

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD
OF THE
One Hundred And Seventeenth Legislature
OF THE
State Of Maine

VOLUME V

FIRST REGULAR SESSION

Senate

June 19, 1995 to June 30, 1995

FIRST CONFIRMATION SESSION

September 14, 1995

FIRST SPECIAL SESSION

House of Representatives

November 28, 1995 to November 30, 1995

Senate

November 28, 1995 to November 30, 1995

Signed:

Senators:

STEVENS, JR. of Androscoggin
MICHAUD of Penobscot

Representatives:

MURPHY of Berwick
TRUE of Fryeburg

Comes from the House with the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-355)**.

Which Reports were **READ**.

On motion by Senator **KIEFFER** of Aroostook, Tabled until Later in Today's Session, pending **ACCEPTANCE** of Either Report.

Out of order and under suspension of the Rules, the Senate considered the following:

COMMUNICATION

The Following Communication:

**STATE OF MAINE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE
COMMITTEE ON EDUCATION AND CULTURAL AFFAIRS**

June 23, 1995

Honorable Jeffrey H. Butland, President of the Senate
Honorable Dan A. Gwadosky, Speaker of the House
117th Maine Legislature
State House
Augusta, Maine 04333

Dear President Butland and Speaker Gwadosky:

Pursuant to Joint Rule 15, we are writing to notify you that the Joint Standing Committee on Education and Cultural Affairs has voted unanimously to report the following bills out "Ought Not to Pass":

L.D. 1394 An Act to Extend the Life of Existing School Buildings

We have also notified the sponsors and cosponsors of each bill listed of the Committee's action.

Sincerely,

S/Sen. Mary E. Small
Senate Chair

S/Rep. John L. Martin
House Chair

S.C. 260

Which was **READ** and, with Accompanying Bill, **ORDERED PLACED ON FILE**.

ORDERS OF THE DAY

Unfinished Business

The following matters in the consideration of which the Senate was engaged at the time of Adjournment have preference in the Orders of the Day and continue with such preference until disposed of as provided by Senate Rule 29.

The Chair laid before the Senate the first Tabled and Later Today Assigned (June 21, 1995) matter:

HOUSE REPORT from the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act to Place a Spending Cap on State Senate and House Campaigns"
H.P. 322 L.D. 443

Report - **Ought to Pass as Amended by Committee Amendment "A" (H-520)**.

Tabled - earlier in the day by Senator **AMERO** of Cumberland.

Pending - **ACCEPTANCE OF THE REPORT**.

(In House, June 19, 1995, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-520)**.)

(In Senate, June 20, Report **READ**.)

On motion by Senator **KIEFFER** of Aroostook, Tabled until Later in Today's Session, pending **ACCEPTANCE** of the Report.

The Chair laid before the Senate the second Tabled and Specially Assigned (June 22, 1995) matter:

Bill "An Act to Provide Greater Access to Health Care"
S.P. 343 L.D. 948
(C "A" S-279)

Tabled - June 21, 1995, by Senator **AMERO** of Cumberland.

Pending - **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-279)**.

(In Senate, June 20, 1995, READ A SECOND TIME).

On motion by Senator HARRIMAN of Cumberland, the Senate **SUSPENDED THE RULES** for the purpose of **RECONSIDERATION**.

On further motion by the same Senator, the Senate **RECONSIDERED** its action whereby it **ADOPTED** Committee Amendment "A" (S-279).

On further motion by the same Senator, Senate Amendment "A" (S-304) to Committee Amendment "A" (S-279) **READ**.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Harriman.

Senator HARRIMAN: Thank you, Mr. President. Good afternoon Ladies and Gentlemen of the Senate. We debated, at length, L.D. 948, the so-called Nurse Practitioners Bill, and out of that debate, I think, came a clearer understanding of the four different types of nurse practitioners. A nurse practitioner who practices midwifery, a nurse practitioner who's involved in anesthetics, a clinical nurse, and lastly, the so-called nurse in advanced practice. One of the things that came out of this debate is the reason why I have proposed this amendment. What it says is that once a nurse, who has become certified that she is an advanced practice nurse, once she has achieved that milestone, or he, then for twenty-four months, under the supervision of a licensed physician, or he or she must be employed by a clinic or hospital that has a medical director who is a licensed physician, once that has been completed the certified nurse practitioner will submit written evidence to the Board that she or he has completed that clinical experience. I think this is a good amendment that will assure, hopefully, for those of you who were doubtful that this bill was heading in the right direction, that it accomplishes some of those concerns, and I hope you will join me in supporting the pending amendment. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Pendexter.

