

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1792

S.P. 627

In Senate, March 9, 1999

An Act Relating to the Admissibility of Medical Records and Reports.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MILLS of Somerset.

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

2
4 Sec. 1. 16 MRSA §357, as amended by PL 1987, c. 791, §3, is repealed and the following enacted in its place:

6 §357. Medical records and copies of records

8 1. Records admissible. Records relating to an examination
10 of a person or to medical, dental or hospital services,
12 prescriptions or orthopedic appliances rendered to or prescribed
14 for a person are admissible in any court, commission or agency
 proceeding for the purposes listed in subsection 2 without
 requiring the maker of the record or the record custodian to be
 called as a witness to authenticate the record.

16 2. Purposes. Records may be admitted as evidence of:

18 A. The fair and reasonable charge for services or the
20 necessity of services or treatments under subsection 1:

22 B. The diagnosis of the physician or dentist;

24 C. The prognosis of the physician or dentist;

26 D. The opinion of the physician or dentist as to proximate
 cause of the condition diagnosed; or

28 E. The opinion of the physician or dentist as to disability
30 or incapacity, if any, proximately resulting from the
 condition diagnosed.

32 3. Certification. The record is admissible if certified by
34 the maker of the record or record custodian to be true and
36 complete. Copies of photographic or microphotographic records
38 kept by hospitals and other medical facilities, when duly
 certified by the person in charge of the hospital or other
 medical facility, must be admitted in evidence equally with the
 original photographs or microphotographs.

40 4. Prior notice required. The party offering the record as
42 evidence must provide written notice of the intention to offer
44 the record as evidence, together with a copy of the record, to
46 the opposing party or parties or to the attorneys by certified
48 mail, return receipt requested, not less than 10 days before the
 introduction of the records into evidence. An affidavit of the
 notice and the return receipt must be filed with the clerk of the
 court, agency or commission immediately after the receipt has
 been returned.

2 5. Calling witnesses. This section does not limit the
4 right of any party to the action to summon, at that party's own
6 expense, the maker or custodian of the record for the purpose of
8 cross examination with respect to the record or to rebut its
10 contents or for any other purpose. This section does not limit
12 the right of any party to the action or proceeding to summon any
14 other person to testify in respect to the record or for any other
16 purpose.

18 6. Blood-alcohol concentration test. If the proceeding is
20 one in which the operator of a motor vehicle or watercraft is
22 alleged to have operated under the influence of intoxicating
24 liquor or drugs and the court is satisfied that probable cause
26 exists to believe that the operator committed the offense
28 charged, the result of a laboratory or any other test kept by a
30 hospital or other medical facility that reflects blood-alcohol
32 concentration may not be excluded as evidence in a criminal or
34 civil proceeding by reason of any claim of confidentiality or
36 privilege and may be admitted provided that the result is
38 relevant and reliable evidence.

SUMMARY

40 This bill rewrites the law concerning the admissibility of
42 medical records in court and other proceedings. It authorizes
44 the admission of medical records without requiring the maker of
46 the record or the record custodian to be called as a witness to
48 authenticate the record.