

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)

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWELFTH LEGISLATURE

SECOND REGULAR SESSION
January 8, 1986 to April 16, 1986

SECOND SPECIAL SESSION
May 28, 1986 to May 30, 1986

AND AT THE

THIRD SPECIAL SESSION
October 17, 1986

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Co., Inc.
Augusta, Maine

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION
of the
ONE HUNDRED AND TWELFTH LEGISLATURE
1985

as that required of legislation affecting the General Fund. Other legislation relating to alcoholism programs shall be reviewed by the appropriate committee.

Sec. 3. Allocation. Upon the effective date of this Act, the Commissioner of Finance and Administration shall certify to the State Controller, with a copy to take to the Legislative Office of Fiscal and Program Review, the amount of General Fund tax revenues projected to be lost due to decreased consumption resulting from the increase in the premium tax, not to exceed \$600,000, for fiscal year 1986-87, and \$300,000 for the fiscal year 1987-88.

The State Controller shall then transfer from the Alcoholism Prevention, Education, Treatment and Research Fund to the General Fund the amount certified by the commissioner in equal monthly installments.

Effective July 16, 1986.

CHAPTER 804

S.P. 958 - L.D. 2400

AN ACT Relating to Medical and Legal Professional Liability.

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

Sec. 1. 14 MRSA §753 is amended to read:

§753. Two years

Actions for assault and battery, and for false imprisonment, slander, and libel and malpractice of physicians and all others engaged in the healing art shall be commenced within 2 years after the cause of action accrues.

Sec. 2. 14 MRSA §753-A is enacted to read:

§753-A. Actions against attorneys

In actions alleging professional negligence or breach of contract, for legal service, by a licensed attorney, the statute of limitations shall start to run from the date of the act or omission giving rise to the injury and not from the discovery of the malpractice, negligence or breach of contract, except:

A. In an action alleging professional negligence in the rendering of a real estate title opinion;

B. In an action alleging professional negligence in the drafting of a last will and testament which has been offered for probate; and

C. As the statute of limitations may be suspended by other laws.

Sec. 3. 24 MRSA §2502, sub-§1-A is enacted to read:

1-A. Health care practitioner. "Health care practitioner" means physicians and all others certified, registered or licensed in the healing arts, including, but not limited to, nurses, podiatrists, optometrists, chiropractors, physical therapists, dentists, psychologists and physicians' assistants.

Sec. 4. 24 MRSA §2502, sub-§2, as enacted by PL 1977, c. 492, §3, is amended to read:

2. Health care provider. "Health care provider" means any hospital, clinic, nursing home or other facility in which skilled nursing care or medical services are prescribed by or performed under the general direction of persons licensed to practice medicine, dentistry, podiatry or surgery in this State and which is licensed or otherwise authorized by the laws of this State.

Sec. 5. 24 MRSA §2502, sub-§§6 and 7 are enacted to read:

6. Action for professional negligence. "Action for professional negligence" means any action for damages for injury or death against any health care provider, its agents or employees, or health care practitioner, his agents or employees, whether based upon tort or breach of contract or otherwise, arising out of the provision or failure to provide health care services.

7. Professional negligence. "Professional negligence" means that:

A. There is a reasonable medical or professional probability that 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; and

B. There is a reasonable medical or professional probability that the acts or omissions complained of proximately caused the injury complained of.

Sec. 6. 24 MRSA §2506, as enacted by PL 1977, c. 492, §3, is amended to read:

§2506. Provider reports

A health care provider shall, within 60 days, report in writing to the appropriate board or authority the name of any member of the medical staff or any other physician practicing in the facility licensed, certified or registered employee or person privileged by the provider whose employment or privileges have been revoked, suspended, limited or terminated, or who has been otherwise formally disciplined by the provider or the provider's medical staff, together with pertinent information relating to such that action, if such revocation, limitation, termination or discipline is the result of negligence, habitual drunkenness, addiction to the use of drugs, professional incompetence or repeated acts of professional incompetence. Any reversal, modification or change of action reported pursuant to this section shall be reported immediately to the board or authority, together with a brief statement of the reasons for such that reversal, modification or change. The failure of any such health care provider to report as required is a civil violation for which a fine of not more than \$1,000 may be adjudged.

