

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1593

H.P. 1093

House of Representatives, April 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 STEVENS of Bangor.

Cosponsored by Representative KETTERER of Madison, Senator CONLEY of Cumberland and Representative OTT of York.

STATE OF MAINE

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

An Act to Amend the Maine Health Security Act.

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

2
3 Sec. 1. 24 MRSA §2852, as amended by PL 1989, c. 361, §§1 to
4 3 and 10, is further amended to read:

6 **§2852. Formation and procedure**

8 1. **Creation of panel lists.** The Chief Justice of the
9 Superior Court shall recommend to the clerk of each judicial
10 region of the Superior Court the names of retired judges and
11 persons with judicial experience and attorneys at law with trial
12 experience who are residents of the region to serve on screening
13 panels under this subchapter. The clerk in each judicial region
14 shall place these names on a list from which the Chief Justice of
15 the Superior Court will shall choose a panel chairman chair under
16 subsection 2.

18 ~~The clerk of each judicial region of the Superior Court shall~~
19 ~~maintain lists of health care practitioners, health care~~
20 ~~providers and attorneys recommended by the professions involved~~
21 ~~to serve on screening panels under this subchapter.~~

22
23 2. **Selection of panel members; compensation.** Screening
24 panel members shall be are selected as follows.

26 A. Upon receipt of a notice of claim under section 2853,
27 the clerk of the Superior Court who receives the notice
28 shall notify the Chief Justice of the Superior Court. The
29 Chief Justice shall choose a ~~retired judge or~~ person with
30 ~~judicial experience~~ from the list maintained by the clerk
31 under subsection 1 to serve as chairman chair of the panel
32 to screen the claim. The Chief Justice shall attempt to
33 choose a chairman chair who is a resident of the judicial
34 region in which the notice of claim was filed. If no
35 resident chairman chair is available or appropriate, the
36 Chief Justice shall choose a chairman chair from the lists
37 maintained by clerks of other judicial regions. If at any
38 time a chairman chair chosen under this paragraph is unable
39 or unwilling to serve, the chief justice shall appoint a
40 replacement following the procedure in this paragraph for
41 the initial appointment of a chairman chair.

42
43 B. Upon notification of the Chief Justice's choice of
44 chair, the clerk who received the notice of claim under
45 section 2853 shall notify that person and provide that
46 person with the ~~clerk's lists of health care practitioners,~~
47 ~~health care providers and attorneys created under subsection~~
48 1 Superior Court jury list from the county where the panel
49 will convene. The chair shall choose 2 panel members from
50 ~~these lists 2 or 3 additional panel members as follows: the~~
51 jury list to represent consumers.

2 (1) ~~The chair shall choose one attorney;~~

4 (2) ~~The chair shall choose one health care~~
6 ~~practitioner. If possible, the chair shall choose a~~
8 ~~practitioner who practices in the specialty or~~
10 ~~profession of the person accused of professional~~
12 ~~negligence;~~

14 (3) ~~Where the claim involves more than one person~~
16 ~~accused of professional negligence the chair may choose~~
18 ~~a 4th panel member who is a health care practitioner or~~
20 ~~health care provider. If possible, the chair shall~~
22 ~~choose a practitioner or provider in the specialty or~~
24 ~~profession of a person accused; and~~

26 (4) ~~When agreed upon by all the parties, the list of~~
28 ~~available panel members may be enlarged in order to~~
30 ~~select a panel member who is agreed to by the parties~~
32 ~~but who is not on the clerk's list.~~

34 The Chief Justice of the Superior Court shall establish the
36 compensation of the panel chair. Other panel members shall
38 serve ~~without compensation or payment of expenses~~ in lieu of
40 jury duty but at the same rate of pay.

42 The clerk of the Superior Court in the judicial region in
44 which the notice of claim is filed under section 2853 shall,
46 with the consent of the Chief Justice of the Superior Court,
48 provide clerical and other assistance to the panel chair.

50 3. **Challenges; replacements.** If any panel member other
52 than the ~~chairman~~ chair is unable or unwilling to serve in any
54 matter or is challenged for cause by any person who is a party to
56 a proceeding before a panel, the party challenging the member
58 shall request a replacement from the ~~lists maintained by the~~
60 ~~clerk~~ Superior Court jury list under subsection 1 2, paragraph B,
62 chosen by the ~~chairman~~ chair who shall so notify the parties.
64 There shall ~~may~~ only be challenges for cause allowed. The
66 ~~chairman~~ chair shall inquire as to any bias on the part of a
68 panel member or as requested by any party.

70 If the ~~chairman~~ chair is challenged for cause by any person who
72 is a party to the proceeding before a panel, the party
74 challenging shall notify the Chief Justice of the Superior Court.
76 If the ~~chief justice~~ Chief Justice finds cause for the challenge,
78 he ~~the~~ Chief Justice shall replace the ~~chairman~~ chair as under
80 subsection 2, paragraph A.

