

**Title 24: INSURANCE**  
**Chapter 21: MAINE HEALTH SECURITY ACT**

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**Maine Revised Statutes**  
**Title 24: INSURANCE**  
**Chapter 21: MAINE HEALTH SECURITY ACT**

Subchapter 1: PROFESSIONAL COMPETENCE REPORTS

**§2501. SHORT TITLE**

This Act shall be known as the Maine Health Security Act. [1977, c. 492, §3 (NEW).]

SECTION HISTORY

1977, c. 492, §3 (NEW).

**§2502. DEFINITIONS**

As used in this chapter, unless the context indicates otherwise, the following words shall have the following meanings. [1977, c. 492, §3 (NEW).]

**1. Board.** "Board" means the Board of Licensure in Medicine, the Board of Dental Practice or the Board of Osteopathic Licensure.

[ 1997, c. 107, §1 (AMD); 2015, c. 429, §23 (REV) .]

**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, physicians' assistants and veterinarians.

[ 2011, c. 190, §1 (AMD) .]

**1-B. Carrier.** "Carrier" has the same meaning as in Title 24-A, chapter 56-A.

[ 1997, c. 271, §2 (NEW) .]

**1-C. Adverse professional competence review action.** "Adverse professional competence review action" means an action based upon professional competence review activity to reduce, restrict, suspend, deny, revoke or fail to grant or renew a physician's or veterinarian's:

A. Membership, clinical privileges, clinical practice authority or professional certification in a hospital, other health care entity or veterinary hospital; or [2011, c. 190, §2 (AMD).]

B. Participation on a health care entity's provider panel. [1997, c. 697, §1 (NEW).]

[ 2011, c. 190, §2 (AMD) .]

**1-D. Health care entity.** "Health care entity" means:

A. An entity that provides or arranges for health care services and that follows a written professional competence review process; [1997, c. 697, §1 (NEW).]

B. An entity that furnishes the services of physicians to another health care entity or to individuals and that follows a written professional competence review process; or [1997, c. 697, §1 (NEW).]

C. A professional society or professional certifying organization when conducting professional competence review activity. [1997, c. 697, §1 (NEW).]

[ 1997, c. 697, §1 (NEW) .]

**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 that is licensed or otherwise authorized by the laws of this State. "Health care provider" includes a veterinary hospital.

[ 2011, c. 190, §3 (AMD) . ]

**2-A. Managed care plan.** "Managed care plan" has the same meaning as in Title 24-A, chapter 56-A.

[ 1997, c. 271, §2 (NEW) . ]

**3. Physician.** "Physician" means any natural person authorized by law to practice medicine, osteopathic medicine or veterinary medicine within this State.

[ 2011, c. 190, §4 (AMD) . ]

**4. Professional competence committee.** "Professional competence committee" means any of the following when engaging in professional competence review activity:

- A. A health care entity; [1997, c. 697, §2 (NEW) . ]
- B. An individual or group, such as a medical staff officer, department or committee, to which a health care entity delegates responsibility for professional competence review activity; [1997, c. 697, §2 (NEW) . ]
- C. Entities and persons, including contractors, consultants, attorneys and staff, who assist in performing professional competence review activities; or [1997, c. 697, §2 (NEW) . ]
- D. Joint committees of 2 or more health care entities. [1997, c. 697, §2 (NEW) . ]

[ 1997, c. 697, §2 (RPR) . ]

**4-A. Professional review committee.** "Professional review committee" means a committee of health care practitioners formed by a professional society for the purpose of identifying and working with health professionals who are disabled or impaired by virtue of physical or mental infirmity or by the misuse of alcohol or drugs, as long as the committee operates pursuant to protocols approved by the various licensing boards that license the health professionals the committee serves.

[ 2011, c. 190, §5 (AMD) . ]

**4-B. Professional competence review activity.** "Professional competence review activity" means study, evaluation, investigation, recommendation or action, by or on behalf of a health care entity and carried out by a professional competence committee, necessary to:

- A. Maintain or improve the quality of care rendered in, through or by the health care entity or by physicians; [1997, c. 697, §3 (NEW) . ]
- B. Reduce morbidity and mortality; or [1997, c. 697, §3 (NEW) . ]
- C. Establish and enforce appropriate standards of professional qualification, competence, conduct or performance. [1997, c. 697, §3 (NEW) . ]

[ 1997, c. 697, §3 (NEW) . ]

**5. Professional society.** "Professional society" means a state professional organization of physicians, surgeons or osteopathic physicians.

[ 1977, c. 492, §3 (NEW) . ]

**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.

[ 1985, c. 804, §§5, 22 (NEW) .]

**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 [1985, c. 804, §§5, 22 (NEW) .]

B. There is a reasonable medical or professional probability that the acts or omissions complained of proximately caused the injury complained of. [1985, c. 804, §§5, 22 (NEW) .]

[ 1985, c. 804, §§5, 22 (NEW) .]

**8. Professional competence review records.** "Professional competence review records" means the minutes, files, notes, records, reports, statements, memoranda, data bases, proceedings, findings and work product prepared at the request of or generated by a professional competence review committee relating to professional competence review activity. Records received or considered by a professional competence committee during professional competence review activity are not "professional competence review records" if the records are individual medical or clinical records or any other record that was created for purposes other than professional competence review activity and is available from a source other than a professional competence committee.

[ 1997, c. 697, §4 (NEW) .]

**9. Written professional competence review process.** "Written professional competence review process" means a process that is reduced to writing and includes:

A. Written criteria adopted by the health care entity that are designed to form the primary basis for granting membership, privileges or participation in or through the health care entity. The health care entity shall furnish or make available for inspection and photocopying to a requesting physician the written criteria used by the entity; and [1997, c. 697, §4 (NEW) .]

B. A mechanism through which an individual physician can:

- (1) Be informed in writing of the basis of any adverse professional competence review action;
- (2) Participate in a meeting or hearing with representatives of the health care entity at which time the facts upon which an adverse action is based and the basis for the adverse action can be discussed and reconsidered; and
- (3) Receive a written explanation of any final adverse professional competence review action.

[1997, c. 697, §4 (NEW) .]

[ 1997, c. 697, §4 (NEW) .]

#### SECTION HISTORY

1977, c. 492, §3 (NEW). 1985, c. 185, §1 (AMD). 1985, c. 804, §§3-5,22 (AMD). 1993, c. 39, §1 (AMD). 1993, c. 600, §§A17,B21,22 (AMD). 1997, c. 107, §§1,2 (AMD). 1997, c. 271, §2 (AMD). 1997, c. 697, §§1-4 (AMD). 2007, c. 288, §1 (AMD). 2009, c. 47, §1 (AMD). 2011, c. 190, §§1-5 (AMD). 2015, c. 429, §23 (REV).

## §2503. HOSPITAL DUTIES

The governing body of every licensed hospital shall assure that: [1977, c. 492, §3 (NEW) .]

**1. Organization of medical staff.** Its medical staff is organized pursuant to written bylaws that have been approved by the governing body;

[ 1977, c. 492, §3 (NEW) .]

**2. Provider privileges.** Provider privileges extended or subsequently renewed to any physician are in accordance with those recommended by the medical staff as being consistent with that physician's training, experience and professional competence;

[ 1977, c. 492, §3 (NEW) .]

**3. Program for identification and prevention of medical injury.** It has a program for the identification and prevention of medical injury which shall include at least the following:

A. One or more professional competence committees with responsibility effectively to review the professional services rendered in the facility for the purpose of insuring quality of medical care of patients therein. Such responsibility shall include a review of the quality and necessity of medical care provided and the preventability of medical complications and deaths; [1977, c. 492, §3 (NEW) .]

B. A grievance or complaint mechanism designed to process and resolve as promptly and effectively as possible grievances by patients or their representatives related to incidents, billing, inadequacies in treatment and other factors known to influence malpractice claims and suits; [1977, c. 492, §3 (NEW) .]

C. A system for the continuous collection of data with respect to the provider's experience with negative health care outcomes and incidents injurious to patients, whether or not they give rise to claims, patient grievances, claims, suits, professional liability premiums, settlements, awards, allocated and administrative costs of claims handling, costs of patient injury prevention and safety engineering activities, and other relevant statistics and information; and [1977, c. 492, §3 (NEW) .]

D. Education programs for the provider's staff personnel engaged in patient care activities dealing with patient safety, medical injury prevention, the legal aspects of patient care, problems of communication and rapport with patients and other relevant factors known to influence malpractice claims and suits; and [1977, c. 492, §3 (NEW) .]

[ 1977, c. 492, §3 (NEW) .]

**4. External professional competence committee.** Where the nature, size or location of the health care provider makes it advisable, the provider may, upon recommendation of its medical staff, utilize the services of an external professional competence committee or one formed jointly by 2 or more providers.

[ 1977, c. 492, §3 (NEW) .]

### SECTION HISTORY

1977, c. 492, §3 (NEW) .

## §2504. PROFESSIONAL SOCIETIES

Every state professional society shall establish a professional competence committee of its members pursuant to written bylaws approved by the society's governing board. The committee shall receive, investigate and determine the accuracy of any report made to the society of any member physician's acts

amounting to gross or repeated medical malpractice, misuse of alcohol, drugs or other substances that may result in the member physician's performing services in a manner that endangers the health or safety of patients or professional incompetence. [ 2013, c. 105, §1 (AMD). ]

#### SECTION HISTORY

1977, c. 492, §3 (NEW). 2013, c. 105, §1 (AMD).

### **§2505. COMMITTEE AND OTHER REPORTS**

Any professional competence committee within this State and any physician or physician assistant licensed to practice or otherwise lawfully practicing within this State shall, and any other person may, report the relevant facts to the appropriate board relating to the acts of any physician or physician assistant in this State if, in the opinion of the committee, physician, physician assistant or other person, the committee or individual has reasonable knowledge of acts of the physician or physician assistant amounting to gross or repeated medical malpractice, misuse of alcohol, drugs or other substances that may result in the physician's or the physician assistant's performing services in a manner that endangers the health or safety of patients, professional incompetence, unprofessional conduct or sexual misconduct identified by board rule. The failure of any such professional competence committee or any such physician or physician assistant to report as required is a civil violation for which a fine of not more than \$1,000 may be adjudged. [ 2013, c. 355, §1 (AMD). ]

Except for specific protocols developed by a board pursuant to Title 32, section 2596-A, 3298 or 18323, a physician or physician assistant, dentist or committee is not responsible for reporting misuse of alcohol, drugs or other substances or professional incompetence or malpractice as a result of physical or mental infirmity or by the misuse of alcohol, drugs or other substances discovered by the physician, physician assistant, dentist or committee as a result of participation or membership in a professional review committee or with respect to any information acquired concerning misuse of alcohol, drugs or other substances or professional incompetence or malpractice as a result of physical or mental infirmity or by the misuse of alcohol, drugs or other substances, as long as that information is reported to the professional review committee. This section does not prohibit an impaired physician, physician assistant or dentist from seeking alternative forms of treatment. [ 2015, c. 429, §8 (AMD). ]

The confidentiality of reports made to a board under this section is governed by this chapter. [ 2011, c. 524, §8 (NEW). ]

#### SECTION HISTORY

1967, c. 183, (RPR). 1977, c. 492, §3 (NEW). 1985, c. 185, §2 (AMD). 1993, c. 600, §A18 (AMD). 1997, c. 107, §3 (AMD). 2003, c. 601, §1 (AMD). 2007, c. 380, §1 (AMD). 2011, c. 524, §8 (AMD). 2013, c. 105, §§2, 3 (AMD). 2013, c. 355, §§1, 2 (AMD). 2015, c. 429, §8 (AMD).