Sec. 7. 24 MRSA §2511, as amended by PL 1985, c. 185, §4 and PL 1985, c. 193, is repealed and the following enacted in its place:

§2511. Immunity

Any person, physician, health care provider, professional society or member of a professional competence committee or of any board or authority acting without malice, in making any report or other information available to any appropriate board or authority pursuant to law or in assisting in the origination, investigation or preparation of that information or in assisting the board or authority in carrying out any of its duties or functions provided by law, shall be immune from civil or criminal liability, except as provided in section 2510, subsection 4, for any such actions.

Sec. 8. 24 MRSA §2601, as enacted by PL 1977, c. 492, §3, is amended by adding at the end a new paragraph to read:

The failure of any insurer providing professional liability insurance in this State to a person licensed by the Board of Registration in Medicine or the Board of Osteopathic Examination and Registration or any health care provider to report as required is a civil violation for which a fine of not more than \$1,000 may be adjudged.

Sec. 9. 24 MRSA §2602, sub-§3 is enacted to read:

3. Fine. The failure of any insurer providing professional liability insurance in this State to a person licensed by the Board of Registration in Medicine or the Board of Osteopathic Examination and Registration or any health care provider to report as required is a civil violation for which a fine of not more than \$1,000 may be adjudged.

Sec. 10. 24 MRSA §2607 is enacted to read:

§2607. Claims paid information

When any person licensed by the Board of Registration in Medicine or the Board of Osteopathic Examination and Registration has 3 professional liability claims that have resulted in a monetary judgment, award or settlement over a 10-year period, the boards shall treat that situation as a complaint against the licensee or practitioner and shall initiate a review consistent with Title 32, sections 3282 to 3289.

Sec. 11. 24 MRSA c. 21, sub-c. IV, as amended, is repealed.

Sec. 12. 24 MRSA c. 21, sub-c. IV-A is enacted to read:

SUBCHAPTER IV-A

MANDATORY PRELITIGATION SCREENING AND MEDIATION PANELS

§2851. Purpose and definitions

1. Purpose. The purpose of mandatory prelitigation screening and mediation panels is:

A. To identify claims of professional negligence which merit compensation and to encourage early resolution of those claims prior to commencement of a lawsuit; and

B. To identify claims of professional negligence and to encourage early withdrawal or dismissal of nonmeritorious claims.

2. Definitions. As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. The definition of a "claim of professional negligence" is limited to any written notice of claim served pursuant to section 2903 against health care practitioners and health care providers or any employee or agent acting within the scope of their authority.

§2852. Formation and procedure

1. Creation of panel lists. The Chief Justice of the Superior Court shall recommend to the clerk of each judicial region of the Superior Court the names of retired judges and persons with judicial experience who are residents of the region to serve on screening panels under this subchapter. The clerk in each judicial region shall place these names on a list from which the Chief Justice of the Superior Court will choose a panel chairman under subsection 2.

The clerk of each judicial region of the Superior Court shall maintain lists of health care practitioners, health care providers and attorneys recommended by the professions involved to serve on screening panels under this subchapter.

2. Selection of panel members; compensation. Screening panel members shall be selected as follows.

A. Upon receipt of a notice of claim under section 2853, the clerk of the Superior Court who receives the notice shall notify the Chief Justice of the Superior Court. The Chief Justice shall choose a retired judge or person with judicial experience from the list maintained by the clerk to serve as chairman of the panel to screen the claim. The Chief Justice shall attempt to choose a chairman who is a resident of the judicial region in which the notice of claim was filed. If no resident chairman is available or appropriate, the Chief Justice shall choose a chairman from the lists maintained by clerks of other judicial regions. If at any time a chairman chosen under this paragraph is unable or unwilling to serve, the chief justice shall appoint a replacement following the procedure in this paragraph for the initial appointment of a chairman.

B. Upon notification of the Chief Justice's choice of chairman, the clerk who received the notice of claim under section 2853 shall notify

that person and provide that person with the clerk's lists of health care practitioners, health care providers and attorneys created under subsection 1. The chairman shall choose from those lists 2 or 3 additional panel members as follows:

(1) The chairman shall choose one attorney;

(2) The chairman shall choose one health care practitioner. If possible, the chairman shall choose a practitioner who practices in the specialty or profession of the person accused of professional negligence; and

(3) Where the claim involves more than one person accused of professional negligence the chairman may choose a 4th panel member who is a health care practitioner or health care provider. If possible, the chairman shall choose a practitioner or provider in the specialty or profession of a person accused.

