
By: **Delegates Barve, Kach, Jones, Donoghue, Boschert, Bozman, Burns, Cadden, G. Clagett, V. Clagett, Conway, Costa, DeBoy, Glassman, Hammen, Howard, Hubbard, Hurson, James, Kirk, Kullen, Love, Mandel, McDonough, Menes, Morhaim, Petzold, Rudolph, Stern, Trueschler, and Weir**

Introduced and read first time: February 11, 2005

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Courts - Medical Injury Recoveries - Attorney's Fees**

3 FOR the purpose of prohibiting an attorney from contracting for or collecting a
4 contingency fee in excess of certain limits for representing a person having a
5 claim against a health care provider for damages due to a medical injury
6 occurring on or after a certain date; providing that a division of fees may be
7 made between certain attorneys only under certain circumstances; providing
8 that an attorney who violates certain provisions of this Act is subject to
9 disbarment, suspension, or other disciplinary action; providing for the
10 application of this Act; defining a certain term; and generally relating to health
11 care malpractice claims and attorney contingency fees.

12 BY adding to

13 Article - Courts and Judicial Proceedings

14 Section 3-2A-07A

15 Annotated Code of Maryland

16 (2002 Replacement Volume and 2004 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article - Courts and Judicial Proceedings**

20 3-2A-07A.

21 (A) (1) IN THIS SECTION, "RECOVERED" MEANS THE NET SUM RECOVERED
22 BY THE CLAIMANT AFTER DEDUCTING ANY DISBURSEMENTS OR COSTS INCURRED IN
23 CONNECTION WITH PROSECUTION OR SETTLEMENT OF THE CLAIM.

1 (2) FOR PURPOSES OF THIS SUBSECTION, THE ATTORNEY'S
2 OFFICE-OVERHEAD COSTS OR CHARGES ARE NOT DEDUCTIBLE DISBURSEMENTS OR
3 COSTS.

4 (B) AN ATTORNEY MAY NOT CONTRACT FOR OR COLLECT A CONTINGENCY
5 FEE FOR REPRESENTING A PERSON HAVING A CLAIM AGAINST A HEALTH CARE
6 PROVIDER FOR DAMAGES DUE TO A MEDICAL INJURY OCCURRING ON OR AFTER
7 JUNE 1, 2005, IN EXCESS OF THE FOLLOWING LIMITS:

- 8 (1) 40% OF THE FIRST \$100,000 RECOVERED;
9 (2) 33 1/3% OF THE NEXT \$100,000 RECOVERED;
10 (3) 25% OF THE NEXT \$100,000 RECOVERED; AND
11 (4) 15% OF ANY AMOUNT RECOVERED IN EXCESS OF \$300,000.

12 (C) THE LIMITATIONS ESTABLISHED UNDER SUBSECTION (B) OF THIS
13 SECTION APPLY REGARDLESS OF WHETHER:

14 (1) THE AMOUNT RECOVERED IS BY SETTLEMENT, AWARD, OR VERDICT;
15 OR

16 (2) THE PERSON FOR WHOM THE AMOUNT IS RECOVERED IS A
17 RESPONSIBLE ADULT, A MINOR, OR A PERSON WHO IS MENTALLY INCOMPETENT.

18 (D) A DIVISION OF FEES BETWEEN AN ATTORNEY WHO CONTRACTS FOR OR
19 COLLECTS A CONTINGENCY FEE SUBJECT TO THIS SECTION AND A REFERRING
20 ATTORNEY MAY BE MADE ONLY IF:

21 (1) THE ATTORNEYS ARE IN THE SAME FIRM; OR

22 (2) (I) THE DIVISION IS IN PROPORTION TO THE SERVICES
23 PERFORMED BY EACH ATTORNEY;

24 (II) THE CLAIMANT IS ADVISED IN WRITING OF AND DOES NOT
25 OBJECT TO THE PARTICIPATION OF THE REFERRING ATTORNEY;

26 (III) THE TOTAL UNDIVIDED FEE IS WITHIN THE LIMITS
27 ESTABLISHED BY THIS SECTION; AND

28 (IV) THE CLAIMANT'S ATTORNEY FILES WITH THE DIRECTOR AS A
29 PUBLIC RECORD:

30 1. WITHIN 90 DAYS FROM THE DATE OF THE COMPLAINT,
31 ALL WRITTEN COMMUNICATIONS OR AGREEMENTS RELATING TO THE DIVISION OF
32 FEES UNDER THIS PARAGRAPH, INCLUDING ALL WRITTEN COMMUNICATIONS OR
33 AGREEMENTS BETWEEN THE ATTORNEYS OR WITH THE CLAIMANT; AND

34 2. BEFORE THE FEE IS DIVIDED, WRITTEN CERTIFICATION
35 DESCRIBING IN DETAIL THE SERVICES PERFORMED BY EACH ATTORNEY, THE

1 AMOUNT OF TIME EXPENDED ON THE CLAIM BY EACH ATTORNEY, AND THE FEE TO
2 BE PAID TO EACH ATTORNEY.

3 (E) AN ATTORNEY WHO VIOLATES THIS SECTION IS SUBJECT TO
4 DISBARMENT, SUSPENSION, OR OTHER DISCIPLINARY ACTION IN ACCORDANCE WITH
5 TITLE 16, CHAPTER 700 OF THE MARYLAND RULES.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
7 effect June 1, 2005.