### **§2506. PROVIDER, ENTITY AND CARRIER REPORTS**

A health care provider or health care entity shall, within 60 days, report in writing to the disciplined practitioner's board or authority the name of any licensed, certified or registered employee or person privileged by the provider or entity whose employment, including employment through a 3rd party, or privileges have been revoked, suspended, limited or terminated or who resigned while under investigation or to avoid investigation for reasons related to clinical competence or unprofessional conduct, together with pertinent information relating to that action. Pertinent information includes: a description of the adverse action; the name of the practitioner involved; the date, the location and a description of the event or events giving rise to the adverse action; and identification of the complainant giving rise to the adverse action. Upon written request, the following information must be released to the board or authority within 20 days of receipt of the request: the names of the patients whose care by the disciplined practitioner gave rise to the adverse action; medical records relating to the event or events giving rise to the adverse action; written statements signed or prepared by any witness or complainant to the event; and related correspondence between the

practitioner and the provider or entity. The report must include situations in which employment, including employment through a 3rd party, or privileges have been revoked, suspended, limited or otherwise adversely affected by action of the health care practitioner while the health care practitioner was the subject of a proceeding regarding employment or a disciplinary proceeding, and it also must include situations where employment, including employment through a 3rd party, or privileges have been revoked, suspended, limited or otherwise adversely affected by act of the health care practitioner in return for the health care provider's or health care entity's terminating such proceeding. Any reversal, modification or change of action reported pursuant to this section must be reported immediately to the practitioner's board or authority, together with a brief statement of the reasons for that reversal, modification or change. If the adverse action requiring a report as a result of a reversal, modification or change of action consists of the revocation, suspension or limitation of employment, including employment through a 3rd party, or clinical privileges of a physician, physician assistant or advanced practice registered nurse by a health care provider or health care entity for reasons relating to clinical competence or unprofessional conduct and is taken pursuant to personnel or employment rules or policies, medical staff bylaws or other credentialing and privileging policies, whether or not the practitioner is employed by that health care provider or entity, then the provider or entity shall include in its initial report to the disciplined practitioner's licensing board or authority the names of all patients whose care by the disciplined practitioner gave rise to the adverse action. The failure of any health care provider or health care entity to report as required is a civil violation for which a fine of not more than \$5,000 may be adjudged. [2013, c. 355, §3 (AMD).]

Carriers providing managed care plans are subject to the reporting requirements of this section when they take adverse actions against a practitioner's credentials or employment for reasons related to clinical competence or unprofessional conduct that may adversely affect the health or welfare of the patient. [1997, c. 271, §3 (NEW).]

#### SECTION HISTORY

1977, c. 492, §3 (NEW). 1985, c. 804, §§6,22 (AMD). 1989, c. 462, §1 (AMD). 1997, c. 271, §3 (AMD). 1997, c. 697, §5 (AMD). 2005, c. 221, §1 (AMD). 2005, c. 397, §C15 (AMD). 2005, c. 397, §C16 (AFF). 2013, c. 355, §3 (AMD).

## §2507. SOCIETY REPORTS

Any professional society within this State which takes formal disciplinary action against a member relating to professional ethics, professional incompetence, moral turpitude, or drug or alcohol abuse shall, within 60 days of the action, report in writing to the appropriate board the name of the member, together with pertinent information relating to the action. The report shall include situations in which membership or privileges have been revoked, suspended, limited or otherwise adversely affected by action of the health care practitioner while the health care practitioner was under investigation or the subject of proceedings and it shall also include situations where membership or privileges have been revoked, suspended, limited or otherwise adversely affected by an act of the health care practitioner in return for the professional society's not conducting or for its ceasing such investigation proceeding. The report shall include situations under which an individual under societal investigation resigns during that pending investigation. The failure of any such society to report as required is a civil violation for which a fine of not more than \$1,000 may be adjudged. [1989, c. 462, §2 (AMD).]

#### SECTION HISTORY

1977, c. 492, §3 (NEW). 1989, c. 462, §2 (AMD).

## §2508. EFFECT OF FILING

The filing of a report with the board pursuant to this chapter, investigation by the board or any disposition by the board may not, in and of itself, preclude any action by a hospital or other health care facility or health care entity or professional society comprised primarily of physicians to suspend, restrict or revoke the privileges or membership of the physician. [1997, c. 697, §6 (AMD).]

### SECTION HISTORY

1977, c. 492, §3 (NEW). 1997, c. 697, §6 (AMD).

## §2509. BOARD RECORDS

**1. Record of physicians.** Each board shall create and maintain a permanent record of the names of all physicians licensed by it or otherwise lawfully practicing in this State and subject to the board's jurisdiction along with an individual historical record for each physician relating to reports or other information furnished the board under this chapter or otherwise pursuant to law. The record may include, in accordance with rules established by the board, additional items relating to a physician's record of medical practice as will facilitate proper periodic review of the physician's professional competency.

[ 1977, c. 492, §3 (NEW) . ]

**2. Reports dismissed without disciplinary action; removal and destruction.** If the board dismisses any report submitted to it without imposing disciplinary action, the report must be removed from the physician's individual historical record and destroyed, unless the report has been placed on file for a specified amount of time pursuant to Title 10, section 8003, subsection 5, paragraph E. Reports placed on file pursuant to Title 10, section 8003, subsection 5, paragraph E may only be removed and destroyed upon the expiration of the specified amount of filing time.

[ 1997, c. 680, Pt. D, §1 (AMD) . ]

**3. Forms; acceptance of other forms.** The board shall provide forms for filing reports pursuant to this chapter. Reports submitted in other forms shall be accepted by the board.

[ 1977, c. 492, §3 (NEW) . ]

**4. Disclosure to physician.** A physician shall be provided with a written notice of the substance of any information received pursuant to this chapter and placed in his individual historical record.

[ 1977, c. 492, §3 (NEW) . ]

**5. Examination of records by physician; response to information.** A physician or his authorized representative shall have the right, upon request, to examine the physician's individual historical record which the board maintains pursuant to this chapter, and to place into the record a statement of reasonable length of the physician's view of the correctness or relevance of any information existing in the record. The statement shall at all times accompany that part of the record in contention. This subsection shall not apply to material submitted to the board in confidence prior to licensure by the board.

[ 1977, c. 492, §3 (NEW) . ]

**6. Court action for amendment or destruction.** With the exception of orders of the board relating to disciplinary action, and reports placed on file for a specified amount of time pursuant to Title 10, section 8003, subsection 5, paragraph E, a physician has the right to seek through court action pursuant to the Maine Rules of Civil Procedure the amendment or destruction of any part of that physician's historical record in the possession of the board. When a physician initiates court action under this subsection, the board shall notify the persons who have filed complaints of the physician's request to amend these complaints or expunge

them from the record. Notice to complainants must be sent to the last known address of the complainants. The notice must contain the name and address of the court to which a complainant may respond, the specific change in the complaint that the physician is seeking or the complaint that the physician seeks to expunge, and the length of time that the complainant has to respond to the court. The board shall provide complainants with at least 60 days' notice from the date the notice is sent in which to respond.

[ 1997, c. 680, Pt. D, §2 (AMD) .]

### **7. Destruction of information.**

[ 1997, c. 680, Pt. D, §3 (RP) .]

#### SECTION HISTORY

1977, c. 492, §3 (NEW). 1991, c. 534, §§1,2 (AMD). 1997, c. 680, §§D1-3 (AMD).

## **§2510. CONFIDENTIALITY OF INFORMATION**

**1. Confidentiality; exceptions.** Any reports, information or records received and maintained by the board pursuant to this chapter, including any material received or developed by the board during an investigation shall be confidential, except for information and data that is developed or maintained by the board from reports or records received and maintained pursuant to this chapter or by the board during an investigation and that does not identify or permit identification of any patient or physician; provided that the board may disclose any confidential information only:

- A. In a disciplinary hearing before the board or in any subsequent trial or appeal of a board action or order relating to such disciplinary hearing; [1977, c. 492, §3 (NEW).]
- B. To governmental licensing or disciplinary authorities of any jurisdiction or to any health care providers or health care entities located within or outside this State that are concerned with granting, limiting or denying a physician's privileges, but only if the board includes along with the transfer an indication as to whether or not the information has been substantiated by the board; [2005, c. 221, §2 (AMD).]
- C. As required by section 2509, subsection 5; [1977, c. 492, §3 (NEW).]
- D. Pursuant to an order of a court of competent jurisdiction; [2011, c. 524, §9 (AMD).]
- E. To qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any patient or physician is first deleted; or [2011, c. 524, §9 (AMD).]
- F. To other state or federal agencies when the information contains evidence of possible violations of laws enforced by those agencies. [2011, c. 524, §10 (NEW).]

[ 2011, c. 524, §§9, 10 (AMD) .]

**2. Confidentiality of orders in disciplinary proceedings.** Orders of the board relating to disciplinary action against a physician, including orders or other actions of the board referring or scheduling matters for hearing, shall not be confidential.

[ 1977, c. 492, §3 (NEW) .]

**2-A. Confidentiality of letters of guidance or concern.** Letters of guidance or concern issued by the board pursuant to Title 10, section 8003, subsection 5, paragraph E, are not confidential.

[ 1997, c. 680, Pt. D, §4 (NEW) .]

**3. Availability of confidential information.** In no event may confidential information received, maintained or developed by the board, or disclosed by the board to others, pursuant to this chapter, or information, data, incident reports or recommendations gathered or made by or on behalf of a health care provider pursuant to this chapter, be available for discovery, court subpoena or introduced into evidence in any medical malpractice suit or other action for damages arising out of the provision or failure to provide health care services. This confidential information includes reports to and information gathered by a professional review committee.

