

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 797

H.P. 586 House of Representatives, March 17, 1987
Reference to the Committee on Judiciary suggested and
ordered printed.

EDWIN H. PERT, Clerk
Presented by Representative ROLDE of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

AN ACT to Establish Policies Governing
Medical Malpractice Claims.

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

14 MRSA c. 745 is enacted to read:

CHAPTER 745

MEDICAL MALPRACTICE

§8301. Definitions

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

1 1. Health care practitioner. "Health care prac-
2 itioner" means physicians and all others certified,
3 registered or licensed in the healing arts, includ-
4 ing, but not limited to, nurses, podiatrists, optome-
5 trists, chiropractors, physical therapists, dentists,
6 psychologists and physicians' assistants.

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

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

21 §8302. Itemized verdict in medical malpractice ac-
22 tions

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

33 §8303. Contingency fees

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

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

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

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

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

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

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

19 STATEMENT OF FACT

20 This bill provides for a cap of \$250,000 on dam-
21 ages for pain and suffering in medical malpractice
22 actions. It also establishes a fee schedule for at-
23 torneys contingent fees in medical malpractice ac-
24 tions.

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