The Chief Justice of the Superior Court shall establish the compensation of the panel chairman. Other panel members shall serve without compensation or payment of expenses.

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

3. Challenges; replacements. If any panel member other than the chairman is unable or unwilling to serve in any matter or is challenged for cause by any person who is a party to a proceeding before a panel, the party challenging the member shall request a replacement from the lists maintained by the clerk under subsection 1, chosen by the chairman who shall so notify the parties. There shall only be challenges for cause allowed. The chairman shall inquire as to any bias on the part of a panel member or as requested by any party.

If the chairman is challenged for cause by any person who is a party to the proceeding before a panel, the party challenging shall notify the Chief Justice of the Superior Court. If the chief justice finds cause for the challenge, he shall replace the chairman as under subsection 2, paragraph A.

4. Experts; costs. If at least half of the panel members so request, the chairman shall draw upon a pool of experts in the field or fields involved to assist the panel in its determination of the health care standards involved, the negligence and causation. The chairman shall apportion costs of the expert among the parties as he deems just and reasonable. A party may appeal the apportionment to the Chief Justice of the Superior Court.

5. Subpoena power. The panel, through the chairman, shall have the same subpoena power as exists for a Superior Court Judge. The chairman shall have sole authority, without requiring the agreement of other panel members, to issue subpoenas.

6. Discovery. The chairman, upon application of a party, may permit reasonable discovery.

§2853. Submission of claims

1. Notice of claim; filing fee. Any person serving a notice of claim of professional negligence pursuant to section 2903 shall also serve a copy upon the clerk of the Superior Court in the judicial region where a complaint based on the claim would be filed within 10 days of serving the notice of claim under section 2903, with ordinary mail notice of service to the person or persons accused of professional negligence in the notice. At the time of filing the notice, the claimant shall also pay to the clerk a filing fee of \$200 per notice filed.

2. Appearance; filing fee. Within 20 days of receipt of notice of service upon the clerk, the person or persons accused of professional negligence in the notice or his representative shall file an appearance before the panel with a copy to the claimant. At the time of filing an appearance, the person or persons accused of professional negligence in the notice shall each pay a filing fee of \$200 per notice filed.

3. Waiver. Any party may, at the time of filing, apply to the chairman of the panel for a waiver of the filing fee. The chairman shall grant the waiver if the party is indigent. In determining indigency of the party, the chairman shall consider the factors contained in the Maine Rules of Criminal Procedure, Rule 44(b).

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 chairman of the panel. The chairman shall then establish a timetable for the filing of all relevant records and reasonable discovery, which shall be filed at least 30 days before any hearing date. The hearing shall not be later than 120 days from the service of the notice of claim upon the clerk.

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 comparative negligence.

6. Combining hearings. Except as otherwise provided in this subsection, there shall be one combined hearing or hearings for all claims under this section arising out of the same set of facts. Where there is more than one person accused of professional negligence against whom a notice of claim has been filed based on the same facts, the parties may, upon agreement of all parties, require that hearings be separated. The chairman may, for good cause, order separate hearings.

7. Extensions of time. All requests for extension of time under this subchapter shall be made to the panel chairman. The chairman may extend any time period under this subchapter for good cause.

§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 representative shall make a responding presentation. Wide latitude shall 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. The chairman shall make all procedural rulings and his rulings shall be 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 not apply. Evidence shall 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 be held as soon as possible. The continued hearings shall 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.

2. Settlement; mediation. The chairman 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 result in a finding against that party and that finding shall have the same effect as a finding against that party under section 2857.

§2855. Findings by panel

At the conclusion of the presentations, the panel shall make its findings in writing within 30 days by answering the following questions:

1. Negligence. Whether there is a reasonable medical or professional probability that the acts or omissions complained of or found by the panel to exist, or as agreed by the parties, constitute a deviation from the applicable standard of care by the health care practitioner or health care provider charged with that care; and

2. Causation. Whether there is a reasonable medical or professional probability that the acts or omissions complained of proximately caused the injury complained of or as found by the panel or as agreed by the parties.

