DISSENTING OPINION BY MOON, C.J.
IN WHICH LEVINSON, J., JOINS

I disagree with the majority's conclusion that a Medicare and/or Medicaid beneficiary may recover medical expenses that he or she, pursuant to federal law, was not legally obligated to pay. The majority's conclusion improperly, unnecessarily, and lightly disregards this jurisdiction's long standing formulation and treatment of special damages. I, therefore, respectfully dissent.

In its first certified question, the district court essentially asks whether the amount paid by Medicare and/or Medicaid -- as opposed to the amount charged by a health care provider -- should be awarded as medical expenses to a plaintiff in a negligence action. Because the amount paid is subsumed within the amount charged and none of the parties disagree that a plaintiff is entitled to recover the amount paid as medical expenses, the question becomes whether the amount written-off (i.e., the amount charged less the amount paid) can be awarded as medical expenses to a plaintiff in a negligence action.

In actions arising in tort, three categories of damages are recoverable: (1) compensatory damages (including special and general damages); (2) punitive damages; and (3) nominal damages. See Zanakis-Pico v. Cutter Dodge, Inc., 98 Hawai'i 309, 327, 47 P.3d 1222, 1240 (2002) (Acoba, J., concurring); Kuhnert v. Allison, 76 Hawai'i 39, 44, 868 P.2d 457, 462 (1994).

Compensatory damages seek to (1) "compensate the injured party for the injury sustained, and nothing more[,]" Kuhnert, 76 Hawai'i at 44, 868 P.2d at 462 (citation and internal quotation marks omitted), and (2) restore [the plaintiff] to the position he [or she] would be in if the wrong had not been committed." Gump v. Wal-Mart Stores, Inc., 93 Hawai'i 417, 423, 5 P.3d 407, 413 (2000) (quoting Rodrigues v. State, 52 Haw. 156, 167, 472 P.2d 509, 517 (1970)) (quotation marks omitted); see also Tabieros v. Clark Equip. Co., 85 Hawai'i 336, 389, 944 P.2d 1279, 1332 (1997). Punitive damages are "those damages assessed in addition to compensatory damages for the purpose of punishing the defendant for aggravated or outrageous misconduct and to deter the defendant and others from similar conduct in the future." Masaki v. Gen. Motors Corp., 71 Haw. 1, 6, 780 P.2d 566, 570, reconsideration denied, 71 Haw. 664, 833 P.2d 899 (1989); see also Kang v. Harrington, 59 Haw. 652, 660-61, 587 P.2d 285, 291 (1978). Nominal damages "are a small and trivial sum awarded for a technical injury due to a violation of some legal right and as a consequence of which some damages must be awarded to determine the right." Van Poole v. Nippu Jiji Co., 34 Haw. 354, 360 (1937) (citation omitted).

Medical expenses, which are at the center of the instant dispute, are recoverable as compensatory special damages -- not general damages. Dunbar v. Thompson, 79 Hawai'i 306, 315, 901 P.2d 1285, 1294 (App. 1995). Special damages "compensate

claimants for specific out of pocket financial expenses and losses," Norris v. Hawaiian Airlines, Inc., 74 Haw. 235, 264, 842 P.2d 634, 647 (1992) (citation omitted) (emphasis added), aff'd, 512 U.S. 246 (1994), and are "considered to be synonymous with pecuniary loss[,]" whereas general damages provide recovery for "such items as physical or mental pain and suffering, inconvenience, and loss of enjoyment which cannot be measured definitively in monetary terms." Dunbar, 79 Hawai'i at 315, 901 P.2d at 1294 (citations omitted) (emphasis added); see also Tabieros, 85 Hawai'i at 389-90, 944 P.2d at 1332-33 ("compensatory damages include 'general damages, embracing items not subject to precise mathematical calculations, such as permanent injuries [and] pain and suffering'" (emphasis and citation omitted) (brackets in original)). As a form of compensatory special damages, medical expenses also:

