

**§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 [PL 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. [PL 1991, c. 505, §1 (NEW).]

Service must be made in accordance with the Maine Rules of Civil Procedure, Rule 4. [PL 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. [PL 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. [PL 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 the person's or persons' 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. [RR 2019, c. 2, Pt. B, §84 (COR).]

**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); [PL 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 [PL 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. [PL 1989, c. 361, §§5, 10 (NEW).]

[PL 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. [PL 1999, c. 523, §1 (AMD); PL 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. [PL 1999, c. 668, §102 (AMD).]

**6. Combining hearings.** Except as otherwise provided in this subsection, there must be one combined hearing or hearings for all claims under this section arising out of the same set of facts. When 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 chair may, for good cause, order separate hearings. [RR 2019, c. 2, Pt. B, §85 (COR).]

**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. [PL 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. [PL 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. [PL 1991, c. 130, §3 (RPR).]

[PL 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. [PL 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. [PL 1991, c. 130, §4 (NEW).]

[PL 1991, c. 130, §4 (NEW).]

#### SECTION HISTORY

PL 1985, c. 804, §§12,22 (NEW). PL 1989, c. 361, §§4-6,10 (AMD). PL 1989, c. 827, §§1-3 (AMD). PL 1991, c. 130, §§3,4 (AMD). PL 1991, c. 505, §§1-4 (AMD). PL 1995, c. 571, §1 (AMD). PL 1999, c. 523, §1 (AMD). PL 1999, c. 668, §102 (AMD). RR 2019, c. 2, Pt. B, §§84, 85 (COR).

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