

# MAINE STATE LEGISLATURE

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1 (New Draft of S.P. 773, L.D. 1945)  
2 SECOND REGULAR SESSION  
3

4 ONE HUNDRED AND TWELFTH LEGISLATURE  
5

6 Legislative Document

No. 2354

7  
8 S.P. 940

In Senate, April 8, 1986

9 Reported by Minority Report from the Committee on Judiciary and  
10 printed under Joint Rule 2. Original bill sponsored by Senator Twitchell of  
11 Oxford. Cosponsored by Representative Jackson of Harrison.

12  
13 JOY J. O'BRIEN, Secretary of the Senate  
14

15 STATE OF MAINE  
16

17 IN THE YEAR OF OUR LORD  
18 NINETEEN HUNDRED AND EIGHTY-SIX  
19

20 AN ACT to Establish Policies Governing  
21 Medical Malpractice Claims.  
22

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

25 14 MRSA c. 745 is enacted to read:

26 CHAPTER 745

27 MEDICAL MALPRACTICE

28 §8301. Definitions

29 As used in this chapter, unless the context indi-  
30 cates otherwise, the following terms have the follow-  
31 ing meanings.

32 1. Health care practitioner. "Health care prac-  
titioner" means physicians and all others certified,  
registered or licensed in the healing arts, includ-

1 ing, but not limited to, nurses, podiatrists, optome-  
2 trists, chiropractors, physical therapists, dentists,  
3 psychologists and physicians' assistants.

4 2. Health care provider. "Health care provider"  
5 means any hospital, clinic, nursing home or other fa-  
6 ility in which skilled nursing care or medical ser-  
7 vices are prescribed by or performed under the gener-  
8 al direction of persons licensed to practice medi-  
9 cine, dentistry, podiatry or surgery in this State  
10 and which is licensed or otherwise authorized by the  
11 laws of this State.

12 3. Medical malpractice. "Medical malpractice"  
13 means any tort or breach of contract based on health  
14 care services rendered, or which should have been  
15 rendered, by a health care practitioner, his agents  
16 or employees or a health care provider, his agents or  
17 employees.

18 §8302. Itemized verdict in medical malpractice ac-  
19 tions

20 In a medical malpractice action, the court shall  
21 instruct the jury that, if the jury finds a verdict  
22 awarding damages, it shall in its verdict specify the  
23 applicable elements of special and general damages  
24 upon which the award is based and the amount assigned  
25 to each element, including, but not limited to, medi-  
26 cal expenses, loss of earnings, impairment of earning  
27 ability and pain and suffering. In any medical mal-  
28 practice action, no verdict may award damages for  
29 pain and suffering which exceed the sum of \$250,000.

30 §8303. Contingency fees

31 1. Limitation. In all medical malpractice ac-  
32 tions, the total contingent fee for plaintiff's at-  
33 torney or attorneys shall not exceed the following  
34 amounts:

35 A. Thirty-three and one-third percent of the  
36 first \$100,000 of the sum recovered;

37 B. Twenty-five percent of the next \$100,000 of  
38 the sum recovered; and

1 C. Twenty percent of any amount over \$200,000 of  
2 the sum recovered.

3 2. Future damages; lump-sum value. For purposes  
4 of determining any lump-sum contingent fee, any fu-  
5 ture damages recoverable by the plaintiff in periodic  
6 installments shall be reduced to lump-sum value.

7 3. Review. The court may review contingent fee  
8 agreements for fairness. In special circumstances,  
9 where an attorney performs extraordinary services in-  
10 volving more than usual participation in time and ef-  
11 fort, the attorney may apply to the court for approv-  
12 al of additional compensation.

13 4. Definition. As used in this section, "con-  
14 tingent fee basis" includes any fee arrangement under  
15 which the compensation is to be determined in whole  
16 or in part on the result obtained.

17 STATEMENT OF FACT

18 This new draft provides for a cap of \$250,000 on  
19 damages for pain and suffering in medical malpractice  
20 actions. It also establishes a fee schedule for at-  
21 torneys' contingent fees in medical malpractice ac-  
22 tions.

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