

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1997

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Legislative Document

No. 1050


H.P. 773

House of Representatives, February 13, 1997

**An Act to Revise the Prelitigation Malpractice Screening Panel  
Procedures, Criteria and Composition.**

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Reference to the Committee on Judiciary suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative SAVAGE of Union.

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

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3       **Sec. 1. 24 MRSA §2852, sub-§1**, as amended by PL 1991, c. 130,  
4 §1, is further amended to read:

6       **1. Creation of panel lists.** The Chief Justice of the  
7 Superior Court shall recommend to each clerk of the Superior  
8 Court the names of retired justices and judges, persons with  
9 judicial experience and other qualified persons to serve on  
10 screening panels under this subchapter. The clerk shall place  
11 these names on a list from which the Chief Justice of the  
12 Superior Court will choose a panel chair under subsection 2.

14 ~~Each clerk of the Superior Court shall maintain lists of health~~  
15 ~~care practitioners, health care providers and attorneys~~  
16 ~~recommended by the professions involved to serve on screening~~  
17 ~~panels under this subchapter.~~

18       **Sec. 2. 24 MRSA §2852, sub-§2, ¶B**, as amended by PL 1989, c.  
19 361, §§1 and 10, is repealed.

22       **Sec. 3. 24 MRSA §2852, sub-§2, ¶C** is enacted to read:

24       C. Upon notification of the Chief Justice's choice of  
25 chair, the clerk who received the notice of claim under  
26 section 2853 shall notify that person and provide that  
27 person with a list of 15 names of citizens in the county  
28 selected in the same random manner as the clerk selects  
29 potential jurors in civil and criminal actions. The chair  
30 shall select randomly 2 panel members from this list. If  
31 either or both of the persons selected are unwilling or  
32 unable to serve, then the chair shall select another person  
33 from the list of 15 to replace the person who can not  
34 serve. The clerk may assist the chair in the selection  
35 process. The clerk shall provide an additional list of 15  
36 names, selected in the same manner, until the chair is  
37 satisfied that 2 panel members are willing and able to serve  
38 and are not removed for cause, pursuant to subsection 3.

40       The Chief Justice of the Superior Court shall establish the  
41 compensation of the panel chair and the other panel members.

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

48       **Sec. 4. 24 MRSA §2855, sub-§1, ¶¶A, B and C**, as enacted by PL  
49 1989, c. 361, §§8 and 10, are repealed.

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Sec. 5. 24 MRSA §2855, sub-§1, ¶¶D to F are enacted to read:

D. Whether there is a genuine issue of material fact as to whether the acts or omissions complained of constitute a deviation from the applicable standard of care by the health care practitioner or health care provider charged with that care;

E. Whether there is a genuine issue of material fact as to whether the acts or omissions complained of proximately caused the injury complained of or as found by the panel or as agreed by the parties; and

F. Whether there is a genuine issue of material fact as to whether any negligence on the part of the patient was equal to or greater than the negligence, if any, on the part of the health care practitioner or health care provider.

Sec. 6. 24 MRSA §2855, sub-§2, as repealed and replaced by PL 1989, c. 361, §§8 and 10, is amended to read:

2. Standard of proof. The standard of proof used by the panel shall be is:

A. The plaintiff must prove that there is a genuine issue of material fact on negligence and proximate causation by a preponderance of the evidence; and

B. The defendant must prove that the plaintiff failed to generate a genuine issue of material fact on the question of comparative negligence by a preponderance of the evidence.

Sec. 7. 24 MRSA §2857, sub-§4 is enacted to read:

4. Applicability of panel findings to related proceedings. There may not be a prelitigation screening and mediation panel procedure in any litigation in which a health care practitioner or health care provider is not a party defendant, even if medical negligence is an issue to be proven in the litigation.

**SUMMARY**

This bill amends the procedures for mandatory prelitigation screening and mediation panels in the following manner:

1. It changes the composition of the panel. Currently, the panel consists of health care practitioners and attorneys. This

2 bill requires the panel members to be chosen from a random list  
that is generated in the same manner as jury lists.

4 2. It requires the panel to determine, and the parties to  
6 prove, whether there are genuine issues of material fact on the  
deviation from health care standards, proximate cause of the  
8 injury and comparative negligence of the parties.

10 3. It prohibits the use of panels in any litigation that  
does not involve a health care practitioner as a defendant.