

STATE OF MAINE  
SUPREME JUDICIAL COURT



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To: Committee on Health and Human Services

Dear Senator Claxton, Representative Meyer, and Members of the Health and Human Services Committee:

Thank you for your letter of June 14, 2021 asking the Maine Judicial Branch to provide information regarding the independent examiners who perform services pursuant to 34-B M.R.S. § 3864. Specifically, you requested data regarding the number, location, and capacity of the current medical examiners; whether they are authorized to prescribe medication; and what might be done to increase the number of available examiners.

We are keenly aware of the scarcity of independent examiners and would like to work with the Committee to resolve this problem so that Maine citizens, the courts, and hospitals have increased access to independent examiners, including those qualified to prescribe medication recommended for the patient's care.

As you know, 34-B M.R.S. § 3864 governs both applications for involuntary commitment as well as applications for involuntary treatment. The applications may be separate or may be combined in one request. 34-B M.R.S. § 3864(1), (1-A).

Upon receipt of an application for involuntary commitment, the court must appoint a "medical practitioner" to examine the patient. 34-B M.R.S. § 3864(4)(A). The statute defines "medical practitioner" to include a licensed physician, licensed physician assistant, certified psychiatric clinical nurse specialist, certified nurse practitioner or licensed clinical psychologist. 34-B M.R.S. § 3801(4-B).

If an application includes a request for involuntary treatment, however, the appointed examiner (or one of them) appointed by the court must be “a medical practitioner who is qualified to prescribe medication relevant to the patient’s care.” 34-B M.R.S. § 3864(4)(A).

As you can see from Table 1 attached to this letter, there are seven (7) court locations where involuntary commitment cases are heard, consistent with the locations of the psychiatric hospitals in the state. There are only six psychologists who can be appointed in these cases in five of the locations: Augusta, Bangor, Lewiston, Rockland, and West Bath. To further compound the problem, it is anticipated that at least three of them will retire in the near term.

Turning to applications requesting involuntary treatment, obviously psychologists cannot prescribe medication and thus cannot serve as the examiner in those cases. In four court locations—Augusta, Lewiston, Rockland, and West Bath—the court has no independent examiners who are qualified to prescribe medication. Please note, that includes some of our large psychiatric institutions such as Riverview Psychiatric Hospital. As a result, the hospitals in those areas do not file requests for involuntary treatment with the court because the process is simply unavailable. It also creates the conundrum that the individual treatment plan presented to the court under 34-B M.R.S. § 3864(5)(F) will include psychiatric medications for severely ill patients who refuse such medication.<sup>1</sup>

The problems have been ameliorated in Biddeford, Portland, and (since April 2021) Bangor because we now have a contract with Behavioral Health Resources of Maine (BHRM). Under that contract, BHRM provides independent examiners to the specific court locations, including a small group of Psychiatric Nurse Practitioners who are qualified to prescribe medication and thus provide independent examinations for involuntary treatment cases. Unfortunately, BHRM does not have sufficient resources to offer this service to additional courts, although it is working with the Maine Nurse Practitioner Association to develop training with the goal of adding more qualified independent examiners.

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<sup>1</sup> Hospitals such as Riverview may have an internal process for involuntary medication, but such process generally first requires an order of involuntary commitment, thus delaying treatment with psychiatric medication for weeks and lengthening the term of hospitalization.

Consistent access to independent examiners is further hampered by two factors. The first is that most otherwise qualified examiners are not “independent” because they are employed by one of three large medical organizations, namely MaineHealth, Northern Light Health, and the State of Maine. A qualified medical practitioner employed by one of these organizations may not be appointed as the examiner for a case in which the examinee is a patient in the same medical organization.

Second, the reimbursement rates provided by the courts via Legislative funding are very low. Currently, the Judicial Branch has funding to offer practitioners \$100.00 per hour for their services. This rate, which has not changed since 2010, covers the practitioner’s time related to evaluating the patient, writing court related reports, and testifying in court. In today’s market, practitioners charge far more per hour for similar services. Indeed, when I was a District Court Judge sitting in Augusta, I tried to recruit psychiatrists to handle the involuntary treatment cases. People literally laughed at me, saying that they could not possibly work for these rates. Thus, we believe that additional funding is necessary to resolve this issue.

The Judicial Branch understands the critical importance of increasing the number of independent examiners so that patients and hospitals, in all parts of the state, have access to qualified examiners, including those who can prescribe medical treatment, in Section 3864 cases. We look forward to working with the Health and Human Services Committee to resolve this serious issue.

Please feel free to contact me with any questions or concerns.

Very Truly Yours,  
  
Valerie Stanfill  
Chief Justice

VS:lr

cc: Amy Quinlan, Director of Court Communication, Government and Media Counsel  
Julia Finn, Legislative Analyst

**Table 1. Involuntary Commitment and Treatment in Maine Courts**

<b>Court</b>	<b>Involuntary Commitment Cases<sup>2</sup></b>	<b>Involuntary Treatment Cases</b>	<b>Independent Examiners</b>	<b>Hospital/Employment Organization</b>
<b>Augusta</b>	200	0	D. Devine, Ph.D. C. Robinson, Ph.D.	Maine General/MaineHealth, Riverview/State of Maine, Togus/US Veteran Affairs
<b>Bangor</b>	225	65	R. Gallon, Ph.D. P. Ippolotti, Ph.D. BHRM	EMMS/Northern Light, Acadia/Northern Light, Dorthea Dix/State of Maine
<b>Biddeford</b>	15	35	BHRM	SMHC/MaineHealth
<b>Lewiston</b>	100	0	C. Robinson, Ph.D. D. Devine, Ph.D. K. McLinn, Ph.D.	St. Mary's/MaineHealth
<b>Portland</b>	80	250	BHRM	Maine Medical/MaineHealth Spring Harbor/MaineHealth
<b>Rockland</b>	55	0	D. Devine, Ph.D. K. McLinn, Ph.D.	Pen-Bay/MaineHealth
<b>West Bath</b>	45	0	D. Devine, Ph.D. M. Morrison, Ph.D.	Mid-Coast/MaineHealth
<b>Total</b>	720	350		

<sup>2</sup> Because of the impact that the pandemic may have had on total cases, cases for 2019, 2020, and 2021 were averaged and the numbers appearing in the first 2 columns for both involuntary commitment and involuntary treatment cases are projections for 2022.