Senator PENDEXTER: Thank you, Mr. President, Men and Women of the Senate. I'm inclined to support this amendment because I think in principle it's going to fix a little bit of a bad bill. But, I'm distressed by the wording of the amendment because it is still very loose. It specifies that a certified nurse practitioner must practice for at least twenty-four months under the supervision of a licensed physician, but doesn't say when that has to happen. I don't know if it was purposefully written that way so that the meaning is ambiguous, but I think the intent is that once a nurse has finished her formal training in the nurse practitioner scenario, that the next step would be, before that nurse can practice independently, that she would have to practice at least twenty-four months under the supervision of a physician. But it's not written that way in the amendment, but I will go with the intent because I think that is what the intention is. I'm a little distressed at the two years because physicians have to do three years. It also doesn't

specify that we are dealing with masters prepared. The Committee amendment still basically says as long as you have completed a formal education program, that's not really identified. So, we are really still dealing with a possible scenario of having independent practitioners out there who have two years of college, and anywhere from nine months to a year of certificate program, out there practicing independently. I will support the amendment in faith, however, I will continue to oppose the bill because it still is not in a form that I can support. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Hancock, Senator Goldthwait.

Senator GOLDTHWAIT: Thank you, Mr. President, Ladies and Gentlemen of the Senate. I appreciate very much the support of the good Senator from Cumberland, Senator Pendexter, for the concept of this amendment. Having seen the bill pass on its first reading here, it was indeed a difficult and painful process to then pursue an amendment, but I do agree that it has strengthened the bill. The intent, as the good Senator said, is for there to be a preceptor type program following graduation from the advanced nurse practice program. Regarding the masters, the bill as it is drafted actually does require that in almost every instance, because in order to become approved by the Board in the State of Maine, you must have your national certification. In order to get your national certification it is now required that almost every track that we are talking about is a masters level training program. So, although it doesn't say the words "masters level" in this bill, it is covered through references to the Board and to the national certification process, which do require masters level training. I continue to believe with my whole heart that this is a good bill. It does provide better access to under-served populations, be they rural or be they city Medicaid patients, and I urge your support for both the good Senator from Cumberland, Senator Harriman's, amendment, and for this bill. Thank you.

On motion by Senator HARRIMAN of Cumberland, Senate Amendment "A" (S-304) to Committee Amendment "A" (S-279) **ADOPTED**.

Senator PENDEXTER of Cumberland moved that the Senate **INDEFINITELY POSTPONE** the Bill and Accompanying Papers.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Pendexter.

Senator PENDEXTER: Thank you, Mr. President, Men and Women of the Senate. Yes, we did have a vote the other day on this issue, but I believe it is still a very close vote. I hope that some of you are continuing to consider how you will vote on this issue, and to consider seriously the ramifications of what will happen should this bill pass. I just continue to maintain that we ought not to legislate out a connection between medicine and nurse practitioners. That's all I'm asking. Only do nurse practitioners need to be concerned about that connection when they are doing medical acts, and that is only when they are diagnosing and treating, because men and women of the Senate, when you