(1) compensate the plaintiff for the loss sustained, and nothing more; and (2) restore the plaintiff to the position he or she would be in if the wrong had not been committed. See Gump, 93 Hawai'i at 423, 5 P.3d at 413; Tabieros, 85 Hawai'i at 389, 944 P.2d at 1332; Kuhnert, 76 Hawai'i at 44, 868 P.2d at 462; Norris, 74 Haw. at 264, 842 P.2d at 647. Stated differently, a plaintiff's award of medical expenses is limited to the pecuniary loss he or she incurred. See Nacino v. Koller, 101 Hawai'i 466, 470-71 n.10, 71 P.3d 417, 421-22 n.10 (2003); Yoshizaki v. Hilo Hosp., 50 Haw. 1, 16-17, 427 P.2d 845, 854, reh'g granted, 50

Haw. 40, 429 P.2d 829 (1967); Masaki v. Columbia Cas. Co., 48 Haw. 136, 139-40, 395 P.2d 927, 929 (1964); accord Terrell v. Nanda, 759 So. 2d 1026, 1030-31 (La. Ct. App. 2000) ("[a] plaintiff may ordinarily recover reasonable medical expenses . . . which he [or she] incurs as a result of injury"); Renne v. Moser, 490 N.W.2d 193, 200 (Neb. 1992) (noting that a plaintiff may recover "the reasonable value of medical expenses incurred as the result of the negligently caused injury"); Moorhead v. Crozer Chester Med. Ctr., 765 A.2d 786, 789 (Pa. 2001) (noting that a plaintiff may recover expenses that "have been actually paid[] or . . . are reasonably necessary to be incurred"); Haselden v. Davis, 534 S.E.2d 295, 304 (S.C. Ct. App. 2000) ("[i]t is a fundamental principle of the law of damages that a person who suffers personal injuries because of the negligence of another is entitled to recover the reasonable value of medical care and expenses incurred for the treatment of the injuries" (quotation marks and citation omitted)), aff'd, 579 S.E. 2d 293 (S.C. 2003). Thus, a plaintiff's recovery of medical expenses must be limited to the amount he or she has paid or became legally obligated to pay. See Black's Law Dictionary 771 (7th ed. 1999) (defining "incur" as "[t]o suffer or bring on oneself (a liability or expense)"); accord Terrell, 759 So. 2d at 1030-31 ("[t]he term 'incur' is defined as 'to become liable for'" (citation omitted)).

In the instant case, plaintiff-appellee Joseph Bynum (Joseph) was a beneficiary of Medicare and Medicaid. Pursuant to federal law, Joseph's health care providers were required to accept the amount paid by Medicare and Medicaid as payment in full. Thus, Joseph's providers wrote-off the remaining portion of his medical expenses. Because it is undisputed that no one paid this amount, the dispositive question is whether Joseph is legally obligated to pay that amount.

Medicare and Medicaid law prohibits participating health care providers from seeking reimbursement of the amount written-off from anyone, including the beneficiary, Medicare and/or Medicaid, or any other source. In other words, a beneficiary, whose medical expenses are paid by Medicare and/or Medicaid, does not incur the amount written-off by the health care provider. Accord Terrell, 759 So. 2d at 1029-31. Consequently, the beneficiary never becomes legally obligated to pay the amount written-off. Similarly, in this case, because Joseph did not incur the amount written-off by his health care providers, he is not legally obligated to pay it. Thus, if Joseph recovers only the amount he incurred -- namely, the amount paid on his behalf by Medicare and Medicaid, which he is legally obligated to reimburse to Medicare and Medicaid under federal law, -- he will be fully compensated with regard to his medical expenses.

The majority's conclusion that Joseph may recover more than the amount he is legally obligated to pay contravenes Hawaii's compensatory special damages law by restoring him to a position better than he would have been had the wrong not been committed -- i.e., Joseph will be overcompensated. See Gump, 93 Hawai'i at 423-24, 5 P.3d at 413-14. The majority, by its ruling today, permits the recovery of unincurred medical expenses which this jurisdiction's precedent clearly prohibits.

