

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 2078

6
7 H.P. 1476

House of Representatives, February 27, 1986

8 Approved for introduction by a majority of the Legislative Council
9 pursuant to Joint Rule 26.

10 Reference to the Committee on Business and Commerce suggested and
ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Nelson of Portland.
11

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-SIX
16

17 AN ACT Concerning Medical Malpractice
18 Insurance.
19

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

22 Sec. 1. 14 MRSA §1455 is enacted to read:

23 §1455. Itemized verdict and limitation of damages in
24 medical malpractice actions

25 In a medical malpractice action the court shall
26 instruct the jury that, if the jury finds a verdict
27 awarding damages, it shall in its verdict specify the
28 applicable elements of special and general damages
29 upon which the award is based and the amount assigned
30 to each element, including , but not limited to, med-
31 ical expenses, loss of earnings, impairment of earn-
32 ing ability and pain and suffering. In any such ac-
33 tion no verdict may award damages for pain and suf-
34 fering which shall exceed the sum of \$250,000.

1 Sec. 2. 24 MRSA §2802-A is enacted to read:

2 §2802-A. Submission of cases a prerequisite to court
3 action

4 All cases of asserted medical malpractice must be
5 submitted to the panel prior to filing court action
6 based on that claim. Court action may not be filed
7 until a determination pursuant to section 2805 has
8 been made.

9 Sec. 3. 24 MRSA §2803, as enacted by PL 1977, c.
10 492, §3, is amended to read:

11 §2803. Submission of cases

12 1. Written requests; signatures; content. Any An
13 attorney may submit a case of asserted medical mal-
14 practice for the consideration of the panel by a re-
15 quest in writing signed by both the party and his at-
16 torney and delivering the original and 6 copies
17 thereof to the chairman of the panel. This written
18 request shall contain the following:

19 A. A brief statement of the facts of the case,
20 showing the persons involved, the dates and the
21 circumstances, so far as they are known, of the
22 alleged act or acts of malpractice;

23 B. A statement authorizing the panel, by its
24 chairman, to obtain all medical and hospital
25 records and information pertaining to the inci-
26 dent complained of, which statement shall be ac-
27 companied by true copies of any and all medical
28 and hospital records then in the possession of
29 said the party or his attorney, and which, for
30 only the purpose of the panel's consideration of
31 the matter, waives privilege as to the contents
32 of such records. The statement shall not be con-
33 strued as waiving the privilege for any other
34 purpose or any other contest, in or out of court;

35 C. A statement that the deliberations and the
36 discussions of the panel and of any member of the
37 panel in the deliberation of the case shall be
38 confidential and privileged, and that no panel
39 member will be asked in any action to testify

1 concerning the deliberations, discussions and in-
2 ternal proceedings of the panel;

3 D. A statement that the party or attorney under-
4 stands and subscribes to the purpose of screening
5 medical malpractice cases and has advised his
6 client thereof of that purpose and that the cli-
7 ent agrees to the submission of the facts pursu-
8 ant to the plan; and

9 E. A request that the panel consider the merits
10 of the claim and render its report.

11 1-A. Confidentiality. A statement that the de-
12 liberations and the discussions of the panel and of
13 any member of the panel in the deliberation of the
14 case shall be confidential and privileged and that no
15 panel member will be asked in any action to testify
16 concerning the deliberations, discussions and inter-
17 nal proceedings of the panel.

18 2. Notice to physician. Upon receipt of the re-
19 quest, the chairman shall immediately forward a copy
20 to the physician involved who, if he agrees to the
21 submission, shall forthwith forward to the chairman
22 a statement as provided in subsection 1, paragraphs
23 B, C, D and E. Neither the party making the original
24 request pursuant to subsection 1 nor his attorney
25 shall be bound by any waiver or agreement made there-
26 under until the chairman shall have received from the
27 physician a like written waiver or agreement.

28 3. Hearing committee. Upon receipt of the state-
29 ment provided in subsection 2, the The chairman shall
30 immediately designate and convene a hearing committee
31 of panel members to consider the case. Such The com-
32 mittee shall consist of 2 attorneys, one of whom
33 shall be designated chairman, and 2 physicians li-
34 icensed by the board that licensed the physician in-
35 volved. The call of meeting may be oral or written
36 and the place and time shall be as determined by the
37 panel chairman. The committee chairman shall attempt
38 to have available at the meeting all medical and hos-
39 pital records and information pertaining to the case.

1 STATEMENT OF FACT

2 There has been a current explosion in the cost of
3 medical malpractice insurance. This bill attempts to
4 provide some stability and checks on medical malprac-
5 tice claims. Enactment of these changes in the law
6 should help stem the rising cost of the insurance.

7 This bill requires verdicts which award damages
8 in medical malpractice actions to be itemized by
9 specifying the applicable elements of special and
10 general damages upon which the award is based and the
11 amount assigned to each element, including, but not
12 limited to, medical expenses, loss of earnings, im-
13 pairment of earning ability and pain and suffering.
14 In addition, it limits damages which may be awarded
15 for pain and suffering to \$250,000.

16 This bill also requires all medical malpractice
17 cases to be reviewed by the Malpractice Advisory Pan-
18 el prior to filing an action in court. Currently,
19 review by the panel is optional.

20 5018021186