

1 **13-1811. Mitigation.**

2 In fixing the amount of money which will reasonably and fairly compensate plaintiff, you  
3 are to consider that an injured person must exercise ordinary care to minimize or lessen ~~[[his]-[her]]~~  
4 their damages. Damages caused by ~~[[his]-[her]]~~ the injured person's failure to exercise such care  
5 cannot be recovered.

6 USE NOTES

7 This instruction is designed to be used when the evidence creates an issue as to whether  
8 plaintiff exercised ordinary care to mitigate damages which were incurred after the injury and not  
9 before.

10 UJI 13-1603 NMRA. Ordinary care, must be given when this instruction is used.

11 [As amended, effective November 1, 1991; as amended by Supreme Court Order No. S-1-RCR-  
12 2025-00126, effective for all cases pending or filed on or after December 31, 2025.]

13 **Committee commentary.** — New Mexico follows the general rule that an injured person must  
14 use ordinary care to mitigate ~~[his]~~ their own damages. *Mitchell v. Jones*, [~~47 N.M. 169, 138 P.2d~~  
15 ~~522 (1943)] 1943-NMSC-020, 47 N.M. 169, 138 P.2d 522, citing 15 Am. Jur., Damages §§ 27 and  
16 36 (*see now* 22 Am. Jur. 2d Damages §§ 30, 32, 38, 39).~~

17 Under the doctrine of avoidable consequences, a person injured by the tort of another is not entitled  
18 to damages for loss which could have been avoided by ordinary care. *Rutledge v. Johnson*, [~~81~~  
19 ~~N.M. 217, 465 P.2d 274 (1970)] 1970 NMSC-023, 81 N.M. 217, 465 P.2d 274 (plaintiff injured  
20 in rear end car accident and thereafter was further injured in three household accidents).~~

21 The obligation to mitigate damages extends not only to obtaining medical attention, but also to  
22 curing of the injury and using reasonable measures to prevent aggravation and to effect a cure.

23 Substantial authority requires an injured person to submit to surgery or medical treatment to

1 minimize tort damages. [~~62 A.L.R.3d 9, 70~~] 62 A.L.R.3d 9, 70 (1975). The award should not  
2 include any sums for physical or mental pain and suffering or loss of earnings caused by failure to  
3 reasonably care for injuries sustained and this would include negligence in failure to consult a  
4 doctor, to follow a doctor's advice, to promptly see a doctor or to otherwise care for the injuries.  
5 *Moulton v. Alamo Ambulance Serv., Inc.*, 414 S.W.2d 444 (Tex. 1967).

6 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]

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