"As a general rule, we do not lightly disregard precedent; we subscribe to the view that great consideration should always be accorded precedent, especially one of long standing and general acceptance." State v. Jenkins, 93 Hawai'i 87, 111-12, 997 P.2d 13, 37-38 (2000) (citation omitted); see also State v. Harada, 98 Hawai'i 18, 23 n.3, 41 P.3d 174, 179 n.3 (2002). "[We] should 'not depart from the doctrine of stare decisis without some compelling justification.'" State v. Garcia, 96 Hawai'i 200, 206, 29 P.3d 919, 925 (2001) (citing Hilton v. South Carolina Pub. Ry. Comm'n, 502 U.S. 197, 202 (1991); Dairy Rd. Partners v. Island Ins. Co., 92 Hawai'i 398, 421, 992 P.2d 93, 116 (2000)) (emphasis in original). Furthermore, "[we] should not overrule [our] earlier decisions unless the most cogent reasons and inescapable logic require it." Dairy Rd. Partners, 92 Hawai'i at 421, 992 P.2d at 116 (citation and quotation marks omitted). And, "we should not change a case law just for the sake of a change." McBryde Sugar Co. v.

Robinson, 54 Haw. 174, 180, 504 P.2d 1330, 1335 (1973); Robinson v. Ariyoshi, 65 Haw. 641, 653 n.10, 658 P.2d 287, 297 n.10 (1982), reconsideration denied, 66 Haw. 528, 726 P.2d 1133 (1983). Nevertheless, this court has previously disregarded precedent in cases where some compelling justification, cogent reason, and/or inescapable logic required doing so. See, e.g., Kahale v. City & County of Honolulu, 104 Hawai‘i 341, 347 n.7, 90 P.3d 233, 239 n.7 (2004), overruling Salavea v. City & County of Honolulu, 55 Haw. 216, 220-21, 517 P.2d 51, 54-55 (1973) ("The 'compelling justification' for our abrogation of the Salavea rule is that its reasoning is analytically bankrupt."); State v. Ah Loo, 94 Hawai‘i 207, 211, 10 P.3d 728, 732, reconsideration denied, 94 Hawai‘i 207, 10 P.3d 728, (2000), overruling State v. Blackshire, 10 Haw. App. 123, 135, 861 P.2d 736, 742 (1993) (overruling Blackshire because it "wrongly decided" that, "as a per se matter, a person is 'in custody' the moment he or she has been 'seized[]'"); Dairy Rd. Partners, 92 Hawai‘i at 421-22, 992 P.2d at 116-17, overruling Hawaiian Ins. & Guar. Co. v. Blanco, 72 Haw. 9, 17, 804 P.2d 876, 880 (1990) and Hawaiian Ins. & Guar. Co. v. Brooks, 67 Haw. 285, 289, 686 P.2d 23, 26 (1984) ("we are inescapably led to the conclusion that, by misapplying our own holding in Standard Oil, this court took a wrong turn in Blanco and, at least by implication, in Brooks[; i]n order to restore manifest justice . . . we therefore overrule Brooks and Blanco"); Francis v. Lee Enters., Inc., 89 Hawai‘i 234, 239, 971 P.2d 707,

712 (1999), overruling Dold v. Outrigger Hotel, 54 Haw. 18, 501 P.2d 368 (1972) ("we decline to recognize the [Dold-Chung] rule any longer . . . [because] we believe that: (1) the Dold-Chung rule does not accord with certain basic principles relevant to contract law; and (2) 'unintended injury would result[]'" (citation omitted)).