§2856. Notification and effect of findings

The panel's findings, signed by the panel members, indicating their vote, shall be served by registered or certified mail on the parties within 7 days of the date of the findings. The findings, notice of claim and record of the hearing shall be preserved until 30 days after final judgment or the case is finally resolved, after which time it shall be destroyed. All medical and provider records shall be returned to the party providing them to the panel.

§2857. Confidentiality and admissibility

1. Proceedings before panel confidential. Except as otherwise provided in this section and section 2858, all proceedings before the panel, including its final determinations, shall be treated in every respect as private and confidential by the panel and the parties to the claim. No findings or other writings of the panel, nor any evidence or statements made by any party or his representative during a panel hearing may be admissible or otherwise submitted or used in any way for any purpose in any subsequent court action or any other public disclosure made, unless otherwise agreed by the party who made the statement or presented the evidence. If the findings of the panel are:

A. As to both questions under section 2855, unanimous and unfavorable to the person accused of professional negligence, the findings, without explanation, shall be admissible in any subsequent court action for professional negligence against that person by the claimant based on the same set of facts upon which the notice of claim was filed; and

B. As to either question under section 2855, unanimous and unfavorable to the claimant, the findings, without explanation, shall be 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.

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

2. Deliberations, discussions and testimony privileged and confidential. The deliberations and

discussion of the panel and the testimony of any expert, whether called by any party or the panel, shall be privileged and confidential, and no such person may be asked or compelled to testify at a later court proceeding concerning the deliberations, discussions, findings or expert testimony or opinions expressed during the panel hearing, unless by the party who called and presented that nonparty expert, except such deliberation, discussion and testimony as may be required to prove an allegation of fraud.

§2858. Effect of findings by panel

A unanimous finding by the panel of any claim under this subchapter shall be implemented as follows.

1. Payment of claim; determination of damages. If the unanimous findings of the panel as to section 2855, subsections 1 and 2 are in the affirmative, the person accused of professional negligence must promptly enter into negotiations to pay the claim or admit liability. If liability is admitted, the claim may be submitted to the panel, upon agreement of the claimant and person accused, for determination of damages. If suit is brought to enforce the claim, the findings of the panel are admissible as provided in section 2857.

2. Release of claim without payment. If the unanimous findings of the panel as to either section 2855, subsection 1 or 2, are in the negative, the claimant must 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.

§2859. Statute of limitations

The applicable statute of limitations concerning actions for professional negligence shall be tolled from the date upon which notice of claim is served until 30 days following the day upon which the claimant receives notice of the findings of the panel pursuant to section 2856 or 175 days after service of the notice of claim pursuant to section 2903, whichever first occurs. After the passage of 175 days, the claimant may bring suit if the panel has not rendered a decision, but after the claimant's filing of a complaint all further proceedings in the case shall be stayed until a decision of the panel is made.

Sec. 13. 24 MRSA §2902, as enacted by PL 1977, c. 492, §3, is repealed and the following enacted in its place:

§2902. Statute of limitations for health care providers and health care practitioners

Actions for professional negligence shall be commenced within 3 years after the cause of action accrues. For the purposes of this section, a cause of action accrues on the date of the act or omission giving rise to the injury. Notwithstanding the provisions of Title 14, section 853, relating to minority, actions for professional negligence by a minor shall be commenced within 6 years after the cause of action accrues or within 3 years after the minor reaches the age of majority, whichever first occurs. This section does not apply where the cause of action is based upon the leaving of a foreign object in the body, in which case the cause of action shall accrue when the plaintiff discovers or reasonably should have discovered the harm. For the purposes of this section, the term "foreign object" does not include a chemical compound, 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.

If the provision in this section reducing the time allowed for a minor to bring a claim is found to be void or otherwise invalidated by a court of proper jurisdiction, then the statute of limitations for professional negligence shall be 2 years after the cause of action accrues, except that no claim brought under the 3-year statute may be extinguished by the operation of this paragraph.

