

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST SPECIAL SESSION-2005

Legislative Document

No. 1582

H.P. 1118

House of Representatives, April 26, 2005

An Act To Protect Maine Citizens from Medical Negligence

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative PELLETIER-SIMPSON of Auburn.

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

2
4 **Sec. 1. 22 MRSA §8753, sub-§5** is enacted to read:

6 5. Report to patient or patient's representative. A health
8 care facility that submits a report under subsection 2 shall
10 provide a copy of the report to the patient or the patient's
12 representative within 5 days of submitting the report to the
14 division.

16 **Sec. 2. 24 MRSA §2902, first ¶,** as repealed and replaced by PL
18 1985, c. 804, §§13 and 22, is amended to read:

20 Actions for professional negligence ~~shall~~ must be commenced
22 within 3 years after the cause of action accrues. For the
24 purposes of this section, a cause of action accrues on the date
26 ~~of the act or omission giving rise to the injury when the~~
28 ~~plaintiff discovers or reasonably should have discovered the~~
30 ~~harm.~~ Notwithstanding the provisions of Title 14, section 853,
32 relating to minority, actions for professional negligence by a
34 minor ~~shall~~ must be commenced within 6 years after the cause of
36 action accrues or within 3 years after the minor reaches the age
38 of majority, whichever first occurs. ~~This section does not apply~~
40 ~~where the cause of action is based upon the leaving of a foreign~~
42 ~~object in the body, in which case the cause of action shall~~
44 ~~accrue when the plaintiff discovers or reasonably should have~~
46 ~~discovered the harm. For the purposes of this section, the term~~
48 ~~"foreign object" does not include a chemical compound,~~
50 ~~prosthetic aid or object intentionally implanted or permitted to~~
 ~~remain in the patient's body as a part of the health care or~~
 ~~professional services.~~

34 **Sec. 3. 24 MRSA §2907** is enacted to read:

36 §2907. Punitive damages

38 In addition to any other remedy allowed by law, a person who
40 has been injured by the professional negligence or intentional
42 professional misconduct of a health care practitioner or health
44 care provider has a cause of action for punitive damages against
46 the employer of that health care practitioner or health care
48 provider if:

50 1. Knowledge of prior acts. The employer had actual or
 constructive knowledge of prior acts of professional negligence
 or intentional professional misconduct committed by that health
 care practitioner or health care provider; and

2. Failed to protect. The employer failed to take
 reasonable measures to protect patients from that health care

2 practitioner's or health care provider's professional negligence
3 or intentional professional misconduct.

4 **Sec. 4. 32 MRSA §3282-A, sub-§3** is enacted to read:

6 **3. Revocation; professional negligence.** The board shall
7 revoke the license of a licensee who has been found to have
8 committed professional negligence in at least 3 different
9 judgments under Title 24, chapter 21.

12 **SUMMARY**

14 This bill protects patients in 4 ways.

16 First, it requires that a sentinel event report about a
17 particular patient be given to that patient or the patient's
18 representative within 5 days of the report's being submitted to
19 the Department of Health and Human Services.

20 Second, it authorizes punitive damages in certain medical
21 malpractice situations. Punitive damages are otherwise available
22 under Maine law only when actual malice is proved. This bill
23 allows an award of punitive damages against an employer who has
24 actual or constructive knowledge of prior professional
25 negligence or intentional professional misconduct and has not
26 taken reasonable measures to protect patients from that health
27 care practitioner's or health care provider's professional
28 negligence or intentional professional misconduct.

30 Third, this bill requires the Board of Licensure in Medicine
31 to revoke the license of a physician when the physician has at
32 least 3 adverse judgments for professional negligence.

34 Fourth, this bill revises the statute of limitations in
35 medical malpractice actions to institute a discovery rule, which
36 delays the running of the statute of limitations until the
37 medical malpractice is discovered or reasonably should have been
38 discovered.