diagnose and when you treat, as we talked about last evening, you are practicing medicine. We have talked over and over about the difference in the depth of knowledge and the training, and my strongest opposition is that nurse practitioners do not have the depth of knowledge that physicians have. If doing primary care is so simple, then why do we require physicians to have to go over and above a four-year college, to have to do four years of med school and do three years of residency. There's some confusion among some of you as to what that three year residency is. I'm just talking about pediatricians and family practice physicians. They don't learn how to do surgery. They don't get into all of those other things. They are basically doing hands-on care of patients in acute hospital settings, as well as in out-patient settings, dishing out health care for three years. If we hold physicians to that standard, that they have to practice three years before they can be independent, how can we support a scenario that you might have a two-year college with a one-year certification program to do the same thing that a physician can do? There was a study done by the Edmund Muskie Institute of Public Affairs. It states briefly, I will just read one paragraph, "Some states allow nurse practitioners to work independently of, or in collaboration with, physicians, rather than under a physician's supervision, as in this case in Maine. Although independent practice is permitted in some states, the reality in Maine, and elsewhere, is that more and more primary care providers are joining in networks, group practices, and integrated systems. Therefore, a collaborative model, in which physicians and nurse practitioners work together, and which is arguably more effective and cost effective than independent practice, is the more practical goal." This is an independent study done addressing health care systems in this State.

We talk a lot about rural access, and it amuses me to read the title of the bill, because it says "An Act to Provide Greater Access to Health Care". We had the rural discussion yesterday, well, let me remind you that 85% of the nurses in advanced practice that we are talking about in this bill, 85% of them are nurse anesthetists. Now, nurse anesthetists don't provide primary health care so we are talking about 15% who probably could go out there and do rural health care. I received this magazine last week, a national nurse practitioner magazine. In the back it has ads, and guess what? There were four here for Maine. Nurse practitioner opportunities in Lubec, Fort Kent, Dover Foxcroft, and if you really want to be urban there is one in Lewiston. There are opportunities now in rural places for nurse practitioners to practice and the reason why they are not there is the same reason why physicians aren't there. I continue to say to you, we use this excuse of ruralness in our State, and it's not founded on anything sound. We can practice in rural areas now if we want to. This bill is not going to make a whole lot of difference. You know, the real answer is to have nurse practitioners and physicians practicing together. I continue to hope that you can vote with the Indefinite Postponement of this Bill, because we should, and we must, work together collaboratively with physicians. Thank you.

Senator **LAWRENCE** of York was granted unanimous consent to address the Senate on the Record.

Senator **LAWRENCE**: Thank you, Mr. President, Men and Women of the Senate. Just to let you know, the Base Closure Realignment Commission just met this morning, and they voted six to two to include Long Beach on the closure list. There was no motion to include Portsmouth on the closure list, so Portsmouth is safe.

I want to take just a moment to express my thanks to all of you during the last six years, through the three Closure Commissions, for all of your support. A special thanks to Governor King, who did a tremendous presentation down in Boston, and made us all very proud. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Benoit.

Senator **BENOIT**: Thank you, Mr. President. May it please the Senate. I'm going to be opposing the pending motion to Indefinitely Postpone because at the start of the session I sponsored a bill on this subject and withdrew that bill because there were these other two measures that went forward to Committee hearing. I would like to see some legislation on this subject, for that reason, I will be voting against this particular motion. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator McCormick.

Senator **MCCORMICK**: Thank you, Mr. President, Men and Women of the Senate. I, too, will be opposing the motion to Indefinitely Postpone, and I just wanted to clear up one particular thing for all of you who are worried that after we pass this bill there will never be a nurse practitioner that ever talks to a doctor again. I can assure you that that is not the case, that it is required by their scope of practice, and, in fact, on page two of the Committee Amendment, line nineteen, we are legislating it in. It says, "Advanced practice registered nursing includes consultation with, or referral to, medical and other health care providers when required by client health care needs." I appreciate the study that the good Senator from Cumberland, Senator Pendexter, read to us about the practice of medicine going more towards the team concept. That is as it appears to me as well, as you look around the state and around the nation. What I have been seeing is nurses in advanced practice are a welcome member of that team which includes physicians and other health care providers. This is the way medicine is going and no one needs to legislate providers who are licensed and dedicated to providing health care to talk to each other about the best interest of their patients. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Hancock, Senator Goldthwait.