Sec. 14. 24 MRSA §2903, as enacted by PL 1977, c. 492, §3, is repealed and the following enacted in its place:

§2903. Notice of claim before suit

1. Commencement of action. No action for professional negligence may be commenced until the plaintiff has:

A. Served written notice of claim setting forth, under oath, the professional negligence alleged and the nature and circumstances of the injuries and damages alleged, personally or by registered or certified mail upon the person accused of professional negligence;

B. Complied with the provisions of subchapter IV-A; and

C. Determined that the time periods provided in section 2859 have expired.

2. Statute of limitations. Any applicable statute of limitations shall be tolled under section 2859.

Sec. 15. 24 MRSA §2903-A is enacted to read:

§2903-A. Notice of expert witnesses

1. Plaintiff to supply list; 90 days. Every plaintiff in an action for professional negligence shall, within 90 days of the filing of the complaint, serve upon the defendant, as provided in the Maine Rules of Civil Procedure, Rule 5, a list of the names of expert witnesses he intends to call at trial on the issues of liability and proximate causation, the subject matter on which each expert is expected to testify, the substance of the facts and opinions to which each expert is expected to testify and a summary of the grounds for each opinion.

2. Defendant to supply list; 60 days. Within 60 days of receipt of the plaintiff's notice of expert witnesses, the defendant shall serve upon the plaintiff a list of the expert witnesses he intends to call at trial on the issues of liability and proximate causation, the subject matter on which each expert is expected to testify, the substance of the facts and opinions to which each expert is expected to testify and a summary of the grounds for each opinion.

3. Extension. The court may extend the time periods established in this section or permit the addition of names of expert witnesses to the list after the time periods established in this section have expired only by motion upon a showing of good cause. Good cause includes:

- A. Unavailability of complete, legible medical records;
- B. Joining of an additional party; or
- C. Any other cause the court determines to require extension or addition under this subsection in the interest of justice.

Sec. 16. 24 MRSA c. 21, sub-c. VI and VII, are enacted to read:

SUBCHAPTER VI

PROHIBITION OF CLAIMS BASED UPON WRONGFUL
BIRTH AND WRONGFUL LIFE FOR BIRTH OF A
HEALTHY CHILD

§2931. Wrongful birth; wrongful life

1. Intent. It is the intent of the Legislature that the birth of a normal, healthy child does not constitute a legally recognizable injury and that it is contrary to public policy to award damages for the birth or rearing of a healthy child.

2. Birth of healthy child; claim for damages prohibited. No person may maintain a claim for relief or receive an award for damages based on the claim that the birth and rearing of a healthy child resulted in damages to him. A person may maintain a claim for relief based on a failed sterilization procedure resulting in the birth of a healthy child and receive an award of damages for the hospital and medical expenses incurred for the sterilization procedures and pregnancy, the pain and suffering connected with the pregnancy and the loss of earnings by the mother during pregnancy.

3. Birth of unhealthy child; damages limited. Damages for the birth of an unhealthy child born as the result of professional negligence shall be limited to damages associated with the disease, defect or handicap suffered by the child.

4. Other causes of action. This section shall not preclude causes of action based on claims that, but for a wrongful act or omission, maternal death or injury would not have occurred or handicap, disease, defect or deficiency of an individual prior to birth would have been prevented, cured or ameliorated in a manner that preserved the health and life of the affected individual.

SUBCHAPTER VII

STRUCTURED AWARDS

§2951. Provision for structured awards

1. Definition. As used in this subchapter, the term "health care services" means acts of diagnosis, treatment, medical evaluation or advice or such other acts as may be permissible under the health care licensing, certification or registration laws of this State.

2. Structured awards; periodic payments. In any action for professional negligence, the court in which the action is brought shall, at the request of either party, enter a judgment ordering that money damages or its equivalent for future damages of the judgment creditor, exclusive of litigation expenses,

be paid in whole or in part by periodic payments rather than by a lump-sum payment if the award equals or exceeds \$250,000 in future damages, including, but not limited to, expert witness fees, attorneys' fees and court costs.

