

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2005

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Legislative Document

No. 1415

H.P. 979

House of Representatives, March 22, 2005

### An Act Regarding Confidentiality in Litigation

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Reference to the Committee on Health and Human Services suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative GERZOFSKY of Brunswick.  
Cosponsored by Senator BRYANT of Oxford and  
Representatives: ASH of Belfast, FINCH of Fairfield, FISCHER of Presque Isle, MAZUREK  
of Rockland, MOODY of Manchester, PERCY of Phippsburg, SMITH of Van Buren,  
WALCOTT of Lewiston.

Be it enacted by the People of the State of Maine as follows:

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4       **Sec. 1. 22 MRSA §1711-C, sub-§1, ¶E**, as amended by PL 1999, c. 512, Pt. A, §5 and affected by §7, is further amended to read:

6       E. "Health care information" means information that  
8       directly identifies the individual and that relates to an  
10       individual's physical, mental or behavioral condition,  
12       personal or family medical history or medical treatment or  
14       the health care provided to that individual. "Health care  
16       information" does not include information that protects the  
18       anonymity of the individual by means of encryption or  
20       encoding of individual identifiers or information pertaining  
22       to or derived from federally sponsored, authorized or  
24       regulated research governed by 21 Code of Federal  
      Regulations, Parts 50 and 56 and 45 Code of Federal  
      Regulations, Part 46, to the extent that such information is  
      used in a manner that protects the identification of  
      individuals. The Board of Directors of the Maine Health  
      Data Organization shall adopt rules to define health care  
      information that directly identifies an individual. Rules  
      adopted pursuant to this paragraph are routine technical  
      rules as defined in Title 5, chapter 375, subchapter ~~II~~-A  
      2-A.

26       "Health care information" does not include information that  
28       is created or received by a member of the clergy or other  
30       person using spiritual means alone for healing as provided  
      in Title 32, sections 2103 and 3270.

32       "Health care information" includes professional competence  
34       review records under Title 24, chapter 21 that directly  
      identify the individual.

36       **Sec. 2. 24 MRSA §2510-A, sub-§5** is enacted to read:

38       5. Patient's health care information. Notwithstanding  
40       provisions of this chapter to the contrary, a patient's health  
42       care information under Title 22, chapter 401 includes  
44       professional competence review records that directly identify the  
      patient, and the professional competence committee shall ensure  
      that such records are included in the patient's medical  
      information records to which the patient has access.

46       **Sec. 3. 24 MRSA §2853, sub-§3-A** is enacted to read:

48       3-A. Access to claimant's physician. The person or persons  
50       accused of professional negligence and their counsel may not  
      contact the claimant's physician except as authorized by the  
      claimant's counsel.

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## SUMMARY

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6           This bill requires that professional competence review  
8 records that contain information that directly identifies a  
10 patient are considered part of the patient's health care  
12 information, must be provided protection under the laws of this  
State as well as under the federal Health Insurance Portability  
and Accountability Act of 1996 and must be available to the  
patient. Current law prohibits the patient access to  
professional competence review records.

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16           This bill prohibits the subject of a medical malpractice  
complaint and the subject's attorneys from contacting the  
physician of the medical malpractice claimant except as  
authorized by the claimant's attorney.