Although the certified question is one of first impression as noted by the majority, we arrive at an answer to that question by examining our case law. Thus, great consideration must be accorded to this jurisdiction's long standing damages law. See Jenkins, 93 Hawai'i at 111-12, 997 P.2d at 38; Harada, 98 Hawai'i at 23 n.3, 41 P.3d at 179 n.3. By disregarding this jurisdiction's precedent, the majority effectively creates a new category of damages. An award of the written-off amount does not fall within the permissible categories of compensatory, punitive, or nominal damages. First, the amount written-off is not recoverable as compensatory special damages for the reasons previously discussed. Because an award of the amount written-off does not provide remuneration for "physical or mental pain and suffering, inconvenience, and loss of enjoyment[,]" it is not recoverable as compensatory general damages. Dunbar, 79 Hawai'i at 315, 901 P.2d at 1294. Second, although punitive damages may be awarded in negligence actions upon a showing that "the defendant has acted wantonly or oppressively or with such malice as implies a spirit of mischief

or criminal indifference to civil obligations[,]" Masaki, 71 Haw. at 11, 780 P.2d at 572 (citation and quotation marks omitted), medical expenses clearly cannot be said to be punitive in nature. Third, by the same token, because the amount written-off "exceed[s] one million dollars[,]" it cannot be said to be nominal. See Minatoya v. Mousel, 2 Haw. App. 1, 6, 625 P.2d 378, 382 (1981) ("nominal damages may not exceed $1.00[]"). Accordingly, inasmuch as the majority's holding allows the recovery of an amount which does not fall within one of the permissible categories of damages, the majority's decision contravenes this jurisdiction's precedent by creating a new category of damages without justification.

Not only does the majority turn a blind eye to Hawaii's damages law, but it also fails to address the policy considerations justifying its departure therefrom. Although the majority asserts that such considerations are inherent in authorities to which it cites and its discussion, the majority points only to policies relating to its application of the collateral source rule; it does not discuss policies justifying its deviation from this jurisdiction's precedent. Accordingly, inasmuch as the majority fails to address these policy concerns, provides no "compelling justification" or "cogent reason" for sidestepping our long standing damages law, and, instead, relies on the Restatement (Second) of Torts to reach the desired result,

I believe that the majority improperly, unnecessarily, and "lightly disregard[s our] precedent."

The majority also erroneously relies on arguments advanced in the American Association of Retired Person's (AARP) amicus curiae brief for its proposition that allowing Medicare and/or Medicaid beneficiaries to recover the amount written-off "leads to a more just result." For example, the majority states that, according to the AARP, permitting recovery of the amount written-off "'ensure[s] that low-income elderly and disabled individuals are treated equitably vis a vis privately insured individuals by compensating for aspects of the [Medicare/Medicaid] programs that would substantially limit, if not completely eliminate, the beneficiary's recovery of special damages.'" (Emphases added). Put differently, the AARP and the majority essentially reason that a Medicare and/or Medicaid beneficiary should recover the same amount of medical expenses as any other individual, irrespective of whether the other individual receives public medical insurance, pays for private medical insurance, or is uninsured. This assertion is plainly wrong. We have stated that "special damages do not arise solely from the wrongful act itself, but rather depend on the circumstances peculiar to the infliction of each particular injury." Ellis v. Crockett, 51 Haw. 45, 50, 451 P.2d 814, 819 (citation omitted) (emphasis added), reh'g denied, 51 Haw. 86, 451 P.2d 814 (1969)). Thus, the amount of medical expenses

recoverable in this case is not determined by the medical expenses that health care providers may charge and recover from someone else (for example, a privately insured or uninsured individual), but the "out of pocket" expenses incurred for the reasonably necessary medical treatment rendered to this plaintiff, i.e., Joseph. Otherwise, if awards for medical expenses are increased or decreased based on what another individual may have incurred, overcompensation or undercompensation may result.

Moreover, the AARP's position that, if a beneficiary is not allowed to recover the amount written-off, his or her recovery of medical expenses will be "substantially limit[ed], if not completely eliminate[d]," is also incorrect. Based on this jurisdiction's formulation and treatment of special damages as discussed above, a beneficiary will receive the full award of special damages to which he or she is entitled if the beneficiary recovers only the incurred expenses.[1] Consequently, he or she will not be penalized as suggested by the majority.

