

§832. Judicial consent to blood-borne pathogen test

1. Petition. Any person who experiences a bona fide occupational exposure may petition the District Court with jurisdiction over the facility or other place where the exposure occurred to require the person whose blood or body fluid is the source of the exposure to submit to a blood-borne pathogen test and to require that the results of the test be provided to the petitioner as long as the following conditions have been met:

A. The exposure to blood or body fluids creates a significant risk of infection with a blood-borne pathogen, as defined by the Bureau of Health through the adoption of rules; [PL 1997, c. 368, §1 (NEW).]

B. The authorized representative of the employer of the person exposed has informed the person whose blood or body fluid is the source of the occupational exposure and has sought to obtain written informed consent from the person whose blood or body fluid is the source of the exposure; and [PL 1997, c. 368, §1 (NEW).]

C. Written informed consent was not given by the person whose blood or body fluid is the source of the exposure and that person has refused to be tested. [PL 1997, c. 368, §1 (NEW).]
[PL 1997, c. 368, §1 (NEW).]

2. Prehearing duties of the court. Upon receipt by the District Court of the petition, the court shall:

A. Schedule an expedited hearing; [PL 2003, c. 88, §1 (AMD).]

B. Cause a written notice of the petition and hearing to be given, in accordance with the Maine Rules of Civil Procedure, to the patient who is the subject of the proceeding; [PL 1997, c. 368, §1 (NEW).]

C. Appoint counsel, if requested, for any indigent client not already represented; and [PL 1997, c. 368, §1 (NEW).]

D. Furnish counsel with copies of the petition. [PL 1997, c. 368, §1 (NEW).]
[PL 2003, c. 88, §1 (AMD).]

3. Hearing. The hearing is governed as follows.

A. The hearing must be conducted in accordance with the Maine Rules of Evidence and in an informal manner consistent with orderly procedure. [PL 1997, c. 368, §1 (NEW).]

B. The hearing is confidential and must be electronically or stenographically recorded. [PL 1997, c. 368, §1 (NEW).]

C. The report of the hearing proceedings must be sealed. A report of the hearing proceedings may not be released to the public, except by permission of the person whose blood or body fluid is the source of the exposure or that person's counsel and with the approval of the court. [PL 1997, c. 368, §1 (NEW).]

D. The court may order a public hearing at the request of the person whose blood or body fluid is the source of the exposure or that person's counsel. [PL 1997, c. 368, §1 (NEW).]
[PL 1997, c. 368, §1 (NEW).]

4. Determination. The court shall require the person whose blood or body fluid is the source of the exposure to obtain a blood-borne pathogen test and shall require that the results of the test be provided to the petitioner only if the petitioner proves by a preponderance of the evidence that:

A. The exposure to blood or body fluids of the person created a significant risk of infection with a blood-borne pathogen as defined by the Bureau of Health through the adoption of rules; [PL 1997, c. 368, §1 (NEW).]

B. An authorized representative of the employer of the person exposed has informed the patient of the occupational exposure and has sought to obtain written informed consent from the person whose blood or body fluid is the source of the exposure; and [PL 1997, c. 368, §1 (NEW).]

C. Written informed consent was not given by the person whose blood or body fluid is the source of the exposure and that person has refused to be tested. [PL 1997, c. 368, §1 (NEW).]
[PL 1997, c. 368, §1 (NEW).]

5. Consent. The court may not order a person whose blood or body fluid is the source of the exposure to obtain a blood-borne pathogen test unless the employee exposed to the blood or body fluids of that person has consented to and obtained a blood-borne pathogen test immediately following that documented exposure.

[PL 1997, c. 368, §1 (NEW).]

6. Costs. The employer of the person exposed is responsible for the petitioner's reasonable costs related to obtaining the results of a blood-borne pathogen test pursuant to this section, including the payment of the petitioner's attorney's fees.

[PL 1997, c. 368, §1 (NEW).]

7. Appeals. A person required to undergo a blood-borne pathogen test may appeal the order to Superior Court. The appeal is limited to questions of law. Any findings of fact of the District Court may not be set aside unless clearly erroneous.

[PL 1997, c. 368, §1 (NEW).]

8. Subsequent testing. Subsequent testing arising out of the same incident of occupational exposure must be conducted in accordance with this section.

[PL 1997, c. 368, §1 (NEW).]

SECTION HISTORY

PL 1997, c. 368, §1 (NEW). PL 2003, c. 88, §1 (AMD).

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