[ 1985, c. 185, §3 (AMD) . ]

**4. Penalty.** Any person who unlawfully discloses such confidential information possessed by the board shall be guilty of a Class E crime.

[ 1977, c. 492, §3 (NEW) . ]

**5. Physician-patient privilege; proceedings by board.** The physician-patient privilege shall, as a matter of law, be deemed to have been waived by the patient and shall not prevail in any investigation or proceeding by the board acting within the scope of its authority, provided that the disclosure of any information pursuant to this subsection shall not be deemed a waiver of such privilege in any other proceeding.

[ 1977, c. 492, §3 (NEW) . ]

**6. Disciplinary action.** Disciplinary action by the Board of Licensure in Medicine is in accordance with Title 32, chapter 48; disciplinary action by the Board of Osteopathic Licensure is in accordance with Title 32, chapter 36; and disciplinary action by the State Board of Veterinary Medicine is in accordance with Title 32, chapter 71-A.

[ 2011, c. 190, §6 (AMD) . ]

#### SECTION HISTORY

1977, c. 492, §3 (NEW). 1977, c. 694, §384 (AMD). 1985, c. 185, §3 (AMD). 1993, c. 600, §§B21,22 (AMD). 1997, c. 680, §D4 (AMD). 2005, c. 221, §2 (AMD). 2011, c. 190, §6 (AMD). 2011, c. 524, §§9, 10 (AMD).

## **§2510-A. CONFIDENTIALITY OF PROFESSIONAL COMPETENCE REVIEW RECORDS**

Except as otherwise provided by this chapter, all professional competence review records are privileged and confidential and are not subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity and are not admissible as evidence in any civil, judicial or administrative proceeding. Information contained in professional competence review records is not admissible at trial or deposition in the form of testimony by an individual who participated in the written professional competence review process. Nothing in this section may be read to abrogate the obligations to report and provide information under section 2506, nor the application of Title 32, sections 2599 and 3296. [1997, c. 697, §7 (NEW) . ]

**1. Protection; waiver.** This chapter's protection may be invoked by a professional competence committee or by the subject of professional competence review activity in any civil, judicial or administrative proceeding. This section's protection may be waived only by a written waiver executed by an authorized representative of the professional competence committee.

[ 1997, c. 697, §7 (NEW) . ]

**2. Adverse professional competence review action.** Subsection 1 does not apply in a proceeding in which a physician contests an adverse professional competence review action against that physician, but the discovery, use and introduction of professional competence review records in such a proceeding does not constitute a waiver of subsection 1 in any other or subsequent proceedings seeking damages for alleged professional negligence against the physician who is the subject of such professional competence review records.

[ 1997, c. 697, §7 (NEW) .]

**3. Defense of professional competence committee.** Subsection 1 does not apply in a proceeding in which a professional competence committee uses professional competence review records in its own defense, but the discovery, use and introduction of professional competence review records in such a proceeding does not constitute a waiver of subsection 1 in the same or other proceeding seeking damages for alleged professional negligence against the physician who is the subject of such professional competence review records.

[ 1997, c. 697, §7 (NEW) .]

**4. Waiver regarding individual.** Waiver of subsection 1 in a proceeding regarding one physician does not constitute a waiver of subsection 1 as to other physicians.

[ 1997, c. 697, §7 (NEW) .]

#### SECTION HISTORY

1997, c. 697, §7 (NEW) .

## §2510-B. RELEASE OF PROFESSIONAL COMPETENCE REVIEW RECORDS

Nothing in this section may be read to abrogate the obligations to report and provide information under section 2506. [1997, c. 697, §7 (NEW) .]

**1. Release to other review bodies, agencies, accrediting bodies.** A professional competence committee may furnish professional competence review records or information to other professional review bodies, state or federal government agencies and national accrediting bodies without waiving any privilege against disclosure under section 2510-A.

[ 1997, c. 697, §7 (NEW) .]

**2. Release to physician.** A professional competence committee may furnish professional competence review records to the physician who is the subject of the professional competence review activity and the physician's attorneys, agents and representatives without waiving any privilege against disclosure under section 2510-A.

[ 1997, c. 697, §7 (NEW) .]

**3. Release of directory information.** A professional competence committee may furnish directory information showing membership, clinical privileges, provider panel or other practice status of a physician with the health care entity to anyone without waiving the privilege against disclosure under section 2510-A.

[ 1997, c. 697, §7 (NEW) .]

#### SECTION HISTORY

1997, c. 697, §7 (NEW) .

**§2511. IMMUNITY**

Any person acting without malice, any physician, podiatrist, health care provider, health care entity or professional society, any member of a professional competence committee or professional review committee, any board or appropriate authority and any entity required to report under this chapter are immune from civil liability: [1997, c. 697, §8 (AMD).]

**1. Reporting.** For making any report or other information available to any board, appropriate authority, professional competence committee or professional review committee pursuant to law;

[ 1987, c. 646, §5 (NEW) .]

**2. Assisting in preparation.** For assisting in the origination, investigation or preparation of the report or information described in subsection 1; or

[ 1987, c. 646, §5 (NEW) .]

**3. Assisting in duties.** For assisting the board, authority or committee in carrying out any of its duties or functions provided by law.

[ 1987, c. 646, §5 (NEW) .]

## SECTION HISTORY

1977, c. 492, §3 (NEW). 1985, c. 185, §4 (AMD). 1985, c. 193, (AMD). 1985, c. 737, §A59 (RPR). 1985, c. 804, §§7,22 (RPR). 1987, c. 402, §B20 (RPR). 1987, c. 646, §5 (RPR). 1993, c. 600, §A19 (AMD). 1997, c. 271, §4 (AMD). 1997, c. 697, §8 (AMD).

**§2512. APPEAL**

*(REPEALED)*

## SECTION HISTORY

1977, c. 492, §3 (NEW). 1977, c. 694, §385 (RP).

## Subchapter 2: LIABILITY CLAIMS REPORTS

**§2601. REPORT OF CLAIM**

Every insurer providing professional liability insurance in this State to a person licensed by the Board of Licensure in Medicine or the Board of Osteopathic Licensure or to any health care provider shall make a periodic report of claims made under the insurance to the department or board that regulates the insured. For purposes of this section, a claim is made whenever the insurer receives information from an insured, a patient of an insured or an attorney that an insured's liability for malpractice is asserted. The report must include: [1997, c. 126, §1 (AMD).]

**1. Date and place.** The date and place of the occurrence for which each claim was made;

[ 1977, c. 492, §3 (NEW) .]

**2. Name of insured; classification of risk.** The name of the insured or insureds and the classification of risk;

[ 1977, c. 492, §3 (NEW) .]

**3. Incident or occurrence for claim.** The incident or occurrence for which each claim was made;

[ 1977, c. 492, §3 (NEW) .]

**4. Amount.** The amount claimed;

[ 1977, c. 492, §3 (NEW) .]

**5. Arbitration agreement.**

[ 1997, c. 592, §8 (RP) .]

**6. Filing of suit or arbitration.**

[ 1997, c. 592, §8 (RP) .]

**7. Other information.** Such other information as may be required pursuant to section 2603.

[ 1977, c. 492, §3 (NEW) .]

The failure of any insurer providing professional liability insurance in this State to a person licensed by the Board of Licensure in Medicine or the Board of Osteopathic Licensure 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. [1993, c. 600, Pt. B, §§21, 22 (AMD).]

#### SECTION HISTORY

1977, c. 492, §3 (NEW). 1985, c. 804, §§8,22 (AMD). 1991, c. 534, §3 (AMD). 1993, c. 600, §§B21,22 (AMD). 1997, c. 126, §1 (AMD). 1997, c. 592, §8 (AMD).

## §2602. REPORT OF DISPOSITION

**1. Report; finality of judgment or award.** The insurer shall make a report of disposition to the board or department that regulates the insured as provided in subsection 2 if any claim subject to section 2601 results in:

- A. A final judgment or award to the claimant in any amount; [1977, c. 492, §3 (NEW) .]
- B. A settlement involving payment in any amount of money or services; or [1977, c. 492, §3 (NEW) .]
- C. A final disposition not involving any payment of money or services. [1991, c. 534, §4 (AMD) .]

For purposes of this subsection, a judgment or award is final when it can not be appealed, and a disposition is final when it results from judgment, dismissal, withdrawal or abandonment.

[ 1997, c. 126, §2 (AMD) .]

**2. Information included:** The report of disposition required pursuant to subsection 1 shall include:

- A. The name, address and specialty coverage of the insured; [1977, c. 492, §3 (NEW) .]
- B. The insured's policy number; [1977, c. 492, §3 (NEW) .]
- C. The date and place of the occurrence which created the claim; [1977, c. 492, §3 (NEW) .]
- D. The date of suit, if filed or arbitration if demanded; [1977, c. 492, §3 (NEW) .]
- E. The date and amount of judgment, award or settlement, if any; [1977, c. 492, §3 (NEW) .]

F. The allocated claim expense, if any; [1977, c. 492, §3 (NEW).]

G. The date and reason for final disposition, if no judgment, award or settlement; [1977, c. 492, §3 (NEW).]

H. A summary of the occurrence which created the claim; and [1977, c. 492, §3 (NEW).]

I. Such other information as may be required pursuant to section 2603. [1977, c. 492, §3 (NEW).]

[ 1977, c. 492, §3 (NEW) .]

**3. Fine.** The failure of any insurer providing professional liability insurance in this State to a person licensed by the Board of Licensure in Medicine or the Board of Osteopathic Licensure 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.

[ 1993, c. 600, Pt. B, §§21, 22 (AMD) .]

#### SECTION HISTORY

1977, c. 492, §3 (NEW). 1979, c. 541, §A161 (AMD). 1985, c. 804, §§9,22 (AMD). 1991, c. 534, §4 (AMD). 1993, c. 600, §§B21,22 (AMD). 1997, c. 126, §2 (AMD).

### §2603. PLACE AND FORM OF REPORTS

Claims reports and reports of disposition required by this subchapter shall be made to the Superintendent of Insurance, who shall prescribe the form and content of the reports. The superintendent shall determine the frequency of claims reports, provided the period covered by the reports shall not be less than one month nor more than one year. Reports of disposition shall be made within 60 days of the judgment, award, settlement or other disposition of the claim as provided under section 2602. [1977, c. 492, §3 (NEW).]

#### SECTION HISTORY

1977, c. 492, §3 (NEW).

