

MAINE STATE LEGISLATURE

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Handwritten initials: R.S.

L.D. 1325

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JUDICIARY

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**STATE OF MAINE
SENATE
119TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT " A " to S.P. 450, L.D. 1325, Bill, "An Act to Provide Fairness to Victims of Medical Malpractice"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in their place the following:

'Sec. 1. 24 MRSA §2853, sub-§4, as amended by PL 1995, c. 571, §1, is further amended to read:

4. Filing of records; time for hearing; extensions. Within 20 days of entry of appearance, the person or persons accused shall contact the claimant's counsel and by agreement shall designate a timetable for filing all the relevant medical and provider records necessary to a determination of the panel and for completing discovery. If the parties are unable to agree on a timetable within 60 days of the entry of appearance, the claimant shall notify the chair of the panel. The chair shall then establish a timetable for the filing of all relevant records and reasonable discovery, which must be filed at least 30 days before any hearing date. Depositions of persons other than the parties and the experts designated by the parties may not be taken except as permitted by the chair upon the request of a party. The hearing may not be later than 6 months from the service of the notice of claim upon the clerk, except when the time period has been extended by the panel chair in accordance with this subchapter.

Sec. 2. 24 MRSA §2854, as amended by PL 1989, c. 361, §§7

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and 10, is further amended to read:

§2854. Hearing

1. **Procedure.** The claimant or a representative of the claimant shall present the case before the panel. The person accused of professional negligence or his that person's representative shall make a responding presentation. Wide latitude shall must be afforded the parties by the panel in the conduct of the hearing including, but not limited to, the right of examination and cross-examination by attorneys. Depositions are admissible whether or not the person deposed is available at the hearing. The chairman chair shall make all procedural rulings and his those rulings shall ~~be~~ are final. ~~A-tape recorded record shall be maintained by the panel for its purpose only. The record shall be maintained until 30 days after its decision and then destroyed pursuant to section 2856. The record shall not be made public and the hearings are not to be public without the consent of both or all parties.~~ The Maine Rules of Evidence shall do not apply. Evidence shall must be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The panel shall make such findings upon such evidence as is presented at the hearing, the records and any expert opinions provided by or sought by the panel or the parties.

After presentation by the parties, as provided in this section, the panel may request from either party additional facts, records or other information to be submitted in writing or at a continued hearing, which continued hearing shall must be held as soon as possible. The continued hearings shall must be attended by the same members of the panel who have sat on all prior hearings in the same claim, unless otherwise agreed by all parties.

1-A. Record; hearings. The panel shall maintain a tape recorded record. Except as provided in section 2857, the record may not be made public and the hearings may not be public without the consent of both or all parties.

2. **Settlement; mediation.** The chairman chair of the panel shall attempt to mediate any differences of the parties before proceeding to findings.

3. **Failure to comply.** Failure of a party, without good cause, to attend a properly scheduled hearing to participate in authorized discovery, or to otherwise substantially comply with this subchapter, shall must result in a finding made by a majority of the panel against that party and that finding shall have has the same effect as a finding against that party under section 2857.

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2 **Sec. 3. 24 MRSA §2855, sub-§1**, as amended by PL 1991, c. 505,
§5, is further amended to read:

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

8 A. Whether the acts or omissions complained of ~~or found by~~
~~the panel to exist, or as agreed by the parties,~~ constitute
10 a deviation from the applicable standard of care by the
health care practitioner or health care provider charged
12 with that care;

14 A-1. If the defendant is a participant in the medical
liability demonstration project established under subchapter
16 IX and has raised as an affirmative defense compliance with
the practice parameters or risk management protocols adopted
18 under section 2973, whether the defendant complied with an
applicable parameter or protocol establishing the applicable
20 standard of care;

22 B. Whether the acts or omissions complained of proximately
caused the injury complained of ~~or as found by the panel or~~
24 ~~as agreed by the parties;~~ and

26 C. If negligence on the part of the health care
practitioner or health care provider is ~~found~~ raised,
28 whether any negligence on the part of the patient was equal
to or greater than the negligence on the part of the
30 practitioner or provider.

