

**1742 PERSONAL INJURIES: MEDICAL CARE: OFFSETTING BENEFIT FROM OPERATION AGAINST DAMAGES FOR NEGLIGENCE IN INFORMING THE PATIENT**

**(Note: This instruction will usually follow other instructions on damages.)**

If you are satisfied that the (operation) (procedure) (treatment), even though not consented to by (patient), resulted in benefit to (patient), you may consider the value of the benefit and offset the value of the benefit against any damage to (patient).

In determining whether there should be any offset of benefit against damages, you should consider the nature of the (operation) (procedure) (treatment), (patient)'s condition before the (operation) (procedure) (treatment), and (patient)'s condition after the (operation) (procedure) (treatment). In comparing the benefit and damages, you must consider, on the basis of (medical) (chiropractic) (dental) (optometric) (podiatric) evidence, what (patient)'s condition would have been had the operation not been performed.

[If you find that benefits exceed damages, you must find that (patient) has suffered no damage.]

**COMMENT**

This instruction and comment were initially approved in 1978 (as JI-Civil 1751.5). They were retitled and renumbered in 1998. The instruction was revised in 2014.

"Where the defendant's tortious conduct has caused harm to the plaintiff or to his or her property and in so doing has conferred upon the plaintiff a special benefit to the interest which was harmed, the value of the benefit conferred is considered in mitigation of damages, where this is equitable." Restatement, Torts § 920.

22 Am. Jur. 2d Damages § 204, p. 283. Dobbs, Remedies § 3.6, pp. 181-84. Maben v. Rankin, 358 P.2d 681 (Calif. 1961); Coleman v. Garrison, 281 A.2d 616 (Del. Superior 1971); Troppe v. Scarf, 187 N.W.2d 511 (Mich. 1971).