

PERSONAL INJURY DAMAGES 2

Pre-Existing Condition, Unusually Susceptible Plaintiff

[*Name of plaintiff*] is not entitled to compensation for any physical or emotional condition that pre-existed the fault of [*name of defendant*]. However, if [*name of plaintiff*] had any pre-existing physical or emotional condition that was aggravated or made worse by [*name of defendant*]'s fault, you must decide the full amount of money that will reasonably and fairly compensate [*name of plaintiff*] for that aggravation or worsening.

You must decide the full amount of money that will reasonably and fairly compensate [*name of plaintiff*] for all damages caused by the fault of [*name of defendant*], even if [*name of plaintiff*] was more susceptible to injury than a normally healthy person would have been, and even if a normally healthy person would not have suffered similar injury.

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SOURCE: JUDICIAL COUNCIL OF CALIFORNIA CIVIL JURY INSTRUCTIONS (2003-04), CACI No. 3928.

USE NOTE: 1. Identification of Possible Parties at Fault: The instruction is drafted for a one-defendant, no comparative fault case. In other cases, replace “defendant” here with the same language used in RAJI (CIVIL) 5th Personal Injury Damages 1 from the “[any] [defendant] [party] [person]” options.

2. The Two Principles Covered by this Instruction: Use the first paragraph when there is an issue of aggravation of pre-existing condition. (“Worsening” has been added as a clarification of “aggravation”; some may find the instruction just as clear with one or the other of those concepts removed.) Use the second paragraph when there is an issue of injury to an unusually susceptible person. Use both paragraphs if both issues are in the case.

3. “Fault” or “Negligence”: If desired, “negligence” can be substituted for “fault” in this instruction; the instruction will be correct either way.