### §2604. RECORDS OF SUPERINTENDENT

For the purpose of evaluation of policy provisions, rate structures and the arbitration process and for recommendations of further legislation, the Superintendent of Insurance shall retain the information and maintain the files in the form and for such period as the superintendent determines necessary. The superintendent shall maintain the reports filed in accordance with this section, and all data or information derived therefrom that identifies or permits identification of the insured or insureds or the incident or occurrences for which a claim was made, as strictly confidential records. Data and information derived from reports filed in accordance with this section that do not identify or permit identification of the insured or insureds or the incident or occurrence for which a claim was made may be released by the superintendent or otherwise made available to the public. Reports made to the superintendent and records thereof kept by the superintendent are not subject to discovery and are not admissible in any trial, civil or criminal, other than proceedings brought before or by the board. [2015, c. 1, §25 (COR).]

#### SECTION HISTORY

1977, c. 492, §3 (NEW). RR 2015, c. 1, §25 (COR).

**§2605. REPORT TO BOARD OR LICENSING AUTHORITY**

The superintendent shall, within 30 days of their receipt, submit to the appropriate board or other state licensing authority a copy or summary of reports received pursuant to section 2601 or section 2602. [2013, c. 59, §1 (AMD).]

## SECTION HISTORY

1977, c. 492, §3 (NEW). 2013, c. 59, §1 (AMD).

**§2606. IMMUNITY**

There shall be no liability on the part of and a cause of action of any nature shall not arise against an insurer reporting hereunder or its agents or employees, or the superintendent or his representatives for any action taken by them pursuant to this subchapter. [1977, c. 492, §3 (NEW).]

## SECTION HISTORY

1977, c. 492, §3 (NEW).

**§2607. CLAIMS PAID INFORMATION**

When 3 notices of professional liability claims are made within a 10-year period regarding any person licensed by the Board of Licensure in Medicine or the Board of Osteopathic Licensure and one or more of the claims, following an initial review, potentially may rise to a level of misconduct sufficient to merit board action, the board 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. Any claims that lack merit or fail to rise to a level of board action may be dismissed by the board for the purpose of this section. [1993, c. 600, Pt. B, §§21, 22 (AMD).]

## SECTION HISTORY

1985, c. 804, §10 (NEW). 1991, c. 534, §5 (AMD). 1993, c. 600, §§B21,22 (AMD).

**§2608. CANCELLATION OR NONRENEWAL**

Any insurer required to report claims information under this subchapter shall also notify the Superintendent of Insurance of the cancellation or nonrenewal of any insured occasioned by either the number of claims against that insured or by the insured's failure to conform to appropriate standards of the medical profession. The information is entitled to the confidentiality protection of section 2604. A copy of the report must be filed by the superintendent, within 30 days of its receipt, with the applicable licensing board or authority. [2013, c. 59, §2 (AMD).]

## SECTION HISTORY

1989, c. 462, §3 (NEW). 2013, c. 59, §2 (AMD).

**Subchapter 3: MEDICAL MALPRACTICE ARBITRATION****§2701. APPLICATION**

*(REPEALED)*

## SECTION HISTORY

1977, c. 492, §3 (NEW). MRSA T. 1, §2501, sub-§24 (RP).

**§2702. AGREEMENTS**

*(REPEALED)*

SECTION HISTORY

1977, c. 492, §3 (NEW). MRSA T. 1, §2501, sub-§24 (RP).

**§2703. PARTIES**

*(REPEALED)*

SECTION HISTORY

1977, c. 492, §3 (NEW). MRSA T. 1, §2501, sub-§24 (RP).

**§2704. COMMENCEMENT OF PROCEEDINGS AND REPARATION OFFERS**

*(REPEALED)*

SECTION HISTORY

1977, c. 492, §3 (NEW). 1977, c. 662, §1 (AMD). MRSA T. 1, §2501, sub-§24 (RP).

**§2705. ARBITRATORS**

*(REPEALED)*

SECTION HISTORY

1969, c. 402, §1 (AMD). 1977, c. 492, §3 (NEW). 1977, c. 662, §2 (RPR). MRSA T. 1, §2501, sub-§24 (RP).

**§2706. DEPOSITIONS; DISCOVERY; LENGTH OF PROCEEDING**

*(REPEALED)*

SECTION HISTORY

1977, c. 492, §3 (NEW). MRSA T. 1, §2501, sub-§24 (RP).

**§2707. CONDUCT OF PROCEEDINGS**

*(REPEALED)*

SECTION HISTORY

1977, c. 492, §3 (NEW). MRSA T. 1, §2501, sub-§24 (RP).

**§2708. FEES AND COSTS**

*(REPEALED)*

SECTION HISTORY

1977, c. 492, §3 (NEW). MRSA T. 1, §2501, sub-§24 (RP).

**§2709. AWARDS**

*(REPEALED)*

SECTION HISTORY

1977, c. 492, §3 (NEW). MRSA T. 1, §2501, sub-§24 (RP).

**§2710. OPINIONS**

*(REPEALED)*

SECTION HISTORY

1977, c. 492, §3 (NEW). MRSA T. 1, §2501, sub-§24 (RP).

**§2711. NONCASH AWARDS**

*(REPEALED)*

SECTION HISTORY

1977, c. 492, §3 (NEW). MRSA T. 1, §2501, sub-§24 (RP).

**§2712. REVIEW**

*(REPEALED)*

SECTION HISTORY

1977, c. 492, §3 (NEW). MRSA T. 1, §2501, sub-§24 (RP).

**§2713. INSURANCE**

*(REPEALED)*

SECTION HISTORY

1977, c. 492, §3 (NEW). MRSA T. 1, §2501, sub-§24 (RP).

**§2714. LEGISLATIVE REVIEW**

*(REPEALED)*

SECTION HISTORY

1977, c. 492, §3 (NEW). MRSA T. 1, §2501, sub-§24 (RP).

**§2715. DATA COLLECTION AND EVALUATION**

*(REPEALED)*

SECTION HISTORY

1977, c. 492, §3 (NEW). MRSA T. 1, §2501, sub-§24 (RP).

Subchapter 4: MALPRACTICE ADVISORY PANELS

**§2801. PURPOSE**

*(REPEALED)*

SECTION HISTORY

1977, c. 492, §3 (NEW). 1985, c. 804, §§11,22 (RP).

**§2802. FORMATION**

*(REPEALED)*

SECTION HISTORY

1977, c. 492, §3 (NEW). 1983, c. 812, §148 (AMD). 1985, c. 804, §§11,22 (RP).

### **§2803. SUBMISSION OF CASES**

*(REPEALED)*

#### SECTION HISTORY

1977, c. 492, §3 (NEW). 1985, c. 804, §§11,22 (RP).

### **§2804. HEARING**

*(REPEALED)*

#### SECTION HISTORY

1977, c. 492, §3 (NEW). 1985, c. 804, §§11,22 (RP).

### **§2805. DETERMINATION BY PANEL COMMITTEE**

*(REPEALED)*

#### SECTION HISTORY

1977, c. 492, §3 (NEW). 1985, c. 804, §§11,22 (RP).

### **§2806. NOTIFICATION OF DETERMINATION**

*(REPEALED)*

#### SECTION HISTORY

1977, c. 492, §3 (NEW). 1985, c. 804, §§11,22 (RP).

### **§2807. CONFIDENTIALITY**

*(REPEALED)*

#### SECTION HISTORY

1977, c. 492, §3 (NEW). 1985, c. 804, §§11,22 (RP).

### **§2808. EFFECT OF DETERMINATION BY PANEL**

*(REPEALED)*

#### SECTION HISTORY

1977, c. 492, §3 (NEW). 1985, c. 804, §§11,22 (RP).

### **§2809. STATUTE OF LIMITATIONS**

*(REPEALED)*

#### SECTION HISTORY

1977, c. 492, §3 (NEW). 1985, c. 804, §§11,22 (RP).

## Subchapter 4-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 [1985, c. 804, §§12, 22 (NEW).]

B. To identify claims of professional negligence and to encourage early withdrawal or dismissal of nonmeritorious claims. [1985, c. 804, §§12, 22 (NEW).]

[ 1985, c. 804, §§12, 22 (NEW) .]

**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.

[ 1985, c. 804, §§12, 22 (NEW) .]

#### SECTION HISTORY

1985, c. 804, §§12,22 (NEW).

## §2852. FORMATION AND PROCEDURE

**1. Creation of panel lists.** The Chief Justice of the Superior Court shall recommend to each clerk of the Superior Court the names of retired or active retired justices and judges, persons with judicial experience and other qualified persons to serve on screening panels under this subchapter. The clerk shall place these names on a list from which the Chief Justice of the Superior Court will choose a panel chair under subsection 2.

Each clerk 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.

[ 2009, c. 136, §3 (AMD) .]

**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 or active retired justice or judge, a person with judicial experience or other qualified person from the list maintained by the clerk to serve as chair of the panel to screen the claim. If at any time a chair 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 chair. Persons other than retired or active retired justices and judges or those with judicial experience may be appointed as chair based on appropriate trial experience. In the event that the Chief Justice seeks to appoint as chair a person who is not a retired or active retired justice or judge or does not have judicial experience, each side is entitled to exercise one challenge to the appointment of a chair by the Chief Justice. [2009, c. 136, §4 (AMD) .]

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

(1) The chair shall choose one attorney;

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

(3) Where the claim involves more than one person accused of professional negligence the chair may choose a 4th panel member who is a health care practitioner or health care provider. If possible, the 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 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 chair. [1989, c. 361, §§1, 10 (AMD).]

[ 2009, c. 136, §4 (AMD) .]

**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.

[ 1985, c. 804, §§12, 22 (NEW) .]

#### **4. Experts; costs.**

[ 1989, c. 361, §2 (RP) .]

**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.

[ 1985, c. 804, §§12, 22 (NEW) .]

**6. Discovery.** The 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.

[ 1989, c. 361, §§3, 10 (AMD) .]

#### SECTION HISTORY

1985, c. 804, §§12,22 (NEW). 1989, c. 361, §§1,3,10 (AMD). 1991, c. 130, §§1,2 (AMD). 2009, c. 136, §§3, 4 (AMD).

## **§2853. SUBMISSION OF CLAIMS**

**1. Notice of claim.** A person may commence an action for professional negligence by:

A. Serving a written notice of claim, setting forth, under oath, the professional negligence alleged and the nature and circumstances of the injuries and damages alleged, on the person accused of professional negligence. The notice of claim must be filed with the Superior Court within 20 days after completion of service; or [1991, c. 505, §1 (NEW).]

