LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

SECOND SPECIAL SESSION
December 12, 1991 to January 7, 1992

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J.S. McCarthy Company
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PUBLIC LAWS

OF THE

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1991

position, that phrase is amended to read and mean the "Director of Applied Technology Administration."

See title page for effective date.

CHAPTER 717

H.P. 1631 - L.D. 2295

An Act to Amend the Laws Governing Respiratory Care Practitioners

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

Whereas, unless this legislation is enacted as an emergency measure some health care institutions may not be able to adequately procure necessary blood and other specimens or perform certain laboratory testing procedures; and

Whereas, this inability would severely impair the quality of care in those institutions; 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. 32 MRSA §9706-A, sub-§1, as enacted by PL 1989, c. 450, §41, is amended to read:

1. Licensed or credentialed persons. Any ~~medical~~ health care personnel licensed ~~or registered in~~ by this State ~~from~~ or who currently hold a nationally recognized credential in a health care profession engaging in the delivery of respiratory care services for which they have been formally trained. That training must include supervised preclinical didactic and laboratory activities and supervised clinical activities and must be approved by the board or an accrediting agency recognized by the board. It also must include an evaluation of competence through a standardized testing mechanism that is determined by the board to be both valid and reliable;

Sec. 2. Transition. A person who, as of January 1, 1992, was performing arterial blood gas procedures for the purpose of acquiring blood samples or analyzing these samples and who was neither licensed nor exempted under the Maine Revised Statutes, Title 32, chapter 97, must, in order to continue performing these procedures, within 2 years of the effective date of this Act, have either been licensed or become exempted under Title 32, chapter 97.

In order to qualify under this section a person must be actively pursuing licensure or exemption during this 2-year period.

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

Effective March 23, 1992.

CHAPTER 718

H.P. 1649 - L.D. 2312

An Act Concerning the Use of Alternative Coding Systems for Plastic Containers

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

Sec. 1. 32 MRSA §1723, sub-§2 is enacted to read:

2. Alternative labels. The Maine Waste Management Agency may approve use of other nationally or internationally recognized label coding systems for special purpose plastic bottles or rigid plastic containers.

See title page for effective date.

CHAPTER 719

H.P. 1287 - L.D. 1857

An Act Concerning Authorization to Consent to Powers of Attorney

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

Sec. 1. 18-A MRSA §5-209, as enacted by PL 1979, c. 540, §1, is amended to read:

§5-209. Powers and duties of guardian of minor

A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of ~~his~~ the minor and unemancipated child, except that a guardian is not legally obligated to provide from ~~his~~ the guardian's own funds for the ward and is not liable to 3rd persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:

(a) ~~He~~ The guardian must take reasonable care of ~~his~~ the ward's personal effects and commence protective

proceedings if necessary to protect other property of the ward.

(b) ~~He~~ The guardian may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship. ~~He~~ The guardian also may receive money or property of the ward paid or delivered by virtue of section 5-103. Any sums so received ~~shall~~ must be applied to the ward's current needs for support, care and education. ~~He~~ The guardian must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case excess ~~shall~~ must be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for ~~his~~ the guardian's services except as approved by order of court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(c) The guardian is empowered to facilitate the ward's education, social~~,~~ or other activities and to ~~authorize~~ give or withhold consents or approvals related to medical, health or other professional care, counsel, treatment~~,~~ or ~~advice~~ service for the ward. The guardian is empowered to withhold or withdraw life-sustaining treatment when the ward is in a terminal condition or persistent vegetative state as defined in section 5-701 with respect to qualified patients. A guardian is not liable by reason of ~~this~~ such giving or withholding of consent for injury to the ward resulting from the negligence or acts of 3rd persons unless it would have been illegal for a parent to have ~~consented~~ so given or withheld consent. A guardian may consent to the marriage or adoption of ~~his~~ the ward.

(d) A guardian must report the condition of ~~his~~ the ward and of the ward's estate which has been subject to ~~his~~ the guardian's possession or control, as ordered by court on petition of any person interested in the minor's welfare or as required by court rule.

Sec. 2. 18-A MRSA §5-312, sub-§(a), ¶(3), as enacted by PL 1979, c. 540, §1, is amended to read:

(3) A guardian may give ~~any~~ or withhold consents or approvals ~~that may be necessary to enable the ward to receive~~ related to medical or other professional care, counsel, treatment or service for the ward. The guardian is empowered to withhold or withdraw life-sustaining treatment when the ward is in a terminal condition or persistent vegetative state as defined in section 5-701 with respect to qualified patients provided, however, that the guardian shall honor any effective living will declaration executed by the ward pursuant to section 5-702.

