

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 7, 1988 to July 1, 1989

Chapters 1 - 502

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
SEPTEMBER 30, 1989

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

J.S. McCarthy Company
Augusta, Maine
1989

PUBLIC LAWS
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the record. ~~The prevailing party or his~~ the prevailing party's attorney shall ~~may~~ submit a bill of costs for all other costs or interest to the court not later than 10 days after entry of judgment and serve copies on all parties who have appeared and may be required to pay these costs. Any party required to pay all or any part of these costs, except a party who is defaulted and has not appeared, may, within 10 days after the date of service, challenge any items of cost or interest and request review by the court. The prevailing party shall, within 10 days after ~~such~~ a challenge, submit to the court any vouchers or other records verifying any challenged items of cost or interest. Either side may request oral argument and submit affidavits and briefs. ~~Any~~ An evidentiary hearing on the reasonableness of costs or interest will be held only when the judge determines that there exists a substantial need for the hearing and the amount of challenged costs or interest are substantial. If the presiding judge determines that the imposition of costs will cause a significant financial hardship to any party, ~~he~~ the judge may waive all or part of the costs with respect to that ~~part~~ party.

See title page for effective date.

CHAPTER 361

S.P. 398 - L.D. 1042

An Act to Clarify the Law Governing Prelitigation Screening Panels

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, a question has arisen regarding the appropriate standard of proof to be utilized before prelitigation screening panels created by Public Law 1985, Chapter 804; and

Whereas, several other areas of ambiguity exist in the current law governing prelitigation screening panels; and

Whereas, these questions must be clarified in order to move ahead the numerous cases now pending before the panels; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 24 MRSA §2852, sub-§2, ¶B, as enacted by PL 1985, c. 804, §§12 and 22, is amended to read:

B. Upon notification of the Chief Justice's choice of chairman chair, 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 chair shall choose from those lists 2 or 3 additional panel members as follows:

(1) The chairman chair shall choose one attorney;

(2) The chairman chair shall choose one health care practitioner. If possible, the chairman chair 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 chair may choose a 4th panel member who is a health care practitioner or health care provider. If possible, the chairman chair shall choose a practitioner or provider in the specialty or profession of a person accused.; and

(4) When agreed upon by all the parties, the list of available panel members may be enlarged in order to select a panel member who is agreed to by the parties but who is not on the clerk's list.

The Chief Justice of the Superior Court shall establish the compensation of the panel chairman chair. 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 chair.

Sec. 2. 24 MRSA §2852, sub-§4, as enacted by PL 1985, c. 804, §§12 and 22, is repealed.

Sec. 3. 24 MRSA §2852, sub-§6, as enacted by PL 1985, c. 804, §§12 and 22, is amended to read:

6. Discovery. The chairman chair, upon application of a party, may permit reasonable discovery. The chair may rule on requests regarding discovery, or may allow the parties to seek a ruling in the Superior Court under the provisions of section 2853, subsection 5.

Sec. 4. 24 MRSA §2853, sub-§1, as enacted by PL 1985, c. 804, §§12 and 22, is amended to read:

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 county 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. The notice of claim and all other documents filed with the clerk in the matter during the prelitigation screening process shall be confidential. At the time of filing the notice, the claimant shall also pay to the clerk a filing fee of \$200 per notice filed.

Sec. 5. 24 MRSA §2853, sub-§3, as enacted by PL 1985, c. 804, §§12 and 22, is repealed and the following enacted in its place:

3. Waiver. Any party may, at the time of filing, apply to the chair of the panel for a waiver of the filing fee. The chair shall grant the waiver if:

A. The party is indigent.

(1) In determining indigency of the party, the chair shall consider the factors contained in the Maine Rules of Civil Procedure, Rule 44(b);

B. The party is or was an employee of another party and that other party stipulates that the employee at the time of the claimed injury was acting in the course and scope of employment with that other party; or

C. The waiver is necessary to avoid requiring an individual who is a party to the case from paying 2 or more filing fees because a professional association or other business entity of which the individual is a member is also named as a party and has substantially the same interests as the individual in the case.

Sec. 6. 24 MRSA §2853, sub-§5, as enacted by PL 1985, c. 804, §§12 and 22, is amended to read:

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. The panel chair may require the parties to litigate, by motion, dispositive legal affirmative defenses in the Superior Court prior to submission of the case to the panel. Any such defense, as well as any motion relating to discovery that the panel chair has chosen not to rule on may be presented, by motion, in Superior Court without the necessity of a complaint having first been filed.

Sec. 7. 24 MRSA §2854, sub-§3, as enacted by PL 1985, c. 804, §§12 and 22, is amended to read:

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 made by

a majority of the panel against that party and that finding shall have the same effect as a finding against that party under section 2857.

Sec. 8. 24 MRSA §2855, as enacted by PL 1985, c. 804, §§12 and 22, is repealed and the following enacted in its place:

§2855. Findings by panel

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

A. Whether 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;

B. 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

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

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

A. The plaintiff must prove negligence and proximate causation by a preponderance of the evidence; and

B. The defendant must prove comparative negligence by a preponderance of the evidence.

Sec. 9. 24 MRSA §2903-A, as enacted by PL 1985, c. 804, §§15 and 22, is repealed.

Sec. 10. Application. Notwithstanding the provision of the Maine Revised Statutes, Title 1, section 302, this Act shall apply to actions pending on its effective date.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective June 19, 1989.

CHAPTER 362

H.P. 503 - L.D. 683

An Act to Prohibit Motor Vehicle Insurers from Adjusting Personal Insurance Rates of Public Works Employees Involved in Collisions