B. Filing a written notice of claim, setting forth, under oath, the professional negligence alleged and the nature and circumstances of the injuries and damages alleged, with the Superior Court. The claimant must serve the notice of claim on the person accused of professional negligence. The return of service must be filed with the court within 90 days after filing the notice of claim. [1991, c. 505, §1 (NEW).]

Service must be made in accordance with the Maine Rules of Civil Procedure, Rule 4.

[ 1991, c. 505, §1 (RPR) .]

**1-A. Confidentiality.** The notice of claim and all other documents filed with the court in the action for professional negligence during the prelitigation screening process are confidential.

[ 1991, c. 505, §2 (NEW) .]

**1-B. Fee.** At the time of filing notice of claim with the court, the claimant shall pay to the clerk a filing fee of \$200 per notice filed.

[ 1991, c. 505, §2 (NEW) .]

**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.

[ 1985, c. 804, §§12, 22 (NEW) .]

**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); [1989, c. 361, §§5, 10 (NEW).]

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 [1989, c. 361, §§5, 10 (NEW).]

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. [1989, c. 361, §§5, 10 (NEW).]

[ 1989, c. 361, §§5, 10 (RPR) .]

**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 chair of the panel. The chair shall then establish a timetable for the filing of all relevant records and reasonable discovery, which must be filed at least 30 days before any hearing date. Depositions of persons other than the parties and the experts designated by the parties may not be taken except as permitted by the chair upon the request of a party. The hearing may not be later than 6 months from the service of the notice of claim upon the clerk, except when the time period has been extended by the panel chair in accordance with this subchapter.

[ 1999, c. 523, §1 (AMD); 1999, c. 523, §5 (AFF) .]

**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, and 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.

[ 1999, c. 668, §102 (AMD) .]

**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.

[ 1985, c. 804, §§12, 22 (NEW) .]

**7. Extensions of time.** All requests for extension of time under this subchapter must be made to the panel chair. The chair may extend any time period under this subchapter for good cause, except that the chair may not extend any time period that would result in the hearing being held more than one year from the filing of notice of claim upon the clerk unless good cause is shown.

[ 1991, c. 505, §4 (AMD) .]

**8. Dismissal.** Cases pending before the panels may be dismissed as follows.

A. Voluntary dismissal will be governed as follows.

(1) Any action before the panel may be dismissed by the plaintiff by filing a notice of dismissal at any time prior to the appointment of the panel or by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal, stipulation or order, the dismissal is without prejudice.

(2) Except as provided in subparagraph (1), an action shall not be dismissed on the plaintiff's motion except on order of the chair of the panel and on terms and conditions the chair deems proper. [1989, c. 827, §3 (NEW) .]

B. Involuntary dismissal is governed as follows.

(1) On failure of the plaintiff to prosecute or to comply with rules or any order of the chair, and on motion by the chair or any party, after notice to all parties has been given and the party against whom sanctions are proposed has had the opportunity to be heard and show good cause, the chair may order appropriate sanctions, which may include dismissal of the case. If any sanctions are imposed, the chair shall state the sanctions in writing and include the grounds for the sanctions.

(2) Unless the chair or the panel in an order for dismissal specifies otherwise, a dismissal under this paragraph is with prejudice for purposes of proceedings before the panel. A dismissal with prejudice is deemed to be the equivalent of a finding for the defendant on all issues before the panel. [1991, c. 130, §3 (RPR) .]

[ 1989, c. 130, §3 (AMD) .]

**9. Default.** In addition to the sanctions set out in subsection 8, paragraph B, the following sanctions may be imposed against a defendant in a case pending before the panel.

A. On failure of a defendant to comply with the rules or any order of the chair, and on motion by the chair or any party, after notice to all parties has been given and the party against whom sanctions are proposed has had the opportunity to be heard and show good cause, the chair may order appropriate sanctions, which may include default. If any sanctions are imposed, the chair shall state the sanctions in writing and include the grounds for the sanctions. [1991, c. 130, §4 (NEW).]

B. Unless the chair or the panel in its order for default specifies otherwise, a default under this paragraph is deemed to be the equivalent of a finding against the defendant on all issues before the panel. [1991, c. 130, §4 (NEW).]

[ 1991, c. 130, §4 (NEW) .]

#### SECTION HISTORY

1985, c. 804, §§12,22 (NEW). 1989, c. 361, §§4-6,10 (AMD). 1989, c. 827, §§1-3 (AMD). 1991, c. 130, §§3,4 (AMD). 1991, c. 505, §§1-4 (AMD). 1995, c. 571, §1 (AMD). 1999, c. 523, §1 (AMD). 1999, c. 668, §102 (AMD).

## §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 that person's representative shall make a responding presentation. Wide latitude must 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. Depositions are admissible whether or not the person deposed is available at the hearing. The chair shall make all procedural rulings and those rulings are final. The Maine Rules of Evidence do not apply. Evidence must 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 must be held as soon as possible. The continued hearings must 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.

[ 1999, c. 523, §2 (AMD) .]

**1-A. Record; hearings.** The panel shall maintain a tape recorded record. Except as provided in section 2857, the record may not be made public and the hearings may not be public without the consent of both or all parties.

[ 1999, c. 523, §2 (NEW) .]

**2. Settlement; mediation.** The chair of the panel shall attempt to mediate any differences of the parties before proceeding to findings.

[ 1999, c. 523, §2 (AMD) .]

**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, must result in a finding made by a majority of the panel against that party and that finding has the same effect as a finding against that party under section 2857.

[ 1999, c. 523, §2 (AMD) .]

#### SECTION HISTORY

1985, c. 804, §§12,22 (NEW). 1989, c. 361, §§7,10 (AMD). 1999, c. 523, §2 (AMD).

## §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 constitute a deviation from the applicable standard of care by the health care practitioner or health care provider charged with that care; [1999, c. 523, §3 (AMD).]

A-1. [1999, c. 668, §103 (RP).]

B. Whether the acts or omissions complained of proximately caused the injury complained of; and [1999, c. 523, §3 (AMD).]

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. [1989, c. 361, §§8, 10 (NEW).]

[ 1999, c. 668, §103 (AMD) .]

**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 [1989, c. 361, §§8, 10 (NEW).]

B. The defendant must prove comparative negligence by a preponderance of the evidence. [1989, c. 361, §§8, 10 (NEW).]

[ 1989, c. 361, §§8, 10 (RPR) .]

#### SECTION HISTORY

1985, c. 804, §§12,22 (NEW). 1989, c. 361, §§8,10 (RPR). 1991, c. 505, §5 (AMD). 1999, c. 523, §3 (AMD). 1999, c. 668, §103 (AMD).

## §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. [1985, c. 804, §§12, 22 (NEW).]

#### SECTION HISTORY

1985, c. 804, §§12,22 (NEW).

## §2857. CONFIDENTIALITY AND ADMISSIBILITY

**1. Proceedings before panel confidential.** Except as provided in this section and section 2858, all proceedings before the panel, including its final determinations, must be treated in every respect as private and confidential by the panel and the parties to the claim.

A. The findings and other writings of the panel and any evidence and statements made by a party or a party's representative during a panel hearing are not admissible and may not otherwise be submitted or used for any purpose in a subsequent court action and may not be publicly disclosed, except that:

(1) Any testimony or writings made under oath may be used in subsequent proceedings for purposes of impeachment; and

(2) The party who made the statement or presented the evidence may agree to the submission, use or disclosure of that statement or evidence. [1999, c. 523, §4 (RPR).]

B. If the panel findings as to both the questions under section 2855, subsection 1, paragraphs A and B are unanimous and unfavorable to the person accused of professional negligence, the findings are 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. [1999, c. 523, §4 (RPR).]

C. If the panel findings as to any question under section 2855 are unanimous and unfavorable to the claimant, the findings are 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. [1999, c. 523, §4 (NEW).]

The confidentiality provisions of this section do not apply if the findings were influenced by fraud.

[ 1999, c. 523, §4 (RPR) .]

**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.

[ 1985, c. 804, §§12, 22 (NEW) .]

**3. Discovery; subsequent court action.** The Maine Rules of Civil Procedure govern discovery conducted under this subchapter. The chair has the same authority to rule upon discovery matters as a Superior Court Justice. Notwithstanding subsection 1, in a subsequent Superior Court action all discovery conducted during the prelitigation screening panel proceedings is deemed discovery conducted as a part of that court action.

This subsection applies to all claims of professional negligence in which the notice of claim is served or filed on or after January 1, 1991.

[ 1989, c. 931, §2 (NEW) .]

### SECTION HISTORY

1985, c. 804, §§12,22 (NEW). 1989, c. 931, §2 (AMD). 1999, c. 523, §4 (AMD).

## §2858. EFFECT OF FINDINGS BY PANEL

A unanimous finding by the panel of any claim under this subchapter shall be implemented as follows. [1985, c. 804, §§12, 22 (NEW).]

**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.

[ 1985, c. 804, §§12, 22 (NEW) . ]

**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.

[ 1985, c. 804, §§12, 22 (NEW) . ]

#### SECTION HISTORY

1985, c. 804, §§12,22 (NEW).

## §2859. STATUTE OF LIMITATIONS

The applicable statute of limitations concerning actions for professional negligence is tolled from the date upon which notice of claim is served or filed in Superior Court until 30 days following the day upon which the claimant receives notice of the findings of the panel. [1989, c. 827, §4 (AMD).]

#### SECTION HISTORY

1985, c. 804, §§12,22 (NEW). 1989, c. 827, §4 (AMD).

### Subchapter 5: GENERAL PROVISIONS

## §2901. AD DAMNUM CLAUSE

No dollar amount or figure shall be included in the demand in any malpractice complaint, but the prayer shall be for such damages as are reasonable in the premises. [1977, c. 492, §3 (NEW).]

#### SECTION HISTORY

1977, c. 492, §3 (NEW).

## §2902. STATUTE OF LIMITATIONS FOR HEALTH CARE PROVIDERS AND HEALTH CARE PRACTITIONERS EXCLUDING CLAIMS BASED ON SEXUAL ACTS

Except as provided in section 2902-B, actions for professional negligence must 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 must 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 when the cause of action is based upon the leaving of a foreign object in the body, in which case the cause of action accrues 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. [2013, c. 329, §2 (AMD).]

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, the statute of limitations for professional negligence is 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. [2013, c. 329, §2 (AMD).]

## SECTION HISTORY

1977, c. 492, §3 (NEW). 1985, c. 804, §§13, 22 (RPR). 2013, c. 329, §2 (AMD).

**§2902-A. MOTORCYCLE PASSENGER EXCLUSION**

*(REALLOCATED TO TITLE 24-A, SECTION 2902-B)*

## SECTION HISTORY

1985, c. 169, (NEW). 1985, c. 737, Pt. A, §60 (RAL).

