

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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Legislative Document

No. 1252

S.P. 456

In Senate, April 11, 1995

**An Act to Clarify the Role of Prelitigation Screening Panels under the Health Security Act.**

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS  
Secretary of the Senate

Presented by Senator MILLS of Somerset.  
Cosponsored by Representative: JONES of Bar Harbor.

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

2           **Sec. 1. 24 MRSA §2855, sub-§1**, as amended by PL 1991, c. 505,  
4 §5, is further amended to read:

6           **1. Negligence and causation.** At the conclusion of the  
presentations, the panel shall make its findings in writing  
8 within 30 days by answering the following questions:

10           A. Whether the evidence presented, including any  
12 stipulations by the parties, permits a reasonable inference  
that the acts or omissions complained of ~~or found by the~~  
14 ~~panel to exist, or as agreed by the parties,~~ constitute a  
deviation from the applicable standard of care by the health  
16 care practitioner or health care provider charged with that  
care;

18           A-1. If the defendant is a participant in the medical  
liability demonstration project established under subchapter  
20 IX and has raised as an affirmative defense compliance with  
the practice parameters or risk management protocols adopted  
22 under section 2973, whether the evidence presented permits a  
reasonable inference that the defendant ~~complied~~ did not  
24 comply with an applicable parameter or protocol establishing  
the applicable standard of care;

26           B. Whether the evidence presented, including any  
28 stipulations by the parties, permits a reasonable inference  
that the acts or omissions complained of proximately caused  
30 the injury complained of ~~or as found by the panel or as~~  
~~agreed by the parties;~~ and

32           C. If a reasonable inference of negligence on the part of  
34 the health care practitioner or health care provider is  
found raised, whether the evidence presented permits a  
36 reasonable inference that any negligence on the part of the  
patient was equal to or greater than the negligence on the  
38 part of the practitioner or provider.

40           **Sec. 2. 24 MRSA §2855, sub-§2**, as repealed and replaced by PL  
1989, c. 361, §§8 and 10, is repealed.

42           **Sec. 3. 24 MRSA §2855, sub-§2-A** is enacted to read:

44           **2-A. Standard of proof.** The standard of proof used by the  
46 panel must be whether, in viewing the evidence and all reasonable  
inferences from the evidence most favorably to the plaintiff, a  
48 jury could reasonably find for the plaintiff on the issues of  
negligence and causation.

50

2                   **Sec. 4. Application.** The sections of this Act that amend the  
Maine Revised Statutes, Title 24, section 2855 apply,  
4 notwithstanding anything to the contrary in Title 1, section 302,  
to all proceedings heard by the prelitigation screening panels on  
6 or after January 1, 1996.

8                   **Sec. 5. Effective date.** This Act takes effect January 1, 1996.

10   **STATEMENT OF FACT**

12                   This bill clarifies the role of the prelitigation screening  
panels under the Maine Health Security Act. That role is not  
14 only to encourage resolution of meritorious claims but to  
discourage the bringing of claims that, in the judgment of the  
16 panel, are so lacking in merit as not to warrant submission to a  
jury. The panel must determine whether the evidence presented to  
18 it and the permissible inferences from the evidence raise issues  
of fact as to negligence and causation.