**20.02B FUTURE MEDICAL EXPENSES**

The (first, second, etc.) item of economic loss claimed by the plaintiff is the reasonable expense of necessary medical care reasonably probable to be received in the future. In order to award damages for a future medical expense, you must find that

(1) the expense is reasonably necessary;

(2) the expense is reasonably certain to occur; and

(3) the evidence provides you with a reasonable basis for estimating the amount of the expense.

[In deciding how long the plaintiff may have medical expenses in the future you may need to consider (his) (her) current life expectancy.]

[In fixing this amount, "medical care" includes: (insert any claimed services or items which the Court determines are "medical care", such as nursing care, drugs, etc.).]

# **Use Note**

Use this instruction with Instruction 20.01A or 20.01B for future medical expenses.

If only past medical expenses are claimed, Instruction 20.02A must be used. If only future medical expenses are claimed, this instruction must be used. If both past and future medical expenses are claimed, both Instruction 20.02A and this instruction must be used.

If future medical expenses are claimed, and if the parties have not stipulated to apply the *Beaulieu* rule, Instruction 20.05 (Inflation and Present Value) must also be given. If the parties have agreed to apply the *Beaulieu* rule, Instruction 20.10 (Future Damages) should be given and Instruction 20.05 is not given.

The sentence on life expectancy should be given only if it is claimed that the medical expenses will continue for the rest of the plaintiff’s life. In that event, Instruction 20.13 (Life Expectancy) should also be given.

The last bracketed sentence allows the trial judge to specify what is included in medical care where doing so will assist the jury.

# **Comment**

For further discussion of the case law on damage awards for past and future medical expenses see the Comment to Instruction 2.02A, Past Medical Expenses.

The court has used both “reasonable certainty” and “reasonable probability” when describing the necessary proof for future medical expenses.  *Sherbahn v. Kerkove*, 987 P.2d 195, 198-99 & n.12 (Alaska 1999); *Sampson v. Alaska Airlines, Inc.*, 467 P.3d 1072, 1075 (Alaska 2020).  This instruction uses the term “reasonably probable” to remain consistent with other instructions in this article. There is some risk of confusing the jury by using different terms for the same concept.  In order to avoid confusing the jury, the Committee has used the term “reasonably probable” rather than the term “reasonably certain” when discussing the likelihood that future medical expenses will be incurred.  As noted above, however, both have been approved by the court and are not erroneous.

The damages awarded for future medical expenses (and custodial care) are to be based on actual life expectancy at the time of trial, rather than pre-injury life expectancy. *Morrison v. State*, 516 P.2d 402, 406 (Alaska 1973).

Unless the parties stipulate to the contrary, future medical expenses must be adjusted for inflation and reduced to present value. *See* AS 09.17.040(b). These concepts are addressed in Instruction 20.05.