

Statutory Basis for Payment to Chiropractor After Certain Settlements/Verdicts

Wisconsin has a unique statute which allows chiropractors to recover a portion of a personal injury settlement or verdict involving a chiropractor's patient. As of this date, the statute is Wisconsin §895.453. This abstruse statute applies only in the event of a unique settlement or verdict situation. The conditions of the settlement or verdict are carefully listed in the statute. Only under those unique circumstances of a settlement/verdict, the chiropractor is entitled to a pro-rata share of the overall recovery. Generally, this statute applies to situations where the patient's recovery from a third party is relatively minimal.

Chiropractors may wish to familiarize themselves with this statute since the doctor should protect their legal interest in these unique types of situations. If the settlement results from actual litigation, the chiropractor may be required to retain legal counsel and actually "intervene" in the pending litigation. In order to protect a chiropractor's overall rights with regard to any settlement; both before or after filing litigation, the doctor should carefully review and implement the use of "Doctor's Liens" or Assignments of Benefits from a patient's recovery. There is additional information on "Doctor's Liens" contained on the Resources pages of this website.

A copy of the statute as it exists at the time of the printing of this article is attached.

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depositions and court proceedings, if abusive conduct is alleged to have occurred against the complainant or if a crime is alleged to have been committed against the complainant and if the abusive conduct or the crime is a factor under s. 767.41 or is a factor in the complainant's ability to represent his or her interest at the hearing, deposition or court proceeding. The complainant shall notify the court orally, or in writing, of that selection. A service representative selected by a complainant has the right to be present at every hearing, deposition and court proceeding and all interviews and meetings related to those hearings, depositions and court proceedings that the complainant is required or authorized to attend. The service representative selected by the complainant has the right to sit adjacent to the complainant and confer orally and in writing with the complainant in a reasonable manner during every hearing, deposition or court proceeding and related interviews and meetings, except when the complainant is testifying or is represented by private counsel. The service representative may not sit at counsel table during a jury trial. The service representative may address the court if permitted to do so by the court.

- (3) **FAILURE TO EXERCISE RIGHT NOT GROUNDS FOR APPEAL.** The failure of a complainant to exercise a right under this section is not a ground for an appeal of a judgment of conviction or for any court to reverse or modify a judgment of conviction.

History: 1991 a. 276; 1995 a. 220; 2001 a. 109; 2005 a. 155 s. 64; Stats. 2005 s. 895.45; 2005 a. 443 s. 265; 2007 a. 20.

895.453

895.453 Payments of chiropractic services from attorney contingency fees.

- (1) In this section:
- (a) "Chiropractor" means a person licensed under ch. 446.
 - (b) "Motor vehicle" means a vehicle, including a combination of 2 or more vehicles or an articulated vehicle, which is self-propelled, except a vehicle operated exclusively on a rail.
- (2) Notwithstanding s. 803.03, if all of the following conditions exist, fees for chiropractic services provided to an injured person shall be paid out of the amount of fees due to his or her attorney under the contingency fee arrangement made between the person and the attorney:
- (a) The person is injured as the result of a motor vehicle accident.
 - (b) The services were provided by a chiropractor because of the injuries arising from the motor vehicle accident.
 - (c) The person is represented by an attorney under a contingency fee arrangement.
 - (d) The person receives an amount under a settlement agreement that is less than his or her damages.
 - (e) Prior to the person's acceptance of the settlement agreement, the chiropractor has not been paid for his or her services and has provided written notification to the person's attorney of the services that were provided to the person.
- (3) Except as provided in sub. (4), if the conditions under sub. (2) are met, the distribution of the amount due under the contingency fee arrangement shall be allocated on a pro rata basis between the person's attorney and each chiropractor who provided services, based on the percentage obtained by comparing the outstanding fees owed to the attorney and each chiropractor to the aggregate outstanding attorney and chiropractic fees.
- (4) This section does not apply if any of the following exist:
- (a) The chiropractor is eligible for payment for the services provided to the person under any health insurance contract or self-insured health plan.
 - (b) The chiropractor is eligible for payment for the services provided to the person under any governmental health plan or program, including Medicaid or Medicare.

History: 2011 a. 32.

895.455 Limits on recovery by prisoners. A prisoner, as defined in s. 801.02 (7) (a) 2., may not recover damages for mental or emotional injury unless the prisoner shows that he or she has suffered a physical injury as a result of the same incident that caused the mental or emotional injury.

History: 1997 a. 133; 2005 a. 155 s. 66; Stats. 2005 s. 895.455.

895.457 Limiting felon's right to damages.

(1) In this section:

- (a) "Crime" means a crime under the laws of this state or under federal law.
- (b) "Damages" means damages for an injury to real or personal property, for death, or for personal injury.
- (c) "Felony" means a felony under the laws of this state or under federal law.
- (d) "Victim" means a person against whom an act constituting a felony was committed.

(2) No person may recover damages from any of the following persons for injury or death incurred while committing, or as a result of committing, an act that constituted a felony, if the person was convicted of a felony for that act:

- (a) A victim of that felony.
- (b) An individual other than a victim of that felony who assisted or attempted to assist in the prevention of the act, who assisted or attempted to assist in the protection of the victim, or who assisted or attempted to assist in the apprehension or detention of the person committing the act unless the individual who assisted or attempted to assist is convicted of a crime as a result of his or her assistance or attempted assistance.

(3) This section does not prohibit a person from recovering damages for death or personal injury resulting from a device used to provide security that is intended or likely to cause great bodily harm, as defined in s. 939.22 (14), or death.

(4)

- (a) Any applicable statute of limitations for an action to recover damages against a person described under sub. (2) (a) or (b) for injury or death incurred while committing, or as a result of committing, an act that constituted a felony is tolled during the period beginning with the commencement of a criminal proceeding charging the person who committed the act with a felony for that act and ending with the final disposition, as defined in s. 893.13 (1), of the criminal proceeding.
- (b) Any applicable statute of limitations for an action to recover damages from an individual described under sub. (2) (b) for injury or death incurred while committing, or as a result of committing, an act that constituted a felony is tolled during the period beginning with the commencement of a criminal proceeding charging the individual described under sub. (2) (b) with a crime as a result of his or her assistance or attempt to assist and ending with the final disposition, as defined in s. 893.13 (1), of the criminal proceeding. This paragraph does not apply if a criminal proceeding described in par. (a) does not result in a felony conviction and there is no other criminal proceeding described under par. (a) pending.

(5) A court may stay a civil action described under sub. (2) until the final disposition of a criminal proceeding described under sub. (4).

History: 2003 a. 87; 2005 a. 155 s. 68; Stats. 2005 s. 895.457.

895.46 State and political subdivisions thereof to pay judgments taken against officers.