

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

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Legislative Document

No. 1464

S.P. 560

In Senate, April 11, 1991

Reference to the Committee on Human Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator CONLEY of Cumberland

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STATE OF MAINE

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

---

An Act to Ensure National Standards of Care.

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

2           Sec. 1. 24 MRSA §2973, as enacted by PL 1989, c. 931, §4, is  
4 amended to read:

6       **§2973. Practice parameters; risk management protocols**

8           Each medical specialty advisory committee shall develop  
10 practice parameters and risk management protocols in the medical  
12 specialty area relating to that committee. The practice  
14 parameters must define appropriate clinical indications and  
16 methods of treatment within that specialty. The risk management  
18 protocols must establish standards of practice designed to ~~avoid~~  
20 ~~malpractice--claims--and--increase--the--defensibility--of--the~~  
22 ~~malpractice-claims-that-are-pursued~~ increase the level of quality  
24 of care and identify incompetent physicians. The parameters and  
26 protocols must be consistent with appropriate prevailing and  
acceptable national standards of care and levels of quality. The  
Board of Registration in Medicine and the Board of Osteopathic  
Examination and Registration shall review the parameters and  
protocols, approve the parameters and protocols appropriate for  
each medical specialty area and adopt them as rules under the  
Maine Administrative Procedure Act. These boards may not adopt  
any parameter or protocol that diminishes the standard of care or  
quality of care for any medical specialty area.

28       Sec. 2. 24 MRSA §2975, sub-§1, as enacted by PL 1989, c. 931,  
§4, is amended to read:

30           1. Introduced by defendant. In any claim for professional  
32 negligence against a physician or the employer of a physician  
34 participating in the project established by this subchapter in  
36 which a violation of a standard of care is alleged, ~~only the~~  
~~physician--or--the--physician's--employer--may--introduce--into~~  
~~evidence,--as--an--affirmative--defense,--the--existence--of--the~~  
practice parameters and ~~risk-management~~ protocols developed ~~and~~  
~~adepted-pursuant-to-section-2973-for-that~~ approved by the Board  
38 of Registration in Medicine and the Board of Osteopathic  
Examination and Registration, as applicable, under the Maine  
40 Administrative Procedure Act are the applicable standards of care  
42 for each medical specialty area. These boards shall ensure that  
the standards represent the highest levels of care and quality  
reasonably attainable.

44       Sec. 3. 24 MRSA §2975, sub-§§2 and 3, as enacted by PL 1989, c.  
46 931, §4, are repealed.

48       Sec. 4. 24 MRSA §2976, as enacted by PL 1989, c. 931, §4, is  
50 repealed and the following enacted in its place:

2 **§2976. Physician participation**

4 All physicians practicing in a medical specialty area for  
6 which practice parameters and risk management protocols have been  
8 developed and adopted pursuant to section 2973 are subject to the  
10 practice parameters and risk management protocols so developed  
12 and adopted.

14 **Sec. 5. 24 MRSA §2977**, as enacted by PL 1989, c. 931, §4, is  
16 repealed.

18 **STATEMENT OF FACT**

20 The purpose of this bill is to require all physicians in the  
22 medical specialty area for which practice parameters and  
24 protocols are developed to be governed by the parameters and  
26 protocols. Additionally, the bill requires that the parameters  
28 and protocols be developed for the purpose of increasing the  
30 quality of health care provided in the State and, so that the  
32 Board of Registration in Medicine and the Board of Osteopathic  
Examination and Registration will have clear criteria for  
measuring shoddy health care and incompetent physicians. The  
bill also requires that the practice parameters and protocols be  
consistent with national standards of care and that these boards  
strive to improve the quality of care provided in the State by  
adopting standards that recognize the highest level of care  
attainable. The bill makes the practice parameters the legal  
standard in all medical negligence cases and requires all  
physicians in the regulated specialty to comply with them.