

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)



118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

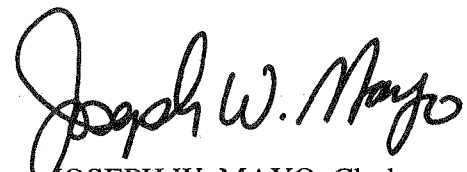
No. 582

H.P. 432

House of Representatives, January 28, 1997

An Act to Amend the Procedures for Medical Malpractice Screenings.

Reference to the Committee on Judiciary suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative JABAR of Waterville.

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

2
4 **Sec. 1. 24 MRSA §2851, sub-§1, ¶A**, as enacted by PL 1985, c. 804, §§12 and 22, is repealed.

6 **Sec. 2. 24 MRSA §2853, sub-§5**, as amended by PL 1991, c. 505, §3, is further amended to read:

8
10 **5. Lawsuits.** The pretrial screening may be bypassed if all parties agree upon a resolution of the claim by lawsuit. All parties to a claim may, by written agreement, submit a claim to the binding determination of the panel, either prior to or after the commencement of a lawsuit. Both parties may agree to bypass the panel and commence a lawsuit for any reason, or may request that certain preliminary legal affirmative defenses or issues be litigated prior to submission of the case to the panel. The panel has no jurisdiction to hear or decide, absent the agreement of the parties, dispositive legal affirmative defenses, ~~except compliance with practice parameters or risk management protocols adopted under section 2973 if the defendant is a participant in the medical liability demonstration project established under subchapter IX and intends to introduce evidence of compliance at trial, and comparative negligence~~ as such defenses are relevant to the question posed under section 2855, subsection 1. The panel chair may require the parties to litigate, by motion, dispositive legal affirmative defenses in the Superior Court prior to submission of the case to the panel. Any such defense, as well as any motion relating to discovery that the panel chair has chosen not to rule on may be presented, by motion, in Superior Court without the necessity of a complaint having first been filed.

32 **Sec. 3. 24 MRSA §2855**, as amended by PL 1991, c. 505, §5, is repealed and the following enacted in its place:

34 **§2855. Findings by panel**

36
38 **1. Question of merit.** At the conclusion of the presentations, the panel shall make its findings in writing within 30 days by answering the question of whether the claim of professional negligence is frivolous.

40
42 **2. Standard of proof.** The standard of proof used by the panel in making a finding under subsection 1 is a preponderance of the evidence.

44
46 **Sec. 4. 24 MRSA §2857, sub-§§1 and 2**, as enacted by PL 1985, c. 804, §§12 and 22, are amended to read:

1. **Proceedings before panel confidential.** Except as
2 otherwise provided in this section and section 2858, all
3 proceedings before the panel, ~~including its final determinations,~~
4 ~~shall be treated in every respect as private and confidential by~~
5 ~~the panel and the parties to the claim~~ are admissible in any
6 subsequent court action for professional negligence based on the
7 same set of facts upon which the notice of claim was filed. No
8 findings or other writings of the panel, ~~nor any evidence or~~
9 ~~statements made by any party or his representative during a~~
10 ~~panel hearing~~ may be admissible or otherwise submitted or used in
11 any way for any purpose in any subsequent court action or any
12 other public disclosure made, unless otherwise agreed by the
13 ~~party who made the statement or presented the evidence.~~ ~~If the~~
14 ~~findings of the panel are~~ parties, except as follows.

16 A. ~~As to both questions~~ If the findings of the panel as to
17 the question under section 2855, are unanimous and
18 unfavorable to the person accused of professional
19 negligence, the findings, without explanation, ~~shall be~~ are
20 admissible in any subsequent court action for professional
21 negligence against that person by the claimant based on the
22 same set of facts upon which the notice of claim was filed;
23 and .

24 B. ~~As~~ If the findings of the panel as to either the
25 question under section 2855, are unanimous and unfavorable
26 to the claimant, the findings, without explanation, ~~shall be~~
27 are admissible in any subsequent court action for
28 professional negligence against the person accused of
29 professional negligence by the claimant based on the same
30 set of facts upon which the notice of claim was filed.

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

38 2. **Deliberations, discussions and testimony privileged and**
39 **confidential.** The deliberations and discussion of the panel and
40 ~~the testimony of any expert, whether called by any party or the~~
41 ~~panel, shall be~~ are privileged and confidential, and no such
42 person may be asked or compelled to testify at a later court
43 proceeding concerning the deliberations, discussions, or findings
44 ~~or expert testimony or opinions expressed during~~ of the panel
45 ~~hearing, unless by the party who called and presented that~~
46 ~~nonparty expert,~~ except as such deliberation, discussion and
47 ~~testimony as~~ findings may be required to prove an allegation of
48 fraud.

2 **Sec. 5. 24 MRSA §2858**, as enacted by PL 1985, c. 804, §§12
and 22, is repealed and the following enacted in its place;

4 **§2858. Effect of findings by panel**

6 If the panel finds unanimously under section 2855 that the
8 claim of professional negligence is frivolous, the claimant shall
10 release the claim or claims based on the findings without payment
 or be subject to the admissibility of those findings under
 section 2857, subsection 1, paragraph B.

12

14

SUMMARY

16

 This bill limits medical malpractice screening panels to a
18 review of professional negligence claims solely for the purpose
of determining whether a claim is frivolous, rather than
20 permitting panels to determine, as under current law, whether
professional negligence occurred. This bill also changes the
22 current law's confidentiality provisions concerning testimony and
other evidence presented to screening panels. Under this bill,
24 such testimony and evidence will be admissible in a subsequent
court action based on the claim of professional negligence.