

STATE OF NEW YORK

7448

2023-2024 Regular Sessions

IN ASSEMBLY

May 22, 2023

Introduced by M. of A. LAVINE -- read once and referred to the Committee on Judiciary

AN ACT to amend the judiciary law, in relation to reform and update contingent fee rules for attorneys in claims or actions for medical, dental or podiatric malpractice

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

1 Section 1. Section 474-a of the judiciary law, as amended by chapter
2 485 of the laws of 1986, is amended to read as follows:

3 § 474-a. Contingent fees for attorneys in claims or actions for
4 medical, dental or podiatric malpractice. 1. For the purpose of this
5 section, the term "contingent fee" shall mean any attorney's fee in any
6 claim or action for medical, dental or podiatric malpractice, whether
7 determined by judgment or settlement, which is dependent in whole or in
8 part upon the success of the prosecution by the attorney of such claim
9 or action, or which is to consist of a percentage of any recovery, or a
10 sum equal to a percentage of any recovery, in such claim or action.

11 2. Notwithstanding any inconsistent judicial rule, a contingent fee in
12 a medical, dental or podiatric malpractice action shall not exceed the
13 amount of compensation provided for in the following schedule:

14 [~~30~~] 33.33 percent of the first [~~\$250,000~~] \$500,000 of the sum recov-
15 ered;

16 [~~25~~] 30 percent of the next [~~\$250,000~~] \$500,000 of the sum recovered;

17 [~~20~~] 25 percent of the next \$500,000 of the sum recovered;

18 [~~15~~] 20 percent of [~~the next \$250,000~~] any amount over \$1,500,000 of
19 the sum recovered[~~+~~

20 ~~10 percent of any amount over \$1,250,000 of the sum recovered~~].

21 3. Such percentages shall be computed on the net sum recovered after
22 deducting from the amount recovered expenses and disbursements for
23 expert testimony and investigative or other services properly chargeable
24 to the enforcement of the claim or prosecution of the action. In comput-

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

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1 ing the fee, the costs as taxed, including interest upon a judgment,
2 shall be deemed part of the amount recovered. For the following or
3 similar items there shall be no deduction in computing such percentages:
4 liens, assignments or claims in favor of hospitals, for medical care,
5 dental care, podiatric care and treatment by doctors and nurses, or of
6 self-insurers or insurance carriers.

7 4. In the event that claimant's or plaintiff's attorney believes in
8 good faith that that he or she is entitled to greater compensation than
9 the fee schedule set forth in subdivision two of this section~~[, because~~
10 ~~of extraordinary circumstances, will not give him adequate compen-~~
11 ~~sation,~~ provides, an application for greater compensation may be made
12 upon affidavit with written notice and an opportunity to be heard to the
13 claimant or plaintiff and other persons holding liens or assignments on
14 the recovery. Such application shall be made to the justice of the trial
15 part to which the action had been sent for trial; or, if it had not been
16 sent to a part for trial, then to the justice presiding at the trial
17 term calendar part of the court in which the action had been instituted;
18 or, if no action had been instituted, then to the justice presiding at
19 the trial term calendar part of the Supreme Court for the county in the
20 judicial department in which the attorney has an office. Upon such
21 application, the justice, in his or her discretion~~[, if extraordinary~~
22 ~~circumstances are found to be present, and without regard to the claim-~~
23 ~~ant's or plaintiff's consent,~~] may fix as reasonable compensation for
24 legal services rendered an amount greater than that specified in the
25 schedule set forth in subdivision two of this section, provided, howev-
26 er, that such greater amount shall not exceed the fee fixed pursuant to
27 the contractual arrangement, if any, between the claimant or plaintiff
28 and the attorney. Factors to be considered by the court in order to
29 grant the application for an enhanced fee shall include whether the
30 performance of the attorney was superior, taking into account the
31 attendant circumstances including the result of the case in light of the
32 nature of the liability and damages issues, and whether the claimant or
33 plaintiff consents; provided that the granting of the application shall
34 not be contingent on such consent, and provided further, that the attor-
35 ney need not submit the number of hours expended. If the application is
36 granted, the justice shall make a written order accordingly, briefly
37 stating the reasons for granting the greater compensation; and a copy of
38 such order shall be served on all persons entitled to receive notice of
39 the application.

40 5. A claimant or plaintiff may waive the percentage limitations of
41 subdivision two of this section if a claimant or plaintiff voluntarily
42 chooses to deviate from the percentage limitations spelled out in the
43 medical malpractice retainer. In no event shall the attorney's fee be
44 greater than 33.33 percent of the amount recovered.

45 6. Any contingent fee in a claim or action for medical, dental or
46 podiatric malpractice brought on behalf of an infant shall continue to
47 be subject to the provisions of section four hundred seventy-four of
48 this chapter.

49 § 2. This act shall take effect immediately.