



# In re: Amendment To The Rules Regulating The Florida Bar, 939 So.2d 1032 (Fla. 2006)

Topics Covered: Professional Liability, Tort Reform

**Outcome: Very Unfavorable**

## Issue

The issue underlying this petition was whether the rules regulating attorneys should be modified to conform to a voter-initiated amendment to the Florida Constitution, which limited medical malpractice plaintiffs' attorneys' contingency fees.

## AMA Interest

The AMA seeks to avoid abusive litigation against physicians.

## Case Summary

By a voter initiative in 2004, the State of Florida amended Article I, §26 of the Florida Constitution to read as follows:

"In any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70 percent of the first \$250,000.00 in all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement, or otherwise, and regardless of the number of defendants. The claimant is entitled to 90 percent of all damages in excess of \$250,000.00, exclusive of reasonable and customary costs and regardless of the number of defendants. This provision is self-executing and does not require implementing legislation."

However, Rule 4-1.5(f)(4)(B) of the Rules Regulating the Florida Bar, which provides ethical limitations on contingency fees, allows contingency fees in excess of the percentages permitted by Article I, §26. The Florida Medical Association ("FMA"), through its attorneys, petitioned the Florida Supreme Court to bring its rules into line with the amended constitutional provision.

However, the Florida Supreme Court, following a proposal from the Florida Bar Association, instead allowed attorneys to have their clients waive the protections of the constitutional amendment. Thus, the amended rule essentially eviscerates the salutary effect of the constitutional amendment.

### **Litigation Center Involvement**

At the request of the FMA, the Litigation Center, along with the Mississippi State Medical Association, filed a memorandum with the Florida Supreme Court on Sept. 22, 2005 to support the FMA petition.

Supreme Court of Florida memorandum