

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1998 to June 19, 1999

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 18, 1999

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1999

claimed as an itemized deduction pursuant to the Maine Revised Statutes, Title 36, section 5125.

See title page for effective date.

CHAPTER 522

H.P. 1255 - L.D. 1809

An Act to Increase Access to Cub Care for Children

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

Sec. 1. 22 MRSA §3174-T, sub-§11, as enacted by PL 1999, c. 401, Pt. QQ, §2 and as affected by §5, is repealed and the following enacted in its place:

11. Cub Care drug rebate program. Effective October 1, 1999, the department shall enter into a drug rebate agreement with each manufacturer of prescription drugs that results in a rebate equal to that which would be achieved under the federal Social Security Act, Section 1927. These rebate agreements do not include the additional 6 percentage points required under section 3174-R.

See title page for effective date.

CHAPTER 523

S.P. 450 - L.D. 1325

An Act to Provide Fairness to Victims of Medical Malpractice

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

Sec. 1. 24 MRSA §2853, sub-§4, as amended by PL 1995, c. 571, §1, is further amended to read:

4. Filing of records; time for hearing; extensions. Within 20 days of entry of appearance, the person or persons accused shall contact the claimant's counsel and by agreement shall designate a timetable for filing all the relevant medical and provider records necessary to a determination of the panel and for completing discovery. If the parties are unable to agree on a timetable within 60 days of the entry of appearance, the claimant shall notify the chair of the panel. The chair shall then establish a timetable for the filing of all relevant records and reasonable discovery, which must be filed at least 30 days before any hearing date. Depositions of persons other than the parties and the experts designated by the parties

may not be taken except as permitted by the chair upon the request of a party. The hearing may not be later than 6 months from the service of the notice of claim upon the clerk, except when the time period has been extended by the panel chair in accordance with this subchapter.

Sec. 2. 24 MRSA §2854, as amended by PL 1989, c. 361, §§7 and 10, is further amended to read:

§2854. Hearing

1. Procedure. The claimant or a representative of the claimant shall present the case before the panel. The person accused of professional negligence or ~~his~~ that person's representative shall make a responding presentation. Wide latitude ~~shall~~ must be afforded the parties by the panel in the conduct of the hearing including, but not limited to, the right of examination and cross-examination by attorneys. Depositions are admissible whether or not the person deposed is available at the hearing. The ~~chairman~~ chair shall make all procedural rulings and ~~his~~ those rulings ~~shall~~ be final. ~~A tape recorded record shall be maintained by the panel for its purpose only. The record shall be maintained until 30 days after its decision and then destroyed pursuant to section 2856. The record shall not be made public and the hearings are not to be public without the consent of both or all parties.~~ The Maine Rules of Evidence ~~shall~~ do not apply. Evidence ~~shall~~ must be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The panel shall make such findings upon such evidence as is presented at the hearing, the records and any expert opinions provided by or sought by the panel or the parties.

After presentation by the parties, as provided in this section, the panel may request from either party additional facts, records or other information to be submitted in writing or at a continued hearing, which continued hearing ~~shall~~ must be held as soon as possible. The continued hearings ~~shall~~ must be attended by the same members of the panel who have sat on all prior hearings in the same claim, unless otherwise agreed by all parties.

1-A. Record; hearings. The panel shall maintain a tape recorded record. Except as provided in section 2857, the record may not be made public and the hearings may not be public without the consent of both or all parties.

2. Settlement; mediation. The ~~chairman~~ chair of the panel shall attempt to mediate any differences of the parties before proceeding to findings.

3. Failure to comply. Failure of a party, without good cause, to attend a properly scheduled hearing to participate in authorized discovery, or to otherwise substantially comply with this subchapter, ~~shall~~ must

result in a finding made by a majority of the panel against that party and that finding ~~shall have~~ has the same effect as a finding against that party under section 2857.

Sec. 3. 24 MRSA §2855, sub-§1, as amended by PL 1991, c. 505, §5, is further amended to read:

1. Negligence and causation. At the conclusion of the presentations, the panel shall make its findings in writing within 30 days by answering the following questions:

A. Whether the acts or omissions complained of ~~or found by the panel to exist, or as agreed by the parties,~~ constitute a deviation from the applicable standard of care by the health care practitioner or health care provider charged with that care;

A-1. If the defendant is a participant in the medical liability demonstration project established under subchapter IX and has raised as an affirmative defense compliance with the practice parameters or risk management protocols adopted under section 2973, whether the defendant complied with an applicable parameter or protocol establishing the applicable standard of care;

B. Whether the acts or omissions complained of proximately caused the injury complained of ~~or as found by the panel or as agreed by the parties;~~ and

C. If negligence on the part of the health care practitioner or health care provider is found, whether any negligence on the part of the patient was equal to or greater than the negligence on the part of the practitioner or provider.

Sec. 4. 24 MRSA §2857, sub-§1, as amended by PL 1985, c. 804, §§12 and 22, is repealed and the following enacted in its place:

1. Proceedings before panel confidential. Except as provided in this section and section 2858, all proceedings before the panel, including its final determinations, must be treated in every respect as private and confidential by the panel and the parties to the claim.

A. The findings and other writings of the panel and any evidence and statements made by a party or a party's representative during a panel hearing are not admissible and may not otherwise be submitted or used for any purpose in a subsequent court action and may not be publicly disclosed, except that:

(1) Any testimony or writings made under oath may be used in subsequent proceedings for purposes of impeachment; and

(2) The party who made the statement or presented the evidence may agree to the submission, use or disclosure of that statement or evidence.

B. If the panel findings as to both the questions under section 2855, subsection 1, paragraphs A and B are unanimous and unfavorable to the person accused of professional negligence, the findings are admissible in any subsequent court action for professional negligence against that person by the claimant based on the same set of facts upon which the notice of claim was filed.

C. If the panel findings as to any question under section 2855 are unanimous and unfavorable to the claimant, the findings are admissible in any subsequent court action for professional negligence against the person accused of professional negligence by the claimant based on the same set of facts upon which the notice of claim was filed.

The confidentiality provisions of this section do not apply if the findings were influenced by fraud.

Sec. 5. Application. This Act applies to actions for professional negligence commenced under the Maine Revised Statutes, Title 24, section 2853 on or after the effective date of this Act.

See title page for effective date.

CHAPTER 524

H.P. 1522 - L.D. 2172

An Act Requiring That the Costs of Transporting Highway Construction and Maintenance Materials to Isle au Haut by Barge or Ferry be Paid from the Highway Fund

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

Sec. 1. 29-A MRSA §203-A is enacted to read:

§203-A. Shipping highway construction and maintenance materials to Isle au Haut; costs paid from Highway Fund

The costs of transporting highway construction and maintenance materials to Isle au Haut by boat must be paid from the Highway Fund in the amount of