32 **Sec. 4. 24 MRSA §2855, sub-§2**, as repealed and replaced by PL
1989, c. 361, §§8 and 10, is repealed.

34 **Sec. 5. 24 MRSA §2855, sub-§3** is enacted to read:

36 **3. Standard of proof.** In making findings under subsection
38 1, the standard of proof used by the panel must be whether the
evidence presented, if properly substantiated, is sufficient to
40 raise a legitimate question of liability appropriate for judicial
inquiry on the issues of negligence and causation. In making its
42 findings, the panel may consider the reliability, relevance,
credibility and weight of the evidence presented.

44 **Sec. 6. 24 MRSA §2857, sub-§1**, as amended by PL 1985, c. 804,
46 §§12 and 22, is repealed and the following enacted in its place:

48 **1. Proceedings before panel confidential.** Except as
provided in this section, all proceedings before the panel,
50 including its final determinations, must be treated in every

respect as private and confidential by the panel and the parties to the claim.

A. The findings and other writings of the panel and any evidence and statements made by a party or a party's representative during a panel hearing are not admissible and may not otherwise be submitted or used for any purpose in a subsequent court action and may not be publicly disclosed, except that:

(1) Any testimony or writings made under oath may be used in subsequent proceedings for purposes of impeachment; and

(2) The party who made the statement or presented the evidence may agree to the submission, use or disclosure of that statement or evidence.

B. If the panel findings as to any question under section 2855 are unanimous and unfavorable to the claimant, the findings are admissible in any subsequent court action for professional negligence against the person accused of professional negligence by the claimant based on the same set of facts upon which the notice of claim was filed. The findings are admissible only against the claimant.

The confidentiality provisions of this section do not apply if the findings were influenced by fraud.

Sec. 7. 24 MRSA §2858, as enacted by PL 1985, c. 804, §§12 and 22, is repealed.

Sec. 8. Application. This Act applies to actions for professional negligence commenced under the Maine Revised Statutes, Title 24, section 2853 on or after the effective date of this Act.'

Further amend the bill by inserting at the end before the summary the following:

FISCAL NOTE

The Judicial Department will incur some minor additional costs to provide and maintain adequate tape recorded records of prelitigation screening panel hearings. These costs can be absorbed within the department's existing budgeted resources.'

SUMMARY

This amendment is the majority report.

COMMITTEE AMENDMENT "A" to S.P. 450, L.D. 1325

2 This amendment replaces the bill.

4 This amendment limits depositions to the parties and the
6 experts designated by the parties, although the chair of the
prelitigation screening panel may authorize deposing additional
persons.

8 This amendment authorizes the admission of depositions to
10 the panel hearing regardless of whether the person deposed is
available for the hearing.

12 This amendment requires the panel to maintain a tape
14 recorded record of the panel proceedings. That record remains
confidential except that testimony made under oath in the panel
16 proceeding may be used in subsequent proceedings for purposes of
impeachment. In addition, the person who made the statement or
18 presented that evidence may agree to its submission, use or
disclosure outside of the panel proceeding.

20 This amendment changes the standard that the panel must use
22 to make its findings. The panel must determine whether the
evidence, if properly substantiated, is sufficient to raise a
24 legitimate question appropriate for judicial inquiry concerning
the liability of the health care practitioner or health care
26 provider. This is the standard used in the Massachusetts medical
liability panels. This change returns the panel to serving more
28 of a screening function rather than providing an initial trial of
all the issues prior to court action. In making its findings,
30 the panel may consider the reliability, relevance, credibility
and weight of the evidence.

32 The panel findings are admissible in court only if the panel
34 was unanimous in finding against the claimant.

36 These changes apply to actions for professional negligence
commenced on or after the effective date of this Act.

38 The amendment also adds a fiscal note to the bill.