STATE OF NEW YORK

6804

2017-2018 Regular Sessions

IN SENATE

June 18, 2017

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the civil practice law and rules, in relation to the scope of disclosure of certain experts; to amend the public health law, in relation to granting immunity from liability to organizations which establish physician committees; to amend the judiciary law, in relation to the maximum allowable amount of contingency fees in medical, dental and podiatric malpractice actions; and to repeal certain provisions of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subparagraph (i) of paragraph 1 of subdivision (d) of section 3101 of the civil practice law and rules, as amended by chapter 184 of the laws of 1988, is amended to read as follows:

(i) Upon request, each party shall identify each person whom the party expects to call as an expert witness at trial and shall disclose in reasonable detail the subject matter on which each expert is expected to testify, the substance of the facts and opinions on which each expert is expected to testify, the qualifications of each expert witness and a summary of the grounds for each expert's opinion. However, where a party for good cause shown retains an expert an insufficient period of time before the commencement of trial to give appropriate notice thereof, the party shall not thereupon be precluded from introducing the expert's testimony at the trial solely on grounds of noncompliance with this paragraph. In that instance, upon motion of any party, made before or at trial, or on its own initiative, the court may make whatever order may be just. In an action for medical, dental or podiatric malpractice, a party, in responding to a request, [~~may omit the names of medical, dental or podiatric experts but~~] shall be required to disclose all [~~other~~] information concerning such experts otherwise required by this paragraph.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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§ 2. Paragraph (g) of subdivision 11 of section 230 of the public health law, as added by chapter 426 of the laws of 1983, subparagraphs (ii) and (iii) as amended by chapter 606 of the laws of 1991, subparagraphs (v) and (vi) as added by chapter 582 of the laws of 1984, is amended to read as follows:

(g) **(i)** Any physician committee of the Medical Society of the State of New York, the New York State Osteopathic Society or a county medical society referred to in subparagraph (ii) of paragraph (c) of this subdivision shall develop procedures in consultation with, and approved by, the commissioner [~~of the department of health~~], including but not limited to the following:

[~~(i)~~] **(A)** The committee shall disclose at least once a month such information as the director of the office of professional medical conduct may deem appropriate regarding reports received, contacts or investigations made and the disposition of each report, provided however that the committee shall not disclose any personally identifiable information except as provided in [~~subparagraph (ii)~~] **clause (B)** or [~~subparagraph (iii)~~] **(C)** of this [~~paragraph~~] **subparagraph**.

[~~(ii)~~] **(B)** The committee shall immediately report to the director the name, all information obtained and the results of any contact or investigation regarding any physician who is believed to be an imminent danger to the public.

[~~(iii)~~] **(C)** The committee shall report to the director in a timely fashion all information obtained regarding any physician who refuses to cooperate with the committee, refuses to submit to treatment, or whose impairment is not substantially alleviated through treatment.

[~~(iv)~~] **(D)** The committee shall inform each physician who is participating in a program of the procedures followed in the program, of the rights and responsibilities of the physician in the program and of the possible results of noncompliance with the program.

[~~(v)~~] **(ii)** No member of any such committee**; nor the Medical Society of the State of New York, the New York State Osteopathic Society or a county medical society referred to in subparagraph (ii) of paragraph (c) of this subdivision that establishes a committee; nor any agent, servant, representative or employee that provides service to any such committee or society,** shall be liable for damages to any person for any action taken by such **committee, society,** member**, agent, servant, representative or employee** provided that such action was taken without malice and within the scope of such [~~member's~~] **individual's** function [~~as a member of~~] **to** such committee.

[~~(vi)~~] **(iii)** The committee, in conjunction with the director of the office of professional medical conduct, shall develop appropriate consent forms and disclosure proceedings as may be necessary under any federal statute, rule or regulation in order to permit the disclosure of the information as may be required under [~~subparagraphs (ii)~~] **clauses (B)** and [~~(iii)~~] **(C) of subparagraph (i)** of this paragraph.

(iv) Except as [~~herein~~] provided **in this paragraph** and notwithstanding any other provision of law, neither the proceedings nor the records of any such physician committee shall be subject to disclosure under article thirty-one of the civil practice law and rules nor shall any member of any such committee nor any person in attendance at any such meeting be required to testify as to what transpired thereat.

§ 3. Subdivision 2 of section 474-a of the judiciary law, as amended by chapter 485 of the laws of 1986, is amended to read as follows:

2. Notwithstanding any inconsistent judicial rule, a contingent fee in a medical, dental or podiatric malpractice action shall not exceed the

amount of compensation provided for in the following schedule **for cases decided prior to December thirty-first, two thousand eighteen**:

30 percent of the first [~~$250,000~~] **$500,000** of the sum recovered;
[~~25 percent of the next $250,000 of the sum recovered;~~
~~20~~] **25** percent of the next $500,000 of the sum recovered;
[~~15~~] **20** percent of the next $250,000 of the sum recovered;
[~~10~~] **15** percent of any amount over $1,250,000 of the sum recovered**;**

and notwithstanding any inconsistent judicial rule, a contingent fee in a medical, dental or podiatric malpractice action shall not exceed the amount of compensation provided for in the following schedule for cases decided from January first, two thousand nineteen through December thirty-first, two thousand nineteen:

30 percent of the first $1,000,000 of the sum recovered;
25 percent of the next $250,000 of the sum recovered;
20 percent of any amount over $1,250,000 of the sum recovered;

and notwithstanding any inconsistent judicial rule, a contingent fee in a medical, dental or podiatric malpractice action shall not exceed the amount of compensation provided for in the following schedule for cases decided from January first, two thousand twenty through December thirty-first, two thousand twenty:

30 percent of the first $1,250,000 of the sum recovered;
25 percent of any amount over $1,250,000 of the sum recovered;

and after December thirty-first, two thousand twenty, contingency fees in medical, dental and podiatric malpractice actions shall be governed by the rules applicable to all other personal injury and wrongful death actions.

§ 4. Subdivisions 3, 4 and 5 of section 474-a of the judiciary law are REPEALED.

§ 5. This act shall take effect immediately; provided however, that section one of this act shall take effect on the thirtieth day after it shall have become a law and shall apply to all actions involving personal injury, medical, dental or podiatric malpractice, or wrongful death filed on and after such date and to all such actions pending on such effective date except as to conduct prohibited by section one of this act which occurred prior to such effective date provided, that the amendments to paragraph (g) of subdivision 11 of section 230 of the public health law, made by section two of this act, shall not affect the repeal of such paragraph, and shall be deemed repealed therewith; and provided, further, that the amendments to subparagraphs (v) and (vi) of paragraph (g) of subdivision 11 of section 230 of the public health law, made by section two of this act, shall not affect the repeal of such subparagraphs, and shall be deemed repealed therewith; provided further, however, that section four of this act shall take effect January 1, 2021.