

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 1957

H.P. 1409

House of Representatives, December 15, 1989

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

Received by the Clerk of the House on December 15, 1989. Referred to the Committee on Judiciary and 1600 ordered printed pursuant to Joint Rule 14.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

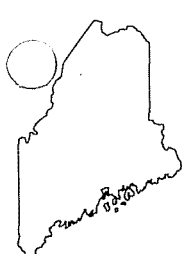
Presented by Representative MacBRIDE of Presque Isle.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

An Act to Clarify the Laws Governing Prelitigation Screening Panels.

(EMERGENCY)



Emergency preamble. Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

Whereas, questions have arisen regarding how to terminate
cases pending before medical malpractice prelitigation screening
panels created by Public Law 1985, chapter 804; and

Whereas, questions have also emerged regarding how to
commence an action before the panels when the person accused of
professional negligence is not available for service; and

Whereas, these questions must be clarified immediately in
order to facilitate the movement of numerous cases currently
pending before the panels; and

Whereas, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
safety; now, therefore,

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

**Sec. 1. 24 MRSA §2853, sub-§1, as amended by PL 1989, c. 361,
§§4 and 10, is further amended to read:**

1. Notice of claim; filing fee. Any person serving a
notice of claim of professional negligence pursuant to section
2903 shall also serve a copy upon with return of service on the
clerk of the Superior Court in the county where a complaint based
on the claim would be filed or was filed within 10 days of
serving the notice of claim under section 2903, with ordinary
mail notice of service to the person or persons accused of
professional negligence in the notice. The notice of claim and
all other documents filed with the clerk in the matter during the
prelitigation screening process shall be confidential. At the
time of filing the notice, the claimant shall also pay to the
clerk a filing fee of \$200 per notice filed.

Sec. 2. 24 MRSA §2853, sub-§8 is enacted to read:

8. Dismissal. Cases pending before the panels may be
dismissed as follows.

A. Voluntary dismissal will be governed as follows.

**(1) Any action before the panel may be dismissed by
the plaintiff by filing a notice of dismissal at any
time prior to the appointment of the panel or by filing
a stipulation of dismissal signed by all parties who
have appeared in the action. Unless otherwise stated**

2 in the notice of dismissal, stipulation or order, the
3 dismissal is without prejudice.

4 (2) Except as provided in subparagraph (1), an action
5 shall not be dismissed on the plaintiff's motion except
6 on order of the chair of the panel and on terms and
7 conditions the chair deems proper.

8
9 B. Involuntary dismissal will be governed as follows.

10 (1) On failure of the plaintiff to prosecute or to
11 comply with rules or any order of the chair, and on
12 motion by the chair or any defendant, after notice to
13 all parties has been given, and in the absence of the
14 showing of good cause, the chair may dismiss the action.

15 (2) Unless the chair of the panel in its order for
16 dismissal otherwise specifies, a dismissal under this
17 paragraph shall be a dismissal with prejudice. A
18 dismissal with prejudice shall be deemed the equivalent
19 of a finding for the defendant on all issues before the
20 panel.

21
22
23 Sec. 3. 24 MRSA §2903, sub-§1, ¶A, as enacted by PL 1985, c.
24 804, §§14 and 22, is amended to read:

25 A. Served written notice of claim setting forth, under
26 oath, the professional negligence alleged and the nature and
27 circumstances of the injuries and damages alleged,
28 personally or by registered or certified mail upon on the
29 person accused of professional negligence. Personal service
30 or service by registered or certified mail shall be
31 completed on the person accused within 30 days of filing.
32 In the event service cannot be obtained within 30 days, the
33 plaintiff may file a motion in Superior Court for an
34 extension on a showing of good cause, including the efforts
35 that have been made for service. In addition to granting
36 the extension, the court may provide for alternate service
37 in accordance with the Maine Rules of Civil Procedure, Rule
38 4;

39 **Emergency clause.** In view of the emergency cited in the
40 preamble, this Act shall take effect when approved.
41

42
43
44
45
46
47 **STATEMENT OF FACT**

48 This bill amends certain portions of the law that
49 established medical malpractice screening panels. After 2 1/2
50 years' experience with the panels, representatives of the court,
51 the plaintiff and defense bar, medical providers and insurance
52

2 companies met and agreed on the need to make clarifications and
additions to the law in the areas of dismissal and alternate
4 service.

6 The bill accomplishes these changes by including language
similar to that found in the Maine Rules of Civil Procedure, Rule
8 41, regarding dismissal and by including language similar to that
in the Maine Rules of Civil Procedure, Rule 4, regarding
alternate service.

10