82 5. **Subpoena power.** The panel, through the ~~chairman~~ chair,
84 shall ~~have~~ has the same subpoena power as exists for a Superior
86 Court Judge. The ~~chairman shall have~~ chair has sole authority,

2 without requiring the agreement of other panel members, to issue
subpoenas.

4 6. **Discovery.** The chair, upon application of a party, may
6 permit reasonable discovery. The chair may rule on requests
regarding discovery, or may allow the parties to seek a ruling in
8 the Superior Court under the provisions of section 2853,
subsection 5.

10 **Sec. 2. 24 MRSA §2856**, as enacted by PL 1985, c. 804, §§12
and 22, is amended to read:

12 **§2856. Notification and effect of findings**

14 The panel's findings, signed by the panel members,
16 indicating their vote, shall must be served by registered or
certified mail on the parties within 7 days of the date of the
18 findings. The findings, notice of claim and record of the
hearing shall must be preserved until 30 days after final
20 judgment or the case is finally resolved, after which time ~~it~~
shall ~~be~~ they are destroyed. On a finding of negligence, a
22 report of that finding must be sent to the Board of Registration
in Medicine where it is maintained pursuant to Title 32, section
24 3269, subsection 17. All medical and provider records shall must
be returned to the party providing them to the panel.

26 **Sec. 3. 24 MRSA §2857, sub-§1**, as enacted by PL 1985, c. 804,
28 §§12 and 22, is amended to read:

30 1. **Proceedings before panel confidential.** Except as
32 otherwise provided in this section and ~~section~~ sections 2856 and
2858, all proceedings before the panel, including its final
34 determinations, shall must be treated in every respect as private
and confidential by the panel and the parties to the claim. No
36 findings or other writings of the panel, nor any evidence or
statements made by any party or ~~his~~ the party's representative
during a panel hearing may be admissible or otherwise submitted
38 or used in any way for any purpose in any subsequent court action
or any other public disclosure made, unless otherwise agreed by
40 the party who made the statement or presented the evidence. If
the findings of the panel are:

42 A. As to both questions under section 2855, unanimous and
44 unfavorable to the person accused of professional
negligence, the findings, without explanation, shall ~~be~~ are
46 admissible in any subsequent court action for professional
negligence against that person by the claimant based on the
48 same set of facts upon which the notice of claim was filed;
and

50 B. As to either question under section 2855, unanimous and
52 unfavorable to the claimant, the findings, without

2 explanation, shall-be are admissible in any subsequent court
4 action for professional negligence against the person
6 accused of professional negligence by the claimant based on
the same set of facts upon which the notice of claim was
filed.

8 Under paragraphs A and B, the findings shall-be are admissible
10 only against the party against whom they were made. The
confidentiality provisions of this section do not apply if the
findings were influenced by fraud.

12 **Sec. 4. 24 MRSA c. 21, sub-cc. VII and VIII are repealed.**

14 **Sec. 5. 32 MRSA §3269, sub-§17 is enacted to read:**

16 17. Mediation panel reports. The duty to maintain
18 confidential reports on a finding of negligence issued pursuant
to Title 24, section 2856.

20 **Sec. 6. 32 MRSA §3296, as amended by PL 1987, c. 646, §11, is**
22 **further amended to read:**

24 **§3296. Records of proceedings of medical staff review committees**
confidential

26 All proceedings and records of proceedings concerning
28 medical staff reviews, hospital reviews and other reviews of
medical care conducted by committees of physicians and other
30 health care personnel on behalf of hospitals located within the
State or on behalf of individual physicians, when the reviews are
32 required by state or federal law, rule or regulations or as a
condition of accreditation by the Joint Commission on
34 Accreditation of Hospitals or the American Osteopathic
Association Committee on Hospital Accreditation or are conducted
36 under the auspices of the state or county professional society to
which the physician belongs, are confidential and shall-be exempt
38 from discovery except by order issued pursuant to Title 24,
section 2852, subsection 6.

40 **STATEMENT OF FACT**

42 This bill amends the provisions of the Maine Health Security
44 Act dealing with malpractice screening panels to:

46 1. Include attorneys at law with trial experience in the
48 selection of a panel chair;

50 2. Revise the current makeup of the panels, requiring that
52 the panel members be selected from the Superior Court jury list
of the county where the panel will convene; and

2 3. Require that a report on any finding of negligence by
the panel members be sent to and maintained by the Board of
Registration in Medicine.

4
6 This bill also repeals the provisions of the Maine Health
Security Act regarding structured awards and limitations on
contingent fees.

8
10 Finally, this bill provides access to proceedings and
records of the Board of Registration in Medicine by the mediation
panels established pursuant to the Maine Health Security Act.

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