**§2902-B. STATUTE OF LIMITATIONS FOR MENTAL HEALTH PROFESSIONALS FOR CLAIMS BASED ON SEXUAL ACTS**

*(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)*

*(WHOLE SECTION TEXT REPEALED 7/1/17)*

*(WHOLE SECTION TEXT EFFECTIVE UNTIL 7/1/17)*

**1. Limitation.** Except as provided in Title 14, section 752-C, actions for professional negligence based on a sexual act engaged in by a professional listed in subsection 3 with a person during the period of time that person was a patient or client of the professional must be commenced within 6 years after the cause of action accrues. For purposes of this section, a cause of action accrues on the date of the act or omission giving rise to the injury.

[ 2013, c. 329, §3 (NEW) .]

**2. Definitions.** As used in this section, the following terms have the following meanings.

A. "Patient or client" means a person who receives counseling or treatment from a professional listed in subsection 3. [2013, c. 329, §3 (NEW) .]

B. "Sexual act" means the following:

(1) A sexual act, as defined in Title 17-A, section 251, subsection 1, paragraph C; or

(2) Sexual contact, as defined in Title 17-A, section 251, subsection 1, paragraph D. [2013, c. 329, §3 (NEW) .]

[ 2013, c. 329, §3 (NEW) .]

**3. Professionals.** Subsection 1 applies with respect to the following types of professionals:

A. A psychiatrist licensed in this State; [2013, c. 329, §3 (NEW) .]

B. A psychologist licensed in this State; [2013, c. 329, §3 (NEW) .]

C. A clinical social worker licensed in this State; [2013, c. 329, §3 (NEW) .]

D. A social worker certified in this State; [2013, c. 329, §3 (NEW) .]

E. A clinical professional counselor licensed in this State; [2013, c. 329, §3 (NEW) .]

F. A pastoral counselor licensed in this State; [2013, c. 329, §3 (NEW) .]

G. A marriage and family therapist licensed in this State; and [2013, c. 329, §3 (NEW) .]

H. A clinical professional counselor licensed in this State. [2013, c. 329, §3 (NEW).]

[2013, c. 329, §3 (NEW).]

**4. Repeal.** This section is repealed July 1, 2017.

[2013, c. 329, §3 (NEW).]

SECTION HISTORY

2013, c. 329, §3 (NEW).

## §2903. NOTICE OF CLAIM BEFORE SUIT

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

A. Served and filed written notice of claim in accordance with section 2853; [1991, c. 505, §6 (AMD).]

B. Complied with the provisions of subchapter IV-A; and [1985, c. 804, §§14, 22 (NEW).]

C. Determined that the time periods provided in section 2859 have expired. [1985, c. 804, §§14, 22 (NEW).]

[1991, c. 505, §6 (AMD).]

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

[1985, c. 804, §§14, 22 (NEW).]

SECTION HISTORY

1977, c. 492, §3 (NEW). 1985, c. 804, §14 (RPR). 1989, c. 827, §5 (AMD). 1991, c. 505, §6 (AMD).

## §2903-A. NOTICE OF EXPERT WITNESSES

*(REPEALED)*

SECTION HISTORY

1985, c. 804, §15 (NEW). 1989, c. 361, §9 (RP).

## §2904. IMMUNITY FROM CIVIL LIABILITY FOR VOLUNTEER ACTIVITIES

**1. Health care practitioners.** Notwithstanding any inconsistent provision of any public or private and special law, an individual is not liable for an injury or death arising from medical services provided as described in this subsection unless the injury or death was caused willfully, wantonly or recklessly or by gross negligence of the individual if that individual is:

A. A licensed health care practitioner who voluntarily, without the expectation or receipt of monetary or other compensation either directly or indirectly, provides professional services within the scope of that health care practitioner's licensure:

- (1) To a nonprofit organization;
- (2) To an agency of the State or any political subdivision of the State;
- (3) To members or recipients of services of a nonprofit organization or state or local agency;

- (4) To support the State's response to a public health threat as defined in Title 22, section 801, subsection 10;
- (5) To support the State's response to an extreme public health emergency as defined in Title 22, section 801, subsection 4-A; or
- (6) To support the State's response to a disaster as defined in Title 37-B, section 703, subsection 2; or [ 2003, c. 438, §2 (NEW) . ]

B. An emergency medical services person who voluntarily, without the expectation or receipt of monetary or other compensation either directly or indirectly, provides emergency medical services within the scope of that person's licensure:

- (1) To support the State's response to a public health threat as defined in Title 22, section 801, subsection 10;
- (2) To support the State's response to an extreme public health emergency as defined in Title 22, section 801, subsection 4-A; or
- (3) To support the State's response to a disaster as defined in Title 37-B, section 703, subsection 2. [ 2005, c. 2, §19 (COR) . ]

[ 2005, c. 2, §19 (COR) . ]

**2. Retired physicians, podiatrists and dentists.** Notwithstanding any inconsistent provision of any public or private and special law, a licensed physician, podiatrist or dentist who has retired from practice and who voluntarily, without the expectation or receipt of monetary or other compensation either directly or indirectly, provides professional services within the scope of that physician's, podiatrist's or dentist's licensure is not liable for an injury or death arising from those services unless the injury or death was caused willfully, wantonly or recklessly by the physician, podiatrist or dentist for professional services provided:

- A. To a nonprofit organization; [ 2003, c. 438, §2 (NEW) . ]
- B. To an agency of the State or any political subdivision of the State; [ 2003, c. 438, §2 (NEW) . ]
- C. To members or recipients of services of a nonprofit organization or state or local agency; [ 2003, c. 438, §2 (NEW) . ]
- D. To support the State's response to a public health threat as defined in Title 22, section 801, subsection 10; [ 2003, c. 438, §2 (NEW) . ]
- E. To support the State's response to an extreme public health emergency as defined in Title 22, section 801, subsection 4-A; or [ 2003, c. 438, §2 (NEW) . ]
- F. To support the State's response to a disaster as defined in Title 37-B, section 703, subsection 2. [ 2003, c. 438, §2 (NEW) . ]

The extended immunity under this subsection applies only if the licensed physician, podiatrist or dentist is retired from practice, possessed an unrestricted license in the relevant profession and had not been disciplined by the licensing board in the previous 5 years at the time of the act or omission causing the injury.

[ 2003, c. 438, §2 (RPR) . ]

**3. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Dentist" means a person who practices dentistry according to the provisions of Title 32, section 18371. [ 2015, c. 429, §9 (AMD) . ]
- B. "Health care practitioner" has the same meaning as in section 2502. [ 2003, c. 438, §2 (RPR) . ]

C. "Nonprofit organization" does not include a hospital. [2003, c. 438, §2 (RPR).]

D. "Podiatrist" has the same meaning as in Title 32, section 3551. [2003, c. 438, §2 (RPR).]

E. "Emergency medical services person" includes a first responder, as defined in Title 32, section 83, subsection 13-A; a basic emergency medical technician, as defined in Title 32, section 83, subsection 7; and an advanced emergency medical technician, as defined in Title 32, section 83, subsection 1. [2005, c. 2, §20 (COR).]

[2015, c. 429, §9 (AMD).]

#### SECTION HISTORY

1977, c. 492, §3 (NEW). 1989, c. 74, §1 (AMD). 1995, c. 239, §1 (AMD). 1995, c. 385, §1 (AMD). 1995, c. 625, §C3 (RPR). 2003, c. 438, §2 (RPR). RR 2005, c. 2, §§19, 20 (COR). 2015, c. 429, §9 (AMD).

## §2905. INFORMED CONSENT TO HEALTH CARE TREATMENT

**1. Disallowance of recovery on grounds of lack of informed consent.** Recovery is not allowed against any physician, physician assistant, podiatrist, dentist or health care provider upon the grounds that the health care treatment was rendered without the informed consent of the patient or the patient's spouse, parent, guardian, nearest relative or other person authorized to give consent for the patient when:

A. The action of the physician, physician assistant, podiatrist or dentist in obtaining the consent of the patient or other person authorized to give consent for the patient was in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities; [2013, c. 355, §4 (AMD).]

B. A reasonable person, from the information provided by the physician, physician assistant, podiatrist or dentist under the circumstances, would have a general understanding of the procedures or treatments and of the usual and most frequent risks and hazards inherent in the proposed procedures or treatments that are recognized and followed by other physicians, physician assistants, podiatrists or dentists engaged in the same field of practice in the same or similar communities; or [2013, c. 355, §4 (AMD).]

C. A reasonable person, under all surrounding circumstances, would have undergone such treatment or procedure had that person been advised by the physician, physician assistant, podiatrist or dentist in accordance with paragraphs A and B or this paragraph. [2013, c. 355, §4 (AMD).]

For purposes of this subsection, the physician, physician assistant, podiatrist, dentist or health care provider may rely upon a reasonable representation that the person giving consent for the patient is authorized to give consent unless the physician, physician assistant, podiatrist, dentist or health care provider has notice to the contrary.

[2013, c. 355, §4 (AMD).]

**2. Presumption of validity of written consent; rebuttal.** A consent which is evidenced in writing and which meets the foregoing standards, and which is signed by the patient or other authorized person, shall be presumed to be a valid consent. This presumption, however, may be subject to rebuttal only upon proof that such consent was obtained through fraud, deception or misrepresentation of material fact.

[1977, c. 492, §3 (NEW).]

**3. Mental and physical competency.** A valid consent is one which is given by a person who, under all the surrounding circumstances, is mentally and physically competent to give consent.

[1977, c. 492, §3 (NEW).]

#### SECTION HISTORY

1977, c. 492, §3 (NEW). 1989, c. 74, §2 (AMD). 1991, c. 217, (AMD).  
2013, c. 355, §4 (AMD).

## §2905-A. INFORMED CONSENT FOR BREAST CANCER

**1. Duty of physician.** Notwithstanding section 2905, a physician who is administering the primary treatment for breast cancer shall inform the patient as provided in this section, orally and in writing, about alternative efficacious methods of treatment of breast cancer, including surgical, radiological or chemotherapeutic treatments or any other generally accepted medical treatment and the advantages, disadvantages and the usual and most frequent risks of each.

[ 1989, c. 291, §1 (NEW) .]

**2. Written information.** The duty to inform the patient in writing may be met by giving the patient a standardized written summary or brochure as described in subsections 3 and 4.

[ 1989, c. 291, §1 (NEW) .]

**3. Standardized written summary.** The standardized written summary may be developed by the Bureau of Health after consultation with the Cancer Advisory Committee.

