

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 1179

H.P. 825

House of Representatives, March 18, 1991

Reference to the Committee on Judiciary suggested and ordered printed.

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

EDWIN H. PERT, Clerk

Presented by Representative GWADOSKY of Fairfield.  
Cosponsored by Representative GRAHAM of Houlton.

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STATE OF MAINE

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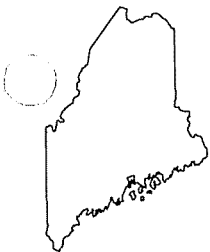
IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

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**An Act to Amend the Laws Regarding Complaints against Physicians  
and to Require a Study Concerning Patient Information.**

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(EMERGENCY)



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

4  
Whereas, there are numerous patient complaints and suits  
6 regarding physician services; and

8  
Whereas, it is felt that providing potential patients with  
additional information regarding physicians as an aid to  
10 selecting and dealing with them would be one means to a more  
satisfactory physician-patient relationship; and

12  
Whereas, some of the information that would be of aid to a  
14 patient appears to be protected by current federal and state  
laws; and

16  
Whereas, it is desirable that these issues of what  
18 information may be legally made available be clarified as soon as  
possible so that patients may be provided with all information  
20 not legally prohibited; and

22  
Whereas, in the judgment of the Legislature, these facts  
create an emergency within the meaning of the Constitution of  
24 Maine and require the following legislation as immediately  
necessary for the preservation of the public peace, health and  
26 safety; now, therefore,

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

30 **Sec. 1. 24 MRSA §2505, last ¶, as amended by PL 1985, c. 185,**  
32 **§2, is further amended to read:**

34 ~~Except for specific protocols developed by the board~~  
~~pursuant to Title 32, section 3298, no physician or committee is~~  
~~responsible for reporting misuse of alcohol or drugs or~~  
36 ~~professional incompetence or malpractice as a result of physical~~  
~~or mental infirmity or by the misuse of alcohol or drugs~~  
38 ~~discovered by the physician or committee as a result of~~  
~~participation or membership in a professional review committee or~~  
40 ~~with respect to any information acquired concerning misuse of~~  
~~alcohol or drugs or professional incompetence or malpractice as a~~  
42 ~~result of physical or mental infirmity or by the misuse of~~  
~~alcohol or drugs, as long as that information is reported to the~~  
44 ~~professional review committee. Nothing in this section may~~  
46 ~~prohibit an impaired physician from seeking alternative forms of~~  
~~treatment.~~

48 **Sec. 2. 24 MRSA §2506, as amended by PL 1989, c. 462, §1, is**  
50 **further amended by adding at the end a new paragraph to read:**

52 This section applies to persons who are health care  
practitioners at the time their privileges are revoked,

2 suspended, limited or terminated, regardless of whether the  
3 person is currently regulated by the State and regardless of the  
4 current state of residence.

5 **Sec. 3. 24 MRSA §2509, sub-§§6 and 7, as enacted by PL 1977, c.**  
6 **492, §3, are amended to read:**

7 **6. Court action for amendment or destruction.** A physician  
8 shall have has the right to seek through court action pursuant to  
9 the Maine Rules of Civil Procedure the amendment or destruction  
10 of any part of his that physician's historical record in the  
11 possession of the board. At least 30 days prior to amending or  
12 destroying a disciplinary record, the board shall by letter to  
13 the last known address inform those persons who filed the  
14 complaint that resulted in the record of the intention to amend  
15 or destroy it.

16 **7. Destruction of information within 5 years.** Except as to  
17 information relating to biographical background, education,  
18 professional training and practice, prior disciplinary action by  
19 any entity or that which the board may be otherwise required by  
20 law to maintain, the board shall destroy after 5 years  
21 information in a physician's historical record, unless the board  
22 has initiated a proceeding for a hearing upon the information  
23 within 5 years of its placement into the historical record. The  
24 board shall act on the findings of the hearing upon its  
25 conclusion.

26 **Sec. 4. 24 MRSA §2601, first ¶, as enacted by PL 1977, c. 492,**  
27 **§3, is amended to read:**

28 Every insurer providing professional liability insurance in  
29 this State to a person licensed by the Board of Registration in  
30 Medicine or the Board of Osteopathic Examination and Registration  
31 or to any health care provider shall make a periodic report of  
32 claims made under the insurance to the department or board that  
33 regulates the insured and to the Attorney General. For purposes  
34 of this section, a claim is made whenever the insurer receives  
35 information from an insured, a patient of an insured or an  
36 attorney that an insured's liability for malpractice is asserted.  
37 The report shall must include:

38 **Sec. 5. 24 MRSA §2602, sub-§1, as amended by PL 1979, c. 541,**  
39 **Pt. A, §161, is further amended to read:**

40 **1. Report; finality of judgment or award.** If The insurer  
41 shall make a report of disposition to the board or department  
42 that regulates the insured and to the Attorney General as  
43 provided in subsection 2 if any claim subject to section 2601  
44 results in:

45 **A. A final judgment or award to the claimant in any amount;**

2 B. A settlement involving payment in any amount of money or  
services; or

4  
6 C. A final disposition not involving any payment of money  
or services, ~~the insurer shall make a report of disposition  
as provided in subsection 2.~~

8  
10 For purposes of this subsection, a judgment or award is final  
when it cannot can not be appealed, and a disposition is final  
12 when it results from judgment, dismissal, withdrawal or  
abandonment.