Senator **GOLDTHWAIT**: Thank you, Mr. President, Ladies and Gentlemen of the Senate. I would add only that in terms of matching residency time that advanced practice nurses will not be treating as broad a range of issues as an M.D., therefore their residency time is somewhat shorter. Also, this bill allows for any nurse practitioner who chooses to remain in a practice setting in which responsibility is delegated to that practitioner by a physician is perfectly free to do so. It in no way requires anyone currently practicing in an arrangement of that sort to in any way change their practice. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Pendexter.

Senator **PENDEXTER**: Thank you, Mr. President, Men and Women of the Senate. I just want to refer my comment to a few comments made by the Senator from Kennebec when she talks about consultation and referral. That's not the same thing as collaboration. I guarantee you, a nurse practitioner who is out there practicing independently is not going to have a connection with a primary care provider, or a pediatrician, if she has not made those arrangements ahead of time. I know that on any given day when I go out and practice that I might need some help, and it's irresponsible of you, as legislators, or of me, as a professional, to go out there and not take care of that need. I don't know what the problem is in the name of public safety in making sure that everybody out there is practicing correctly. What is the big deal about just requiring that that has to happen? Imagine the scenario, I now am a nurse practitioner, practicing on my own, and I have a sincere question I need to ask a pediatrician. But I haven't made any arrangements with anybody else. Now, I don't know about you, but when you go to your physician's office, the room is always full of patients, they're always busy, and who am I to think that I'm just going to ring up somebody's phone and that physician is going to drop everything he or she is doing, and answer my questions when he doesn't particularly know who I am. We haven't made that ahead of time, we haven't made those agreements ahead of time. He probably doesn't particularly know how I practice, what I know, what I can do. Philosophically, it sounds really nice here in these halls, but think about how it plays out. Who's going to answer the phone? Nobody is, because the minute that physician answers that phone, he is very liable. If they follow their legal advice, I don't know who, in their right mind, would answer it. So, when you are promoting independent practice, you are promoting nurses to be out there by themselves. Consultation and referral is not the same thing. You can talk all you want about scope of practice, but if you came to my office and watched me practice, then you went into the other room and watched the pediatrician, you would not know who the physician is. Because when you are doing primary care, my scope of practice is I can do whatever I feel comfortable doing, and you don't know what that is, it's in my head. I call the shots when I think I'm in trouble. That's the way it works. I think it's irresponsible of us to continue to think that we should be out there practicing by ourselves. I hope you will support the motion on the floor. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Washington, Senator Cassidy.

Senator **CASSIDY**: Thank you, Mr. President, Ladies and Gentlemen of the Senate. I rise this morning just to give you a little bit of information on this particular motion before us. My wife happens to work in a regional health center in the Princeton area in Washington County, and works with a very competent nurse practitioner. She has worked with her for over ten years between the two offices they have worked in. The nurse practitioner there, as I mentioned, has a wonderful reputation, she has a great clientele. People love to go to her when they are feeling ill. The thing is, when I was looking at our schedule and saw this bill coming before us, I decided I needed to get a little information about this, not knowing a whole lot about health care. I spoke with my wife, and also with that nurse practitioner. Both of them felt very uncomfortable with this bill before us today for a lot of the reasons that I won't reiterate, that Senator Pendexter has mentioned. They feel that they need to have those charts signed off by physicians. When the regional center first opened, being in a rural area, it was tough to get a physician to be located there, so they would have a person who would come in so many days a week and maybe have a few hours to oversee all of those charts. Fortunately we were lucky enough to have a physician come there full-time. So, when you talk with some of the people in the field who have had some extra authority or space to practice, without the restrictions, and they say to you that this is a bad bill, I am going to support the pending motion to Indefinitely Postpone this and all of its papers. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Hancock, Senator Goldthwait.

Senator **GOLDTHWAIT**: Thank you, Mr. President, Men and Women of the Senate. I would remind you that this bill would allow the practitioners, mentioned by the good Senator from Washington, Senator Cassidy, to continue practicing in exactly the arrangement he described. When the vote is taken I would request the Yeas and Nays.

On motion by Senator **GOLDTHWAIT** of Hancock, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Pendexter.