A. In the case of a jury trial, prior to the case being presented to the jury, the judge shall make a preliminary determination as to whether or not a verdict is likely to result in an award for future damages in excess of the threshold set out in this subsection. If such a determination is made, the judge shall instruct the jury to apportion damages between past and future in those categories of damages required under this subchapter to be structured. In entering a judgment ordering the payment of future damages by periodic payments, the court shall make a specific finding as to the dollar amount of periodic payments which will compensate the judgment creditor for those future damages. In determining the amount of the periodic payment, the court shall consider the amount of interest that would be earned on the amount had it been paid presently. As a condition to authorizing periodic payments of future damages, the court must be satisfied that there are adequate financial resources available to the judgment debtor. If not so satisfied, the judge may either deny structuring the award or require adequate security to be deposited with the court. Upon termination of periodic payments of future damages, the court shall order the return of the security, or so much as remains, to the judgment debtor.

B. The judgment ordering the payment of future damages by periodic payment shall specify the recipient or recipients of the payments, the dollar amount of the payments, the interval between payments and the number of payments or the period of time over which payments shall be made. The payments shall only be subject to modification in the event of death of the judgment creditor.

C. In the event that the court finds that the judgment debtor has exhibited a continuing pattern of failing to make the payments, as specified in paragraph B, the court shall find the judgment debtor in contempt of court and, in addition to the required periodic payments, shall order the judgment debtor to pay the judgment creditor all damages caused by the failure to make these periodic payments, including court costs and attorneys' fees.

D. Money damages awarded for loss of future earnings and loss of services shall not be reduced or payments terminated by reason of the death of the judgment creditor, but shall be paid to the judgment creditor's estate. In those cases, the court which rendered the original judgment may, upon petition of any party in interest, modify the judgment to award and apportion the unpaid future damages, exclusive of unpaid damages for future medical treatment, in accordance with this subchapter.

E. Following the occurrence or expiration of all obligations specified in the periodic payment judgment, any obligation of the judgment debtor to make further payments shall cease and any security given, pursuant to paragraph A shall revert to the judgment debtor.

F. As used in this section:

(1) "Future damages" includes damages for future medical treatment, care or custody, loss of future earnings and loss of the economic value of services.

SUBCHAPTER VIII
CONTINGENT FEES

§2961. Contingent fees

1. Limitation. In an action for professional negligence, the total contingent fee for the plaintiff's attorney or attorneys shall not exceed the following amounts, exclusive of litigation expenses:

A. Thirty-three and one-third percent of the first \$100,000 of the sum recovered;

B. Twenty-five percent of the next \$100,000 of the sum recovered; and

C. Twenty percent of any amount over \$200,000 of the sum recovered.

2. Future damages; lump-sum value. For purposes of determining any lump-sum contingent fee, any future damages recoverable by the plaintiff in periodic installments shall be reduced to lump-sum value.

3. Review. The court may review contingent fee agreements for fairness. In special circumstances, where an attorney performs extraordinary services in-

volving more than usual participation in time and effort, the attorney may apply to the court for approval of additional compensation.

4. Definition. As used in this section, "contingent fee" includes any fee arrangement under which the compensation is to be determined in whole or in part on the result obtained.

Sec. 17. 32 MRSA §2562-A is enacted to read:

§2562-A. Adequacy of budget

The budget submitted by the board to the Commissioner of Human Services shall be sufficient to enable the board to comply with this subchapter. The fiscal resources available to the board should enable it to strengthen its staffing capabilities and those of the Department of Attorney General's legal and investigative staff so that complaints, including the professional liability related complaints detailed in Title 24, section 2607, can be resolved in a timely fashion. The board shall engage in a collaborative effort with the Board of Registration in Medicine so that the Department of Attorney General's legal and investigative staff resources can be shared. Staff resources shall include an additional staff member to handle complaint processing and licensure problems. One investigator and one attorney may be shared with the Board of Registration in Medicine.

Sec. 18. 32 MRSA §2581, 2nd ¶, as enacted by PL 1973, c. 374, §1, is amended to read:

