

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## SECOND REGULAR SESSION-2008

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Legislative Document

No. 1986

S.P. 780

December 18, 2007

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**An Act To Expand the Pool of Qualified Mental Health Examiners  
for Purposes of Involuntary Treatment**

(EMERGENCY)

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Secretary of the Senate on December 18, 2007. Referred to the Committee on Health and Human Services pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by ~~Senator~~ NUTTING of Androscoggin.

Cosponsored by Representative LEWIN of Eliot and Senators: BRANNIGAN of Cumberland, MARRACHÉ of Kennebec, RAYE of Washington, Representatives: FAIRCLOTH of Bangor, FINLEY of Skowhegan, GOULD of South Berwick, PIEH of Bremen, SAVIELLO of Wilton.

1       **Emergency preamble. Whereas,** acts and resolves of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3       **Whereas,** Public Law 2007, chapter 446 requires, in cases of involuntary treatment  
4 of mental health patients, that one of the examiners, either a licensed physician or clinical  
5 psychologist, be licensed to prescribe medications for the patient's care; and

6       **Whereas,** the effect of this change was to require that at least one of the 2 examiners  
7 be a licensed physician since clinical psychologists are not licensed to prescribe  
8 medications; and

9       **Whereas,** under the other changes made to the involuntary treatment laws, it is  
10 expected that the number of mental health examinations will increase and more qualified  
11 examiners will be needed; and

12       **Whereas,** meeting that need will be a serious problem based on the current  
13 limitations; and

14       **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
15 the meaning of the Constitution of Maine and require the following legislation as  
16 immediately necessary for the preservation of the public peace, health and safety; now,  
17 therefore,

18       **Be it enacted by the People of the State of Maine as follows:**

19       **Sec. 1. 34-B MRSA §3864, sub-§4, ¶A,** as amended by PL 2007, c. 446, §3 and  
20 **affected by §7, is further amended to read:**

21       A. Upon receipt by the District Court of the application and the accompanying  
22 documents specified in subsection 1 and at least 3 days after the person who is the  
23 subject of the examination was notified by the psychiatric hospital of the proceedings  
24 and of that person's right to retain counsel or to select an examiner, the court shall  
25 cause the person to be examined by 2 examiners.

26       (1) ~~Each Except as provided in subparagraph (1-A), each~~ examiner must be  
27 either a licensed physician or a licensed clinical psychologist. ~~When involuntary~~  
28 ~~treatment under subsection 1-A has been requested, one of the examiners must be~~  
29 ~~a professional who is licensed to prescribe medications relevant to the patient's~~  
30 ~~care.~~

31       (1-A) If the application requests an order for involuntary treatment pursuant to  
32 subsection 1-A, one examiner must be a licensed physician or a licensed clinical  
33 psychologist and one examiner must be a person who is qualified to prescribe  
34 medication relevant to the patient's care as a licensed physician, certified nurse  
35 practitioner, advanced practice registered nurse or registered physician assistant.

36       (2-A) If the person under examination or the counsel for that person selects a  
37 qualified examiner who is reasonably available, then the court shall choose that  
38 examiner as one of the 2 designated by the court.

1 (3) Neither examiner appointed by the court may be the certifying examiner  
2 under section 3863, subsection 2 or 7.

3 **Emergency clause.** In view of the emergency cited in the preamble, this  
4 legislation takes effect when approved.

5 **SUMMARY**

6 Under the changes made by Public Law 2007, chapter 446, scheduled to take effect  
7 January 1, 2008, one of the examiners, either a licensed physician or clinical  
8 psychologist, in cases of involuntary treatment of mental health patients, must be licensed  
9 to provide medications for the patient's care. Since clinical psychologists are not licensed  
10 to prescribe medication, the effect of this change is to require at least one of the 2  
11 examiners to be a licensed physician. This requirement seriously limits the pool of  
12 professionals who qualify to perform examinations.

13 This bill alleviates the shortage by adding to the list of professionals qualified to  
14 perform mental health examinations for purposes of involuntary treatment applications  
15 certified nurse practitioners, advanced practice registered nurses and registered physician  
16 assistants.