14 Sec. 6. 24 MRSA §2607, as enacted by PL 1985, c. 804, §10, is  
amended to read:

16  
18 **§2607. Claims paid information**

20 When any person licensed by the Board of Registration in  
Medicine or the Board of Osteopathic Examination and Registration  
22 has 3 professional liability claims that have resulted in a  
monetary judgment, award or settlement over a 10-year period, the  
boards shall treat that situation as a complaint against the  
24 licensee or practitioner and shall initiate a review consistent  
with Title 32, sections 3282 to 3289.

26  
28 Sec. 7. 32 MRSA §3282-A, sub-§1, as enacted by PL 1983, c.  
378, §53, is amended to read:

30 1. **Disciplinary proceedings and sanctions.** The board shall  
investigate a complaint, on its own motion or upon receipt of a  
32 written complaint filed with the board, regarding noncompliance  
with or violation of this chapter or of any rules adopted by the  
34 board.

36 The board shall notify the licensee of the content of a complaint  
filed against the licensee as soon as possible, but in no event  
38 later than within 60 days of receipt of this information. The  
licensee shall respond within 30 days. If the licensee's  
40 response to the complaint satisfies the board that the complaint  
does not merit further investigation or action, the matter may be  
42 dismissed, with notice of the dismissal to the complainant, if  
any.

44  
46 If, in the opinion of the board, the factual basis of the  
complaint is or may be true, and it is of sufficient gravity to  
warrant further action, the board may request an informal  
48 conference with the licensee. The board shall provide the  
licensee with adequate notice of the conference and of the issues  
50 to be discussed. The conference shall must be conducted in  
executive session of the board, unless otherwise requested by the  
52 licensee. Statements made at the conference may not be

introduced at a subsequent formal hearing unless all parties consent.

The board shall investigate and take action on a complaint involving activities that occurred in this State regardless of whether the licensee continues to be licensed or continues to reside in the State. In the case of physicians who have moved to another state, the board shall notify the appropriate state regulatory body in that state that the physician is under investigation and report to that body the final results of the investigation.

If the board finds that the factual basis of the complaint is true and is of sufficient gravity to warrant further action, it may take any of the following actions it deems appropriate:

A. With the consent of the licensee, enter into a consent agreement which that fixes the period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the licensee. A consent agreement may be used to terminate a complaint investigation, if entered into by the board, the licensee and the Attorney General's office;

B. In consideration for acceptance of a voluntary surrender of the license, negotiate stipulations, including terms and conditions for reinstatement, which that ensure protection of the public health and safety and which serve to rehabilitate or educate the licensee. These stipulations shall may be set forth only in a consent agreement signed by the board, the licensee and the Attorney General's office;

C. If the board concludes that modification or nonrenewal of the license might be in order, the board shall hold an adjudicatory hearing in accordance with the provisions of the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV; or

D. If the board concludes that suspension or revocation of the license is in order, the board shall file a complaint in the Administrative Court in accordance with Title 4, chapter 25.

A licensee with hospital patients and hospitals shall notify a licensee's hospital patients of any probation or stipulation under which the licensee is practicing as a result of board disciplinary action.

**Sec. 8. Study; timetable.** The Office of Policy and Legal Analysis shall undertake a study of federal law and the Constitution of Maine for the purposes of determining the following:

2 1. If, and options concerning how, the following  
4 information can be provided to patients and potential patients  
for their protection:

6 A. Any complaints filed against a physician;

8 B. Any disciplinary action taken against a physician;

10 C. Any findings or recommendations made by a professional  
12 review committee in regard to a physician;

14 D. Any findings, recommendations and reports of any  
insurance company in regard to a physician, pursuant to the  
16 Maine Revised Statutes, Title 24, section 2601; and

18 E. Any reports, findings, recommendations issued by, and  
any restrictions or limitations imposed by, a health care  
20 provider on a physician; and

22 2. If, and options concerning how, the state law regarding  
informed consent to health care treatment, Title 24, section  
24 2905, can be modified to provide greater protection for consumers.

26 The Office of Policy and Legal Analysis shall report by  
November 15, 1991 to the Joint Standing Committee on Business  
28 Legislation, which may submit implementing legislation to the  
Second Regular Session of the 115th Legislature.

30 **Emergency clause.** In view of the emergency cited in the  
preamble, this Act takes effect when approved.

34 **STATEMENT OF FACT**

36 This bill:

38 1. Removes from the law certain instances in which a  
40 physician or professional competence committee is relieved from  
responsibility for reporting malpractice or drug or alcohol abuse  
42 to the appropriate state regulatory board;

44 2. Requires that health care providers report disciplinary  
46 action to the appropriate state board even though the  
practitioner may no longer be licensed or may no longer be in the  
48 State;

50 3. Requires that a board that is planning to amend or  
destroy any items from a physician's record report this fact to  
52 the complainant if those items concern disciplinary action;

2           4. Requires that the provider report of liability insurance  
4           claims and claim dispositions against physicians and health care  
            institutions currently required by law be made to the appropriate  
            state regulatory body and to the Attorney General;

6           5. Removes the 10-year time span within which 3 monetary  
8           judgments against a physician must fall in order to constitute a  
            complaint before the state regulatory board;

10          6. Requires that physician regulatory boards continue to  
12          investigate and resolve a complaint even though the licensee may  
14          no longer be licensed or living in the State. The bill requires  
            that notice of complaint and, subsequently, its resolution be  
            sent to the state to which the licensee has moved; and

16          7. Requires that the Office of Policy and Legal Analysis  
18          study the federal law and state constitutional issues that would  
20          be involved in providing greater information on physicians to  
            consumers and in modifying the informed consent law so as to  
            offer consumers greater protection.