



Potential Malpractice Trap in the OTCA

By Marilyn Heiken

For claims subject to the Oregon Tort Claims Act (OTCA), the \$500,000 cap on noneconomic damages in ORS 31.710 does not apply. ORS 30.262(2). That means that in a wrongful death case against a public body, the caps in the OTCA apply rather than those in ORS 31.710. The caps in the OTCA are set forth in ORS 30.269-273.

Another thing to be aware of is that there are currently 33 “hospital districts” in Oregon, which are public bodies subject to the OTCA. For a current list of hospital districts, go to <https://secure.sos.state.or.us/muni/public.do>. Other public bodies include state boards, agencies, departments, cities, counties, school districts, transit districts, and hospital districts. ORS 30.260.

The limitations on liability for claims against public entities are adjusted every year. ORS 30.271. In a wrongful death case arising in August of 2018 against a local hospital district, the applicable cap on damages is \$727,200 per claimant, with an aggregate limit of \$1,454,300. ORS 30.272. If there are two surviving beneficiaries, each beneficiary has a separate cap. The combined cap on the claims would be \$1,454,300. *Miller v. Tri-Cty. Metro. Dist.*, 241 Or App 86, rev den, 350 Or 408 (2011). The statute does not establish different caps for noneconomic and economic damages. There is just one total cap for all the wrongful death damages.

In some cases where the beneficiaries have sustained no economic damages because the decedent was not generating income at the time of his or her death, the beneficiaries could potentially recover the full \$1,454,300 in noneconomic damages.