

(2) The court shall then deduct the litigation expenses of the plaintiff's attorney proportionately from each remaining item of the damages awards, including the remaining lump sum payments specified in such subdivisions (b), (c), and (d), and the present value of the remaining streams of payments specified in such subdivisions (c) and (d), and such expenses shall be paid in a lump sum. After said deductions, the streams of payments specified in such subdivisions (c) and (d) and their present value shall be adjusted accordingly.

(3) The court shall then determine the attorney's fees based upon the

remaining damages awards, including the remaining lump sum payments specified in such subdivisions (b), (c), and (d), and the present value of the remaining streams of payments specified in such subdivisions (c) and (d). The attorney's fees shall be deducted proportionately from each item of the remaining damages awards, including the remaining lump sum payments specified in such subdivisions (b), (c), and (d), and the present value of the remaining streams of payments specified in such subdivisions (c) and (d), and such fees shall be paid in a lump sum. After said deductions, the stream of payments specified in such subdivisions (c) and (d) and their present value shall be adjusted accordingly.

(4) Any liens which are not the subject of a separate award by the finder of fact shall then be deducted proportionately from each item of the remaining damages awards, including the remaining lump sum payments specified in such subdivisions (b), (c), and (d), and the present value of the remaining streams of payments specified in such subdivisions (c) and (d), and such liens shall be paid in a lump sum. After said deductions, the stream of payments specified in such subdivisions (c) and (d) and their present value shall be adjusted accordingly.

(g) The defendants and their insurance carriers shall be required to offer and to guarantee the purchase and payment of an annuity contract to make annual payments in equal monthly installments of the remaining streams of payments specified in such subdivisions (c) and (d), after making the deductions and adjustments prescribed in subdivision (f) of this section. The annuity contract shall provide that the payments shall run from the date of the verdict (unless some other date is specified in the verdict) for the period of years determined by the finder of fact (except the stream of payments for future pain and suffering, which shall not exceed eight years) or the life of the plaintiff, whichever is shorter, except that:

(1) awards for lost earnings shall be paid for the full term of the award determined by the finder of fact; and

(2) awards for any item of economic or pecuniary damages as to which the finder of fact found that the loss or item of damage is permanent, the payments for that item shall continue to run for the entire life of the plaintiff, increasing each year beyond the period of years determined by the finder of fact at the same growth rate as determined

by the finder of fact.

(h) The judgment shall be entered on the lump sum payments and the present value of the streams of payments required to be made by the defendants under this section.