



Maine Veterinary Medical Association

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Dear Senator Beebe-Center, Representative Hasenfus and Members of the Committee on Criminal Justice and Public Safety,

My name is Katherine Sovereil. I am from Portland and I serve as the Executive Director of the Maine Veterinary Medical Association. The MVMA represents over 500 veterinarians across the state of Maine.

I am writing on behalf of the MVMA in opposition of LD 962 " An Act to Establish the Offense of Aggravated Operating Under the Influence Resulting in the Death of a Pet". Section 3C of this bill allows for compensation for distress suffered by the owner of the pet in an amount not to exceed \$3,000. Allowing damages for emotional distress for the loss of an animal is a slippery slope which could open the door to allow for non-economic damages in other areas as well.

The MVMA strives to advance the science and practice of veterinary medicine to improve animal and human health, as well as to support veterinarians in their stewardship of animal health and welfare and their role in promoting public health. We love our pets, acknowledge the importance of the human-animal bond, and fully understand the emotional impact that the loss of a pet can have on an animal's owners. However, allowing for emotion-based damages for the loss of pets does not redress that loss, and will instead increase the cost of veterinary care — resulting in decreased access to care.

Veterinary care can be expensive, and it is usually paid for out of a person's discretionary disposable income. For many people, there is a limit to what they can or will spend on pet care, often a few hundred dollars. Veterinarians continuously work in partnership with their clients to spend available dollars wisely to best care for their animals. Maine is a small state with a limited number of veterinarians among whom to spread insurance risk. Veterinary providers would be forced to raise prices to cover additional costs that are passed on to the client.

Additionally, it will cause general veterinary practitioners to practice defensively and to refer more cases to veterinary specialists, which can add considerable cost. They may also simply decline to provide care to higher-risk animals. The result will be significantly increased costs for the pet owner and will result in an increase in economic euthanasia, where an animal is euthanized to prevent suffering due to the animal's owner being unable or unwilling to spend the money necessary for care. Unfortunately, this financial impact will be most felt by those who can least afford it. The MVMA opposes any provision that will result in an owner's inability to obtain care for their pets.

The MVMA believes animal owners should be allowed to collect reasonable economic damages in litigation. Injecting noneconomic measures for damages will, unintentionally, but inevitably, harm animals and their owners. The result will not be improved quality of animal care, but rather increased cost of veterinary, and other services for pets, the inability to address higher-risk cases without specialist referrals, and far fewer owners being able to afford to provide the care their pets need and deserve.



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I have included below relevant caselaw in Maine that demonstrates the narrow window where Maine law currently allows for damages for emotional distress. Enacting this bill as written would be a departure from existing Maine law.

I appreciate the opportunity to submit this testimony and appreciate the work that this committee does for the State of Maine.

Sincerely,

Katherine Soverel
Executive Director
Maine Veterinary Medical Association

ADDENDUM: Relevant Caselaw in Maine

§ 302. Action for loss of consortium

A married person may bring a civil action in that person's own name for loss of consortium of that person's spouse.

Cite: 14 M.R.S.A. § 302

§ 2-807. Actions for wrongful death

...

2. Wrongful death action; damages; limitations. Every wrongful death action must be brought by and in the name of the personal representative or special administrator of the deceased person, and is distributable, after payment for funeral expenses and the costs of recovery including attorney's fees, directly to the decedent's heirs without becoming part of the probate estate, except as may be specifically provided in this subsection. The amount recovered in every wrongful death action, except as specifically provided in this subsection, is for the exclusive benefit of the deceased's heirs to be distributed to the individuals and in the proportions as provided under the intestacy laws of this State in sections 2-101 to 2-113. The jury may give damages as it determines a fair and just compensation with reference to the pecuniary injuries resulting from the death. Damages are payable to the estate of the deceased person only if the jury specifically makes an award payable to the estate for reasonable expenses of medical, surgical and hospital care and treatment and for reasonable funeral expenses or, in the case of a settlement, the settlement documents specifically provide for such an allocation to the estate for the same. In addition, the jury may give damages not exceeding \$1,000,000 adjusted for inflation as provided in section 1-108 for the loss of comfort, society and companionship of the deceased, including any damages for emotional distress arising from the same facts as those constituting the underlying claim, to the persons for whose benefit the action is brought. The jury may also give punitive damages not exceeding \$500,000. An action under this section must be commenced within 3 years after the decedent's death, except that if the decedent's death is caused by a homicide, the action may be commenced within 6 years of the date the personal representative or special administrator of the decedent discovers that there is a just cause of action against the person who caused the homicide. If a claim under this section is settled without an action having been commenced, the amount paid in settlement



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must be distributed as provided in this subsection. A settlement on behalf of minor children is not valid unless approved by the court, as provided in Title 14, section 1605.

...

Cite: 18-C M.R.S.A. § 2-807.

F. Loss of Consortium (Count VII)

Although Plaintiff claims damages stemming from the loss of consortium of her son, Maine law allows for recovery under such claims only for the loss of a spouse. See 14 M.R.S.A. § 302. As such, Plaintiff cannot recover under Section 302. In her response to Defendants' Motion for Summary Judgment, Plaintiff also attempts to make out a claim for loss of services under 14 M.R.S.A. § 303. (See Pl.'s Argument in Opp'n to Defs.' Mot. for Summ. J. (Docket # 42) at 6.)

The Court questions the timeliness of this claim, and additionally finds it to be without merit. Section 303 allows a parent to "maintain an action for loss of the services or earnings" of a child. Here Plaintiff has not created any issue of material fact that could lead the Court to find that S.B. performed any services or collected any earnings.

Absent a trialworthy issue, the Court GRANTS Defendants summary judgment as to Count VII.

Cite: Ms. K v. City of S. Portland, 407 F. Supp. 2d 290, 299 (D. Me. 2006).

D. Negligent Infliction of Emotional Distress

Count IV asserts a cause of action for negligent infliction of emotional distress. In order to recover for negligent infliction of emotional distress, Plaintiff must establish "either a unique relationship between the plaintiff and the defendant, or an underlying tort." Richards v. Town of Eliot, 780 A.2d 281, 293 (Me.2001). The Law Court has found the requisite unique relationship and corresponding duty among physicians and patients, see Bolton v. Caine, 584 A.2d 615, 618 (Me.1990), between a hospital and the family of the deceased, see Gammon v. Osteopathic Hosp. of Maine Inc., 534 A.2d 1282, 1285 (Me.1987), and between a psychotherapist and a patient, see Rowe v. Bennett, 514 A.2d 802, 806-07 (Me.1986). The Law Court, however, has declined to find the requisite relationship between a police officer and an arrestee, see Richards, 780 A.2d at 293, and between a church and its members, see Bryan R. v. Watchtower Bible & Tract Society of New York, Inc., 738 A.2d 839, 849 (Me.1999). Plaintiff asserts that "a duty to act reasonably arose when SAE took on the role of investigating Fiacco and reporting issues of concern to the public." (Pl.'s Mem. in Opp'n to Def.'s Mot. for Summ. J. (Docket # 71) at 28). Plaintiff, however, has failed to proffer any evidence or cite any cases in support of finding the requisite duty. The Court declines to find that there is a unique relationship between Defendant and Plaintiff.¹⁹ In addition, no tort claim remains on which to base liability for negligent infliction of emotional distress. Thus, SAE is entitled to summary judgment on Count IV.

Cite: Fiacco v. Sigma Alpha Epsilon Fraternity, 484 F. Supp. 2d 158, 176-77 (D. Me. 2007), aff'd, 528 F.3d 94 (1st Cir. 2008).