Additionally, awarding a Medicare and/or Medicaid beneficiary only medical expenses that were incurred will not result in a windfall to the tortfeasor. In fact, limiting the

[1] Of course, a beneficiary's recovery is not limited to his or her award of medical expenses. He or she may also recover (1) other special damages, such as "loss of earnings[] and diminished capacity to work[,]" Dunbar, 79 Hawai'i at 315, 901 P.2d at 1294 (citation omitted); (2) general damages for "physical or mental pain and suffering, inconvenience, and loss of enjoyment[,]" id. (citation omitted); and (3) punitive damages if the tortfeasor acted wantonly, oppressively, or with malice, Masaki, 71 Haw. at 11, 780 P.2d at 572.

award to the amount incurred ensures that neither party will receive a windfall. Tortfeasors would be held fully liable for their actions, and the beneficiary would be made whole. However, if, as the majority holds, a beneficiary is allowed to recover medical expenses that no one incurred, the beneficiary would recover a windfall at the expense of taxpayers. See Bozeman v. State, 879 So. 2d 692, 705, reh'g denied, (La. 2004) ("it would be unconscionable to permit the taxpayers to bear the expense of providing free medical care to a person and then allow that person to recover damages for [unincurred] medical expenses from a tort-feasor and pocket the windfall[]" (citation and quotation marks omitted)); Terrel, 759 So. 2d at 1031; Moorhead, 765 A.2d at 789.

The majority cites to Sam Teague, Ltd. v. Hawai'i Civil Rights Comm'n, 89 Hawai'i 269, 971 P.2d 1104 (1999), for the proposition that the collateral source rule applies in this case "inasmuch as the wrongdoer should not profit from third party benefits." Majority at 20 n.16. In Sam Teague, Ltd., this court was faced with determining whether a back pay award in an employment discrimination case may be reduced by the amount of unemployment benefits received by the plaintiff-employee during the period which the defendant-employer refused to employ her. 89 Hawai'i at 281, 971 P.2d at 1116. Therein, this court's application of the collateral source rule turned on the "general functions" of back pay awards, one of which is "to deter future

discrimination." Id. (citation omitted). In that regard, this court noted that, if the plaintiff's back pay award was reduced by the amount of unemployment benefits she received, it would be "less costly for the employer to wrongfully terminate a protected employee and thus dilutes the prophylactic purposes of a back pay award[.]" Id. at 282, 971 P.2d at 1117 (citation omitted). This court also stated that such an outcome would "result[] in a windfall to the employer who committed the illegal discrimination" and that, "[a]lthough collateral source payments represent additional benefits to [the plaintiff], as between the employer, whose action caused the discharge, and the employee, who may have experienced other noncompensable losses, it is fitting that the burden be placed on the employer." Id. (citations and quotation marks omitted). Thus, this court applied the collateral source rule to the unemployment benefits paid to the plaintiff.

In contrast to Sam Teague, Ltd., the alleged benefit received by Joseph -- i.e., the amount written off by his health care providers -- does not serve to deter future conduct. Thus, recovery of only the amount paid cannot be said to "dilute[] the prophylactic purposes of" an award for medical expenses. See id. (citation omitted). Moreover, inasmuch as the instant case concerns the recovery of medical expenses, which are awarded for compensable losses, it is irrelevant whether Joseph "may have experienced other noncompensable losses[.]" Additionally, the

court in Sam Teague, Ltd. applied the collateral source rule to payments -- not write offs -- made by a collateral source. Id. at 281-83, 971 P.2d at 1116-18. Thus, this court's decision in Sam Teague, Ltd. is inapposite to the certified question before us.

In conclusion, I believe that the questions presented to this court can be answered by applying the existing precedent in this jurisdiction regarding Hawaii's special damages law. The majority offers no compelling justification or cogent reason to disregard our precedent and resort to the Restatement's discussion of the collateral source rule to overcompensate Medicare and/or Medicaid beneficiaries. Based on the foregoing, I would conclude that, when a health care provider writes off a portion of a Medicare and/or Medicaid beneficiary's medical expenses, the beneficiary does not incur any liability for such amount and would, therefore, hold that the beneficiary's recovery of the reasonable value of medical services does not include the written-off amount as compensatory special damages. Accordingly, I would answer both questions certified by the federal district court in the affirmative.