Every osteopathic physician legally licensed to practice in this State, shall, on or before the first day of January of each year, pay to the secretary of the board a fee as stipulated by the board not to exceed \$25 ~~\$125~~ for the renewal of his or her certificate to practice. In addition to the payment of such renewal fee, each licensee so applying for the renewal of his or her certificate shall, commencing for the year 1975 and thereafter, furnish to said board satisfactory evidence that he or she has attended in the year preceding at least 50 hours of educational programs devoted to continuing medical education approved by the board. Said required education must be obtained from formalized programs of continuing medical education sponsored by recognized associations, colleges or universities, hospitals, institutes or groups approved by the board. A copy of the current approved list shall be available in the office of the secretary of the board. At least 40% of these credit hours must be osteopathic medical education approved in the rules and regulations established by the

board. The board shall have the authority to adjudicate continuing medical education performance in situations of illness, hardship or military service upon written petition by the applicant. The secretary of said board shall send a written notice of the foregoing requirements to each such osteopathic physician, at least 60 days prior to each said January 1st, directed to the last known address of the licensee enclosing therewith proper blank forms for application for said renewal. If any licensee shall fail to furnish the board evidence of attendance at continuing medical educational programs, as approved by the board, and fails to pay the said renewal fee, he or she shall automatically forfeit his or her right to practice osteopathic medicine in this State and his or her license, therefore, shall be cancelled. The secretary of the board may reinstate him or her upon the presentation of satisfactory evidence of continuing medical education as outlined and approved by the board and upon payment of the renewal fee.

Sec. 19. 32 MRSA §3269, sub-§15 is enacted to read:

15. Adequacy of budget. The budget submitted by the board to the Commissioner of Human Services shall be sufficient to enable the board to comply with this subchapter. The fiscal resources available to the board should enable it to strengthen its staffing capabilities and those of the Department of the Attorney General's legal and investigative staff so that complaints, including the professional liability related complaints detailed in Title 24, section 2607, can be resolved in a timely fashion. The board shall engage in a collaborative effort with the Board of Osteopathic Examination and Registration so that the Department of Attorney General's legal and investigative staff resources can be shared. Staff resources shall include an additional staff member to handle complaint processing and licensure problems. One investigator and one attorney may be shared with the Board of Osteopathic Examination and Registration.

Sec. 20. 32 MRSA §3280, first ¶, as amended by PL 1983, c. 378, §50, is further amended to read:

On or before the first day of July, 1966, and on or before the first day of July of every even-numbered year thereafter, every physician licensed under this chapter shall apply to the Board of Registration in Medicine for a certificate of biennial registration on forms provided by the board. On or before the first day of July, 1982, and on or before the first day of July of every even-numbered year thereafter, any applicant actively practicing medi-

cine in the State shall include satisfactory evidence to the board that, in the preceding 2 years, the applicant has completed a course of continuing medical education as prescribed in the rules and regulations of the board. The registration fee for residents of this State and for nonresidents shall in no event exceed the sum of ~~\$100~~ \$250. This section shall not apply to interns or residents registered under section 3279 nor shall it apply to those holding temporary certificates for practice in hospitals or camps as provided in section 3277. The registration fees provided for under this section shall not be required of any physician who is 70 years of age on the first day of July of the year for which reregistration is made, although the requirement of reregistration as provided for shall apply without regard to age.

Sec. 21. Report. The Commission to Examine Problems of Tort Litigation and Liability Insurance in Maine shall examine medical and legal professional liability, including, but not limited to, the issues of statutes of limitations, discovery rules, contingent fees and caps on damage awards, and shall present its findings on these issues in its report to the 113th Legislature. The Superintendent of Insurance shall report to the 114th Legislature the impact of the provisions of this Act upon the premiums charged to the health care practitioners and health providers covered by this Act.

Sec. 22. Effective date. Sections 3, 4, 5, 6, 7, 8, 9, 15, 16, except that part designated subchapter VIII, 17, 18, and 19, take effect 90 days after adjournment of the session in which they are enacted and apply to all notices of claim and claims filed on or after that date. The application of these sections shall not be prospective only, but apply to claims arising prior to the effective date if action is commenced after that date. Sections 1, 2, 13 and that part of section 16 designated subchapter VIII, shall take effect on August 1, 1988, except that no claims previously barred by the statute of limitations shall be revived by sections 1 and 13. Application of sections 1 and 13 shall not be prospective only, but will apply to any notice of claim or claim filed on or after August 1, 1988. The statute of limitations applicable to any suit commenced on or after August 1, 1988, shall be the statute of limitations in effect when the claim is filed, and not the statute in effect when the cause of action accrued. Sections 11, 12 and 14 shall be effective on January 1, 1987, and shall apply to any notices of claim filed after that date.