[ 1989, c. 291, §1 (NEW) .]

**4. Brochure.** The brochure must be one which is approved or made available through the National Cancer Institute, the American Cancer Society, the American College of Surgeons or any other recognized professional organization approved by the Bureau of Health.

[ 1989, c. 291, §1 (NEW) .]

**5. Signed form.** A form, signed by the patient, indicating that the patient has been given the oral information required by this section and a copy of the brochure or the standardized written summary shall be included in the patient's medical record.

[ 1989, c. 291, §1 (NEW) .]

**6. Extent of duty.** A physician's duty to inform a patient under this section does not require disclosure of information beyond what a reasonably well-qualified physician licensed under Title 32 would know.

[ 1989, c. 291, §1 (NEW) .]

**7. Actions barred.** A patient who signs a form described in subsection 5 is barred from bringing a civil action against the physician, based on failure to obtain informed consent, but only in regard to information pertaining to alternative forms of treatment of breast cancer and the advantages, disadvantages, and risks of each method.

[ 1989, c. 291, §1 (NEW) .]

**8. Application of this section to common law rights.** Nothing in this section restricts or limits the rights of a patient under common law.

[ 1989, c. 291, §1 (NEW) .]

### SECTION HISTORY

1989, c. 291, §1 (NEW).

## §2906. COLLATERAL SOURCES

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Claimant" means any person who brings a personal injury action and, if such an action is brought through or on behalf of an estate, the term includes the decedent or, if such an action is brought through or on behalf of a minor, the term includes the minor's parent or guardian. [1989, c. 931, §3 (NEW) .]

B. "Collateral source" means a benefit paid or payable to the claimant or on the claimant's behalf under, from or pursuant to a contract, agreement or plan executed, renewed or implemented on or after the effective date of this Act, including:

(1) An accident, health or sickness insurance, income or wage replacement insurance, income disability insurance, workers' compensation insurance, casualty or property insurance, including automobile accident and homeowner's insurance benefits, or any other insurance benefits, except life insurance benefits;

(2) A contract or agreement of a group, organization, partnership or corporation to provide, pay for or reimburse the cost of medical, hospital, dental or other health care services or provide similar benefits; or

(3) A contractual or voluntary wage continuation plan or payments made pursuant to such a plan provided by an employer or otherwise or any other system intended to provide wages during a period of disability. [1989, c. 931, §3 (NEW) .]

C. "Damages" means economic losses paid or payable by collateral sources for wage losses, medical costs, rehabilitation costs, services and other out-of-pocket costs incurred by or on behalf of a claimant for which that party is claiming recovery through a tort suit. [1989, c. 931, §3 (NEW) .]

[ 1989, c. 931, §3 (NEW) .]

**2. Collateral source payment reductions.** In all actions for professional negligence, as defined in section 2502, evidence to establish that the plaintiff's expense of medical care, rehabilitation services, loss of earnings, loss of earning capacity or other economic loss was paid or is payable, in whole or in part, by a collateral source is admissible to the court in which the action is brought after a verdict for the plaintiff and before a judgment is entered on the verdict. After notice and opportunity for an evidentiary hearing, if the court determines that all or part of the plaintiff's expense or loss has been paid or is payable by a collateral source and the collateral source has not exercised its right to subrogation within the time limit set forth in subsection 6, the court shall reduce that portion of the judgment that represents damages paid or payable by a collateral source.

[ 2015, c. 1, §26 (COR) .]

**3. Federal benefits.** The court shall also reduce the judgment by the amount of Medicare, Medicaid or Social Security disability benefits paid or payable to the plaintiff for the plaintiff's expenses or losses, provided that the court enters an order requiring the defendant to indemnify and make whole the plaintiff for any subrogation claim made for those benefits and for the costs, including attorney's fees, for that indemnification claim, as the court finds are reasonably required to enforce this provision.

[ 1989, c. 931, §3 (NEW) .]

**4. Offsetting reduction.** The court may reduce the reduction in subsection 2 by an amount equal to:

A. The claimant's payments over the 2-year period immediately predating the personal injury to the collateral source in the form of payroll deductions, insurance premiums or other direct payments by the claimant, as determined by the court to be appropriate in each case; and [1989, c. 931, §3 (NEW).]

B. The portion of the total costs incurred by the plaintiff in the action, including discovery, witness fees, exhibit expenses and attorney's fees. This reduction is calculated as the amount that is the same percentage of the total costs incurred by the plaintiff in the action as the amount paid or payable by the collateral source is of the total verdict. [1989, c. 931, §3 (NEW).]

[ 1989, c. 931, §3 (NEW) .]

**5. Limit.** The reduction made under this section may not exceed the amount of the judgment for economic loss or that portion of the verdict that represents damages paid or payable by a collateral source.

[ 1989, c. 931, §3 (NEW) .]

**6. Notice of claim or verdict required.** No later than 10 days after a verdict for the plaintiff, the plaintiff's attorney shall send notice of the claim or verdict by registered mail to all persons known to the attorney who are entitled by contract or law to a lien against the proceeds of the plaintiff's recovery. If a lienholder does not notify the court of the lienholder's right to subrogation within 30 days after receipt of the notice, the lienholder loses the right of subrogation.

[ 1989, c. 931, §3 (NEW) .]

**7. Preexisting obligation required.** For purposes of this section, benefits from a collateral source are not considered payable unless the court makes a determination that there is a previously existing contractual or statutory obligation on the part of the collateral source to pay the benefits.

[ 1989, c. 931, §3 (NEW) .]

#### SECTION HISTORY

1989, c. 931, §3 (NEW). RR 2015, c. 1, §26 (COR).

## §2907. COMMUNICATIONS OF SYMPATHY OR BENEVOLENCE

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Relative" means an alleged victim's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister or spouse's parents. "Relative" includes these relationships that are created as a result of adoption. In addition, "relative" includes any person who has a domestic partner relationship with an alleged victim. As used in this paragraph, "domestic partner" is a person who has registered as a domestic partner pursuant to Title 22, section 2710. [2005, c. 376, §1 (NEW).]

B. "Representative" means a legal guardian, attorney, person designated to make decisions on behalf of a patient under an advance directive or any person recognized in law or custom as a person's agent. [2005, c. 376, §1 (NEW).]

C. "Unanticipated outcome" means the outcome of a medical treatment or procedure that differs from an expected result. [2005, c. 376, §1 (NEW).]

[ 2005, c. 376, §1 (NEW) .]

**2. Evidence of admissions.** In any civil action for professional negligence or in any arbitration proceeding related to such civil action, any statement, affirmation, gesture or conduct expressing apology, sympathy, commiseration, condolence, compassion or a general sense of benevolence that is made by a health care practitioner or health care provider or an employee of a health care practitioner or health care provider to the alleged victim, a relative of the alleged victim or a representative of the alleged victim and that relates to the discomfort, pain, suffering, injury or death of the alleged victim as the result of the unanticipated outcome is inadmissible as evidence of an admission of liability or as evidence of an admission against interest. Nothing in this section prohibits the admissibility of a statement of fault.

[ 2005, c. 376, §1 (NEW) .]

SECTION HISTORY

2005, c. 376, §1 (NEW).

Subchapter 6: 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.

[ 1985, c. 804, §§ 16, 22 (NEW) .]

**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.

[ 1985, c. 804, §§ 16, 22 (NEW) .]

**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.

[ 1985, c. 804, §§ 16, 22 (NEW) .]

**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.

[ 1985, c. 804, §§ 16, 22 (NEW) .]

SECTION HISTORY

1985, c. 804, §§16,22 (NEW).

Subchapter 7: 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.

[ 1985, c. 804, §§ 16, 22 (NEW) . ]

**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. [1985, c. 804, §§ 16, 22 (NEW) . ]

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. [1985, c. 804, §§ 16, 22 (NEW) . ]

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. [1985, c. 804, §§ 16, 22 (NEW) . ]

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. [1985, c. 804, §§ 16, 22 (NEW) . ]

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. [1985, c. 804, §§ 16, 22 (NEW) . ]

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. [1985, c. 804, §§ 16, 22 (NEW).]

[ 1985, c. 804, §§ 16, 22 (NEW) .]

#### SECTION HISTORY

1985, c. 804, §§16,22 (NEW).

## Subchapter 8: 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; [1985, c. 804, §§ 16, 22 (NEW).]

B. Twenty-five percent of the next \$100,000 of the sum recovered; and [1985, c. 804, §§ 16, 22 (NEW).]

C. Twenty percent of any amount over \$200,000 of the sum recovered. [1985, c. 804, §§ 16, 22 (NEW).]

[ 1985, c. 804, §§ 16, 22 (NEW) .]

**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.

[ 1985, c. 804, §§ 16, 22 (NEW) .]

**3. Review.** If the plaintiff prevails in the action for professional negligence, the plaintiff's attorney may petition the court to review the reasonableness of the fees permitted under subsection 1. The court may award a greater fee than that permitted by subsection 1, provided that:

A. The court, considering the factors established in Maine Rules of Professional Conduct, Rule 1.5 as guides in determining the reasonableness of a fee, finds that the fees permitted by subsection 1 are inadequate to compensate the attorney reasonably for the attorney's services; and [2009, c. 652, Pt. B, §7 (AMD).]

B. The court finds that the fee found reasonable under paragraph A does not exceed the percentages set forth in the contingent fee agreement between the attorney and plaintiff as the maximum amount of compensation the attorney may receive. [1987, c. 646, §§6 and 14 (NEW).]

An attorney may petition the court under this subsection only if, prior to the signing of a contingent fee agreement by the attorney and client, the attorney informs the client, orally and in writing, of the provisions of this section.

[ 2009, c. 652, Pt. B, §7 (AMD) .]

**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.

[ 1985, c. 804, §§ 16, 22 (NEW) .]

#### SECTION HISTORY

1985, c. 804, §§16,22 (NEW). 1987, c. 646, §§6,14 (AMD). 2009, c. 652, Pt. B, §7 (AMD).

## Subchapter 9: MEDICAL LIABILITY DEMONSTRATION PROJECT

### **§2971. MEDICAL LIABILITY DEMONSTRATION PROJECT**

*(REPEALED)*

#### SECTION HISTORY

1989, c. 931, §4 (NEW). 1993, c. 600, §B21 (AMD). 1999, c. 668, §104 (RP).

### **§2972. MEDICAL SPECIALTY ADVISORY COMMITTEES ESTABLISHED**

*(REPEALED)*

#### SECTION HISTORY

1989, c. 931, §4 (NEW). 1991, c. 319, §§2,3 (AMD). 1993, c. 600, §B21,22 (AMD). 1999, c. 668, §105 (RP).