Sec. 3. 18-A MRSA art. V, Pt. 5, as amended, is repealed and the following enacted in its place:

PART 5

DURABLE POWER OF ATTORNEY

§5-501. Definition

(a) A durable power of attorney is a power of attorney by which a principal designates another as the principal's attorney-in-fact in writing and the writing contains the words "This power of attorney is not affected by subsequent disability or incapacity of the principal or lapse of time" or "This power of attorney becomes effective upon the disability or incapacity of the principal" or similar words showing the intent of the principal that the authority conferred is exercisable notwithstanding the principal's subsequent disability or incapacity, and unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument.

§5-502. Durable power of attorney not affected by disability or incapacity

All acts done by an attorney-in-fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and the principal's successors in interest as if the principal were competent and not disabled.

§5-503. Relation of attorney-in-fact to court-appointed fiduciary

(a) If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator, guardian of the estate or other fiduciary charged with the management of all of the principal's property or all of the principal's property except specified exclusions, the attorney-in-fact is accountable to the fiduciary as well as to the principal. The fiduciary has the same power to revoke or amend the power of attorney that the principal would have had if the principal were not disabled or incapacitated; provided, however, that a durable power of attorney for health care may be revoked or amended only with the prior approval of the court upon petition by any interested person.

(b) A principal may nominate, by a durable power of attorney, the conservator, guardian of the principal's estate or guardian of the principal's person for consideration by the court if protective proceedings for the principal's person or estate are commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

§5-504. Power of attorney not revoked until notice

(a) The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney-in-fact or other person who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds successors in interest of the principal.

(b) The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney-in-fact or other person who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

§5-505. Proof of continuance of durable and other powers of attorney by affidavit

An affidavit executed by the attorney-in-fact under a power of attorney, durable or otherwise, stating that the attorney-in-fact did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation or of the principal's death, disability or incapacity is conclusive proof of the nonrevocation or nontermination of the power at that time with respect to acts taken in good faith reliance upon the affidavit. If the exercise of the power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable. This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

§5-506. Durable health care power of attorney

(a) A durable health care power of attorney is a durable power of attorney by which a principal designates another as attorney-in-fact to make decisions on the principal's behalf in matters concerning the principal's medical or health treatment and care. An attorney-in-fact designated under a durable health care power of attorney may be authorized to give or withhold consents or approvals relating to any medical, health or other professional care, counsel, treatment or service of or to the principal by a licensed or professional certified person or institution engaged in the practice of, or providing, a healing art, including life-sustaining treatment when the principal is in a terminal condition or a persistent vegetative state as those terms are defined in section 5-701.

(b) A durable health care power of attorney must be signed by the principal, or another at the principal's direction, and witnessed by 2 individuals other than the designated attorney-in-fact. This section's requirement of 2 witnesses does not render ineffective a durable health care power of attorney validly executed prior to the effective date of this section.

(c) A durable health care power of attorney may be revoked or terminated by a fiduciary of the principal only with the prior approval of the court upon petition by any interested person.

Sec. 4. 18-A MRSA §5-701, sub-§(b), ¶(10), as enacted by PL 1991, c. 441, §1, is amended to read:

(10) "Persistent vegetative state" means a state that occurs after coma in which the individual totally lacks higher cortical and cognitive function, but maintains vegetative ~~brainstem~~ brain stem processes, with no realistic possibility of recovery, as diagnosed in accordance with accepted medical standards. ~~Vegetative brainstem processes may include one or more of the following: cycles of sleeping and waking, spontaneous eye opening and movements, some motor activity, vocalization, blood pressure, respiration and heart beat.~~

Sec. 5. 18-A MRSA §5-702, sub-§(d), as enacted by PL 1989, c. 830, §1, is repealed.

Sec. 6. 18-A MRSA §5-703, as enacted by PL 1989, c. 830, §1, is amended to read:

§5-703. When declaration operative

A declaration becomes operative when it is communicated to the attending physician and the declarant is determined by the attending physician to be in a terminal condition or persistent vegetative state as defined in section 5-701 and no longer able to make or communicate decisions regarding administration of life-sustaining treatment. When the declaration becomes operative, the attending physician and other health-care providers shall act in accordance with its provisions and with the instructions of a designee under section 5-702, subsection (a) or comply with the transfer requirements of section 5-708.

Sec. 7. 18-A MRSA §5-705, as enacted by PL 1989, c. 830, §1, is amended to read:

§5-705. Recording determination of terminal condition or persistent vegetative state and declaration

Upon determining that a declarant is in a terminal condition or persistent vegetative state as defined in section 5-701, the attending physician who knows of a declaration shall record the determination and the terms of the declaration in the declarant's medical record.

