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:

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

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

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:

[~~30~~] **33.33** percent of the first [~~$250,000~~] **$500,000** of the sum recovered;

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

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

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

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

3. Such percentages shall be computed on the net sum recovered after deducting from the amount recovered expenses and disbursements for expert testimony and investigative or other services properly chargeable 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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ing the fee, the costs as taxed, including interest upon a judgment, shall be deemed part of the amount recovered. For the following or similar items there shall be no deduction in computing such percentages: liens, assignments or claims in favor of hospitals, for medical care, dental care, podiatric care and treatment by doctors and nurses, or of self-insurers or insurance carriers.

4. In the event that claimant's or plaintiff's attorney believes in good faith that **that he or she is entitled to greater compensation than** the fee schedule set forth in subdivision two of this section[~~, because of extraordinary circumstances, will not give him adequate compensation,~~] **provides, an** application for greater compensation may be made upon affidavit with written notice and an opportunity to be heard to the claimant or plaintiff and other persons holding liens or assignments on the recovery. Such application shall be made to the justice of the trial part to which the action had been sent for trial; or, if it had not been sent to a part for trial, then to the justice presiding at the trial term calendar part of the court in which the action had been instituted; or, if no action had been instituted, then to the justice presiding at the trial term calendar part of the Supreme Court for the county in the judicial department in which the attorney has an office. Upon such application, the justice, in his **or her** discretion[~~, if extraordinary circumstances are found to be present, and without regard to the claimant's or plaintiff's consent,~~] may fix as reasonable compensation for legal services rendered an amount greater than that specified in the schedule set forth in subdivision two of this section, provided, however, that such greater amount shall not exceed the fee fixed pursuant to the contractual arrangement, if any, between the claimant or plaintiff and the attorney. **Factors to be considered by the court in order to grant the application for an enhanced fee shall include whether the performance of the attorney was superior, taking into account the attendant circumstances including the result of the case in light of the nature of the liability and damages issues, and whether the claimant or plaintiff consents; provided that the granting of the application shall not be contingent on such consent, and provided further, that the attorney need not submit the number of hours expended.** If the application is granted, the justice shall make a written order accordingly, briefly stating the reasons for granting the greater compensation; and a copy of such order shall be served on all persons entitled to receive notice of the application.

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

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

§ 2. This act shall take effect immediately.