### **§2973. PRACTICE PARAMETERS; RISK MANAGEMENT PROTOCOLS**

*(REPEALED)*

#### SECTION HISTORY

1989, c. 931, §4 (NEW). 1993, c. 600, §B21,22 (AMD). 1999, c. 668, §106 (RP).

### **§2974. REPORT TO LEGISLATURE**

*(REPEALED)*

#### SECTION HISTORY

1989, c. 931, §4 (NEW). 1991, c. 319, §4 (AMD). 1993, c. 600, §B21,22 (AMD). 1999, c. 668, §107 (RP).

### **§2975. APPLICATION TO PROFESSIONAL NEGLIGENCE CLAIMS**

*(REPEALED)*

#### SECTION HISTORY

1989, c. 931, §4 (NEW). 1995, c. 343, §1 (AMD). 1999, c. 668, §108 (RP).

### **§2976. PHYSICIAN PARTICIPATION**

*(REPEALED)*

#### SECTION HISTORY

1989, c. 931, §4 (NEW). 1991, c. 734, §1 (AMD). 1993, c. 600, §B21,22 (AMD). 1999, c. 668, §109 (RP).

### **§2977. EVIDENCE; INADMISSIBILITY**

*(REPEALED)*

#### SECTION HISTORY

1989, c. 931, §4 (NEW). 1995, c. 343, §2 (AMD). 1999, c. 668, §110 (RP).

## **§2978. INFORMATION AND REPORTS**

*(REPEALED)*

### SECTION HISTORY

1989, c. 931, §4 (NEW). 1993, c. 189, §§1-3 (AMD). 1993, c. 600, §§B21,22 (AMD). 1995, c. 343, §§3,4 (AMD). 1999, c. 668, §111 (RP).

## **§2979. EXPANDED PRACTICE PARAMETERS; EXPANDED RISK MANAGEMENT PROTOCOLS**

*(REPEALED)*

### SECTION HISTORY

1993, c. 477, §D6 (NEW). 1993, c. 477, §F1 (AFF). 1993, c. 600, §§B21,22 (AMD). 1999, c. 668, §112 (RP).

## Subchapter 10: BILLING FOR HEALTH CARE

### **§2985. BILLING FOR HEALTH CARE SERVICES**

A health care practitioner, as defined in section 2502, subsection 1-A, who directly bills for health care services must use the current standardized claim form for professional services approved by the Federal Government and, after October 16, 2003, must submit claims in electronic data format to a carrier, as defined in Title 24-A, section 4301-A, subsection 3, that accepts claims in an electronic format. A health care practitioner or group of health care practitioners with fewer than 10 full-time-equivalent health care practitioners and other employees is exempt from the requirement to submit claims in electronic data format until October 16, 2005. Beginning October 16, 2005, a health care practitioner or group of health care practitioners with fewer than 10 full-time-equivalent health care practitioners and other employees may apply to the Superintendent of Insurance for a continued exemption from the requirement to submit claims in electronic data format based upon hardship. The Superintendent of Insurance shall adopt rules relating to the process for a hardship exemption and the standard for determining whether a practitioner has demonstrated hardship. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2003, c. 469, Pt. D, §9 (AFF); 2003, c. 469, Pt. D, §2 (RPR).]

### SECTION HISTORY

1993, c. 477, §D7 (NEW). 1993, c. 477, §F1 (AFF). 2003, c. 469, §D9 (AFF). 2003, c. 469, §D2 (RPR).

### **§2986. PERFORMING FORENSIC EXAMINATIONS FOR ALLEGED VICTIMS OF GROSS SEXUAL ASSAULT**

**1. Standard forensic examination kit.** All licensed hospitals and licensed health care practitioners shall use a standard forensic examination kit developed and furnished by the Department of Public Safety pursuant to Title 25, section 2915 to perform forensic examinations for alleged victims of gross sexual assault.

[ 1999, c. 719, §2 (NEW); 1999, c. 719, §11 (AFF) .]

**2. Victims' Compensation Board billing.** All licensed hospitals and licensed health care practitioners that perform forensic examinations for alleged victims of gross sexual assault shall submit a bill to the Victims' Compensation Board directly for payment of the forensic examinations. The Victims' Compensation

Board shall determine what a forensic examination includes pursuant to Title 5, section 3360-M. The hospital or health care practitioner that performs a forensic examination shall take steps necessary to ensure the confidentiality of the alleged victim's identity. The bill submitted by the hospital or health care practitioner may not identify the alleged victim by name but must be assigned a tracking number that corresponds to the forensic examination kit. The tracking number may not be the alleged victim's social security number. The Victims' Compensation Board shall pay the actual cost of the forensic examination up to a maximum of \$750. Licensed hospitals and licensed health care practitioners that perform forensic examinations for alleged victims of gross sexual assault may not bill the alleged victim or the alleged victim's insurer, nonprofit hospital or medical service organization or health maintenance organization for payment for the examination.

[ 2011, c. 420, Pt. A, §21 (AMD) .]

**3. Completed kit.** If the alleged victim has not reported the alleged offense to a law enforcement agency when the examination is complete, the hospital or health care practitioner shall then notify the nearest law enforcement agency, which shall transport and store the completed forensic examination kit for at least 90 days. The completed kit may be identified only by the tracking number. If during that 90-day period an alleged victim decides to report the alleged offense to a law enforcement agency, the alleged victim may contact the hospital or health care practitioner to determine the tracking number. The hospital or health care practitioner shall provide the alleged victim with the tracking number on the forensic examination kit and shall inform the alleged victim which law enforcement agency is storing the kit.

If the alleged victim reports the alleged offense to a law enforcement agency by the time the examination is complete, the investigating agency shall retain custody of the forensic examination kit.

If an examination is performed under subsection 5 and the alleged victim does not, within 60 days, regain a state of consciousness adequate to decide whether or not to report the alleged offense, the State may file a motion in the District Court relating to storing or processing the forensic examination kit. Upon finding good cause and after considering factors, including, but not limited to, the possible benefits to public safety in processing the kit and the likelihood of the alleged victim's regaining a state of consciousness adequate to decide whether or not to report the alleged offense in a reasonable time, the District Court may order either that the kit be stored for additional time or that the kit be transported to the Maine State Police Crime Laboratory for processing, or such other disposition that the court determines just. In the interests of justice or upon motion by the State, the District Court may conduct hearings required under this paragraph confidentially and in camera and may impound pleadings and other records related to them.

[ 2011, c. 59, §1 (AMD) .]

**4. Other payment.** A licensed hospital or licensed health care practitioner is not precluded from seeking other payment for treatment or services provided to an alleged victim that are outside the scope of the forensic examination.

[ 1999, c. 719, §2 (NEW); 1999, c. 719, §11 (AFF) .]

**5. Implied consent.** If an alleged victim of gross sexual assault is unconscious and a reasonable person would conclude that exigent circumstances justify conducting a forensic examination, a licensed hospital or licensed health care practitioner may perform an examination in accordance with the provisions of this section.

A forensic examination kit completed in accordance with this subsection must be treated in accordance with Title 25, section 3821 and must preserve the alleged victim's anonymity. In addition, the law enforcement agency shall immediately report to the district attorney for the district in which the hospital or health care practitioner is located that such a forensic examination has been performed and a forensic examination kit has been completed under this subsection.

[ 2005, c. 538, §2 (NEW) .]

**6. Liability.** A licensed hospital or licensed health care practitioner in the exercise of due care is not liable for an act done or omitted in performing a sexual assault forensic examination under this section.

[ 2005, c. 538, §2 (NEW) .]

#### SECTION HISTORY

1999, c. 719, §2 (NEW). 1999, c. 719, §11 (AFF). 2005, c. 538, §§1,2 (AMD). 2011, c. 59, §1 (AMD). 2011, c. 420, Pt. A, §21 (AMD).

## §2987. CONSUMER INFORMATION

*(REPEALED)*

#### SECTION HISTORY

2003, c. 469, §C30 (NEW). 2013, c. 332, §3 (AFF). 2013, c. 332, §2 (RP).

## §2988. IDENTIFICATION OF HEALTH CARE PRACTITIONERS; ADVERTISING

**1. Definitions.** For the purposes of this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Advertisement" means a communication, whether printed, electronic or oral, that names a health care practitioner and the practice, profession or institution in which the practitioner is employed, volunteers or otherwise provides health care services. "Advertisement" includes business cards, letterhead, patient brochures, e-mail, Internet, audio and video communications and any other communication used in the course of business. [2013, c. 285, §1 (NEW).]

B. "Deceptive or misleading advertising" includes, but is not limited to, use of an advertisement that misstates, falsely describes, falsely holds out or falsely details the health care practitioner's professional skills, training, expertise, education, board certification or licensure. [2013, c. 285, §1 (NEW).]

[ 2013, c. 285, §1 (NEW) .]

**2. Advertising.** A health care practitioner who advertises health care services shall disclose in an advertisement the applicable license under which the health care practitioner is authorized to provide services. The advertisement:

A. May not constitute deceptive or misleading advertising; and [2013, c. 285, §1 (NEW).]

B. Must include the health care practitioner's name, the type of license the practitioner holds and the common term for the practitioner's profession. [2013, c. 285, §1 (NEW).]

[ 2013, c. 285, §1 (NEW) .]

**3. Identification.** A health care practitioner shall comply with the following identification requirements.

A. [2015, c. 35, §1 (RP).]

B. A health care practitioner seeing patients on a face-to-face basis shall wear a name badge or some other form of identification that clearly discloses:

(1) The health care practitioner's first name or first and last name, except that if the health care practitioner is a physician, the name badge or identification must disclose the physician's first and last name; and

(2) The type of license, registration or certification the health care practitioner holds, including the common term for the health care practitioner's profession. [2015, c. 35, §1 (AMD).]

[ 2015, c. 35, §1 (AMD) .]

**4. Complaints; disciplinary action.** A person may file a complaint with the appropriate licensing board regarding a health care practitioner who fails to provide the consumer information required in this section. A health care practitioner who violates any provision of this section engages in unprofessional conduct and is subject to disciplinary action under the applicable licensing provisions of the health care practitioner.

[ 2013, c. 285, §1 (NEW) .]

**5. Authority of licensing board.** This section may not be construed to limit the authority of a licensing board to impose requirements for professional conduct and advertising on a health care practitioner in addition to the requirements of this section.

[ 2013, c. 285, §1 (NEW) .]

#### SECTION HISTORY

2013, c. 285, §1 (NEW). 2015, c. 35, §1 (AMD).

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