Sec. 8. 18-A MRSA §5-707, sub-§(b), ¶(1), as enacted by PL 1989, c. 830, §1, is repealed.

Sec. 9. 18-A MRSA §5-707, sub-§(b), ¶¶1-A, 1-B and 1-C are enacted to read:

(1-A) An attorney-in-fact appointed by the individual under a durable health care power of attorney unless the health care power of attorney expressly provides that treatment be continued or that the attorney-in-fact does not have this authority or unless the authority or the power of attorney has been terminated by the court;

(1-B) A judicially appointed guardian of the individual's person;

(1-C) The spouse of the individual;

Sec. 10. 18-A MRSA §5-711, sub-§(d), as enacted by PL 1989, c. 830, §1, is amended to read:

(d) This Part creates no presumption concerning the intention of an individual who has revoked or has not executed a declaration with respect to the use, withholding, or withdrawal of life-sustaining treatment in the event of a terminal condition, or a persistent vegetative state.

See title page for effective date.

CHAPTER 720

H.P. 1469 - L.D. 2081

An Act Concerning Passamaquoddy Indian Territory

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

Sec. 1. 30 MRSA §6205, sub-§1, ¶B, as amended by PL 1987, c. 153, §§1 and 3, is further amended to read:

B. The first 150,000 acres of land acquired by the secretary for the benefit of the Passamaquoddy Tribe from the following areas or lands to the extent that those lands are acquired by the secretary prior to January 31, 1991, are not held in common with any other person or entity and are certified by the secretary by January 31, 1991, as held for the benefit of the Passamaquoddy Tribe:

The lands of Great Northern Nekoosa Corporation located in T.1, R.8, W.B.K.P. (Lowelltown), T.6, R.1, N.B.K.P. (Holeb), T.2, R.10, W.E.L.S. and T.2, R.9, W.E.L.S.; the land of Raymidga Company located in T.1, R.5, W.B.K.P. (Jim Pond), T.4, R.5, B.K.P.W.K.R. (King and Bartlett), T.5, R.6, B.K.P.W.K.R. and T.3, R.5, B.K.P.W.K.R.; the land of the heirs of David Pingree located in T.6, R.8, W.E.L.S.; any portion of Sugar Island in Moosehead Lake; the lands of Prentiss and Carlisle Company located in T.9, S.D.; any portion of T.24, M.D.B.P.P.; the lands of Bertram C. Tackeff or Northeastern Blueberry Company, Inc. in T.19, M.D.B.P.P.; any portion of T.2, R.8, N.W.P.; any portion of T.2, R.5, W.B.K.P. (Alder Stream); the lands of Dead River Company in T.3, R.9, N.W.P., T.2, R.9, N.W.P., T.5, R.1, N.B.P.P. and T.5, N.D.B.P.P.; any portion of T.3, R.1, N.B.P.P.; any portion of T.3, N.D.; any portion of T.4, N.D.; any portion of T.39, M.D.; any portion of T.40, M.D.; any portion of T.41, M.D.; any portion of T.42, M.D.B.P.P.; the lands of Diamond International Corporation, International Paper Company and Lincoln Pulp and Paper Company located in Argyle; and the lands of the Dyer Interests in T.A.R.7 W.E.L.S., T.3 R.9 N.W.P., T.3 R.3. N.B.K.P. (Alder Brook Township), T.3 R.4 N.B.K.P. (Hammond Township), T.2 R.4 N.B.K.P. (Pittston Academy Grant), T.2 R.3 N.B.K.P. (Soldiertown Township), and T.4 R.4 N.B.K.P. (Prentiss Township), and any lands in Albany Township acquired by the Passamaquoddy Tribe before January 1, 1991.

Sec. 2. Effective date. This Act is not effective unless, within 60 days of the adjournment of the Legislature, the Secretary of State receives written notification by the Joint Tribal Council of the Passamaquoddy Tribe that the Tribe has agreed to the provisions of this Act pursuant to the United States Code, Title 25, Section 1725(e)(1), copies of which must be submitted by the Secretary of State to the Secretary of the Senate and the Clerk of the House of Representatives; and in no event may this Act become effective until 90 days after the adjournment of the Legislature.

See title page for effective date, unless otherwise indicated.

CHAPTER 721

H.P. 1472 - L.D. 2084

An Act Concerning Penobscot Nation Trust Land Designation

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

Sec. 1. 30 MRSA §6205, sub-§2, ¶B, as amended by PL 1987, c. 153, §§2 and 3, is further amended to read:

B. The first 150,000 acres of land acquired by the secretary for the benefit of the Penobscot Nation from the following areas or lands to the extent that those lands are acquired by the secretary prior to January 31, ~~1991~~ 2001, are not held in common