

Quick Reference Guide: Medical Malpractice

Statute of Limitations (Maine):

GENERAL RULE	3 years from the act of medical negligence (24 MRS § 2902)
FOREIGN OBJECTS	3 years from discovery (24 MRS § 2902)
MINORS	Earlier of 3 years from majority or 6 years from accrual (24 MRS § 2902)
WRONGFUL DEATH	3 years (Maine's Death Act provides a 2-year SOL for death claims, but the 3-year medical malpractice deadline trumps in wrongful death arising from medical malpractice).
CONTINUING NEGLIGENT TREATMENT	If there is at least one act of negligence causing harm within 3 years of commencement of the action, the claimant may also allege the entire course of the negligent treatment by the same provider extending back in time before the 3 years.
STATE GOVERNMENTAL ENTITIES	Some medical providers are considered subdivisions of the State (see below). For these providers, deadlines follow those of the Maine Tort Claims Act.
FEDERAL GOVERNMENTAL ENTITIES	Some medical providers are either Federal government entities or treated as such because they are Federally funded (see below). For these providers, the deadlines follow those of the Federal Tort Claims Act.
TOLLING FOR PANEL PROCESS	The SOL is tolled from the service or filing of the notice of claim until 30 days after notice of the panel's findings (see description of panel process).

Selected State & Federal Medical Providers

State: Augusta Mental Health Institute;
Dorthea Dix Psychiatric Center (Bangor) and Cary Medical Center (Caribou)

Federal: ** For a searchable database, see <https://data.hrsa.gov/tools/ftca-search-tool>

VA Hospitals (Togus etc) | **Bucksport Regional Health Center**
Penobscot Regional Health Center (Bangor) | **Portland Community Health Center**
Sacopee Valley Health Center (Parsonsfield)
York County Community Action Corporation (Sanford)
DFD Russell Medical Center (Leeds) | **Eastport Health Care Inc.**
Fish River Rural Health (Eagle Lake)

Healthreach Community Health Centers (Waterville) **Harrington Family Health Center Health Access Network Inc.** (Lincoln) | **Katahdin Valley Health Center** (Patten)

The Medical Malpractice Screening Panel Process

- State-law medical malpractice claims must be screened through the pre-litigating screening panel process before the action can be commenced by filing a complaint in superior court (unless the parties agree to waive the panel process).
- The panel action is commenced through the filing of a notice of claim in superior court. The court then appoints a panel chair to preside over the case.

The Panel Process Cont.

- The panel chair issues a scheduling order, and the parties conduct discovery, including depositions of fact witnesses and experts.
- The panel chair empanels a lawyer and a medical provider in the same or similar subspecialty as the respondent provider to sit on the panel for the case.
- After completion of discovery, the parties submit detailed panel briefs, medical records, and depositions transcripts to the panelists.
- The panel chair convenes a panel hearing, at which the parties present live evidence to the panelists.
- The panel issues a decree. Each panelist has one vote on each of the following questions:
 1. Whether the acts or omissions complained of constitute a deviation from the applicable standard of care by the health care practitioner
 2. Whether the acts or omissions complained of proximately caused the injury complained of
- If the panelists are unanimous in support of claimant or respondent, then the party with unanimous findings may present the panel decree (subject to a carefully crafted jury instruction) to the jury at trial. The jury may (but is not required to) consider the panel decree as one piece of the evidence submitted at trial.

Common Medical Malpractice Categories:

■ BIRTH INJURY

- Cerebral Palsy
- Neonatal Death
- Material Death

■ SPINAL CORD INJURY/PARALYSIS

- Cauda Equina Syndrome
- Epidural Abscess
- Epidural Hematoma
- Surgical injury

■ DELAYED TREATMENT OF INFECTION/SEPSIS

- Pneumonia
- Septic Joint
- Meningitis
- Osteomyelitis
- Viral or Fungal Infection

■ DELAYED/MISSED DIAGNOSIS OF CANCER

■ BLOOD CLOT, THROMBOSIS, EMBOLISM

- Deep Vein Thrombosis (DVT)
- Pulmonary Embolism
- Arterial Clots

■ AMPUTATION INJURY

- Limb ischemia
- Gangrene

■ ABDOMINAL PROCESSES

- Aortic Aneurysm
- Peritonitis
- Bowel Obstruction
- Mesenteric ischemia

■ SURGICAL ERROR

- Biliary surgery
- Gall Bladder Surgery
- Joint replacement surgery
- Wrong-sided
- Surgical complications

■ RETAINED FOREIGN OBJECT

- Surgical Sponge
- Surgical Device

■ IV-INFILTRATION AND INTRAVASATION

■ RADIOLOGY MALPRACTICE

- Missed finding on imaging

■ PRIMARY CARE/PEDIATRICS/WALK-IN CLINIC

- Failure to test
- Failure to refer
- Lack of follow up on emergency or specialist care

■ CARDIAC INJURY

- Missed heart attack or acute coronary syndrome
- Heart-valve infection (endocarditis)

■ EYE-RELATED INJURY

- Plaquenil (Hydroxychloroquine) toxicity
- Laser surgery
- Detached retina

■ NURSING HOME/ELDER CARE

- Neglect
- Pressure ulcers, wound infection
- Unsupervised falls

■ NEGLIGENT COMMUNICATION AND DOCUMENTATION

- Failure to communicate test result
- Failure to communicate with doctor, specialist or patient
- Inaccurate or incomplete medical-record documentation

■ MEDICATION ERRORS

- Allergies
- Wrong prescription or dosage
- Dangerous drug interactions
- Overdose