Senator **PENDEXTER**: Thank you, Mr. President, Men and Women of the Senate. Very briefly, to respond to the comment just made by the Senator from Hancock, we are now going to be having tiers of practice. Some nurse practitioners can work with physicians, and some can't, some don't have to. How is the consumer supposed to know. That's what I would like to know. They're confused even now. They are always asking me what a nurse practitioner is and what she can do. When I first came to the legislature, four years ago, everybody asked me, "What's a nurse practitioner?" Thanks to the two bills that we have had to discuss, everybody knows now what a nurse practitioner is, but people out there don't. They ask us over and over. So, now we have tier levels of practice to add even

more confusion. I think, men and women of the Senate, we should all be practicing the same. Even though you vote against this motion, there is still another report out there that is alive. Indefinitely Postponing this bill, we can still move the other report. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator McCormick.

Senator **McCORMICK:** Thank you, Mr. President. Just a reminder that Maine's nursing statute is out of date, and this L.D. 948, as we just amended it, brings it up to date with the way medicine is practiced and the way nursing is practiced today. If you ask any nurse practitioner, and believe me, in the course of this bill and its three year life I have met many, if you ask them if they currently now know several doctors to which they regularly refer patients, the answer is yes, they do. They constantly are referring. They constantly are calling, not just the delegating physician that they work for, but they are also referring to other physicians in the community and outside the community. So, let's bring Maine's nursing statute up to date and allow nursing and medicine to be practiced the way it has evolved and not impede it by the statutes of the State of Maine.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Carey.

Senator **CAREY:** Thank you, Mr. President, Members of the Senate. The good Senator from Kennebec, Senator McCormick, said maybe you ought to ask somebody. I did ask some people. I got a letter from a doctor down in Kittery who used to be a nurse practitioner and felt that she was getting into a field which was well above the work that she could do. She turned around and she got that extra training that I was talking about yesterday, and is now a doctor of osteopathic medicine. She feels a lot more comfortable and, in the letter that I had distributed to you, she pointed out on several occasions that she has an excellent relationship with the supervising physician. I'm going to be supporting the gentlelady from Cumberland on her motion, simply because I think we are moving too far, too fast.

THE PRESIDENT: The pending question before the Senate is the motion of Senator **PENDEXTER** of Cumberland that the Senate **INDEFINITELY POSTPONE** the Bill and Accompanying Papers.

A vote of Yes will be in favor of **INDEFINITE POSTPONEMENT**.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators: **ABROMSON, AMERO, BEGLEY, BERUBE, CAREY, CARPENTER, CASSIDY, HALL, HANLEY, HATHAWAY, KIEFFER, PENDEXTER, SMALL, and the PRESIDENT, Senator BUTLAND**

NAYS: Senators: **BENOIT, BUSTIN, CIANCHETTE, CLEVELAND, ESTY, FAIRCLOTH, FERGUSON, GOLDTHWAIT, HARRIMAN, LAWRENCE, LONGLEY, LORD, McCORMICK, MICHAUD, MILLS, PARADIS, PINGREE, RAND, RUHLIN, STEVENS**

ABSENT: Senator: **O'DEA**

14 Senators having voted in the affirmative and 20 Senators having voted in the negative, with 1 Senator being absent, the motion of Senator **PENDEXTER** of Cumberland to **INDEFINITELY POSTPONE** the Bill and Accompanying Papers, **FAILED**.

Committee Amendment "A" (S-279), as Amended by Senate Amendment "A" (S-304), thereto, **ADOPTED**.

Which was **PASSED TO BE ENGROSSED, As Amended**.

Sent down for concurrence.

Senate at Ease

Senate called to order by the President.

Off Record Remarks

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

HOUSE REPORT - from the Committee on LEGAL AND VETERANS AFFAIRS on Bill "An Act to Place a Spending Cap on State Senate and House Campaigns"

H.P. 322 L.D. 443

Report - Ought to Pass as Amended by Committee Amendment "A" (H-520).

Tabled - earlier in the day by Senator **KIEFFER** of Arostook.

Pending - **ACCEPTANCE** of the Report.

(In House, June 19, 1995, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-520)**.)