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October 16, 2019

To: Interstate Medical Licensure Compact Commission

From: Timothy Terranova, Commissioner for the Maine Board of Licensure in Medicine

RE: **The Executive Committee's authority to initiate legal action against a member state without Commission vote**

On March 28, 2019 the Commission instigated legal proceedings against a member state based on a vote of the executive committee. The full commission was notified of the action during the April 30, 2019 Commission Meeting. The intent of this discussion is not to determine if the legal action was justified, but to clarify the statute and determine whether the executive committee has the authority to initiate legal action without prior authorization from the full commission in the future.

At issue are apparent discrepancies in the compact language. On behalf of the Maine Board of Licensure in Medicine (BOLIM), I am requesting the commission review the discrepancies in the language and provide direction to the executive committee should this situation arise in the future.

The following references point out the differences in compact language.

Section 17 (b) of IMLCC law states:

The Interstate Commission may, by **majority vote of the Commissioners**, initiate legal action in the United States Court for the District of Columbia, or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its principal offices, to enforce compliance with the provisions of the Compact, and its promulgated rules and bylaws, against a member state in default.

In addition, Bylaws Article III states:

The chairperson shall call and preside at all meetings of the Commission and in conjunction with the Executive Committee shall prepare agendas for such meetings, shall make appointments to all committees of the Commission, and, **in accordance with the Commission's directions, or subject to ratification by the Commission, shall act on the Commission's behalf during the interims between Commission meetings.**

Section 11 (k) of the Compact law states:

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The Interstate Commission shall establish an executive committee, which shall include officers, members, and others as determined by the bylaws. **The executive committee shall have the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session.** When acting on behalf of the Interstate Commission, the executive committee shall oversee the administration of the Compact including enforcement and compliance with the provisions of the Compact, its bylaws and rules, and other such duties as necessary.

Section 12 (e) of the Compact Law states:

Establish and appoint committees including, but not limited to, **an executive committee as required by Section 11, which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties.**

Article VII section 1 of the by-laws states:

The Commission shall establish an executive committee **which shall be empowered to act on behalf of the Commission during the interim between Commission meetings, except for rulemaking or amendment of the Compact or these Bylaws.** The executive committee shall be composed of all officers of the Commission and the chairperson of each committee established as provided in Section 2 of this Article. The immediate past chairperson of the Commission shall also serve as an ex-officio member of the executive committee for a term of one year. The procedures, duties, budget, and tenure of such an executive committee shall be determined by the Commission. **The power of such an executive committee to act on behalf of the Commission shall at all times be subject to any limitations imposed by the Compact.** The executive committee is subject to the requirements of Article VI of these Bylaws.

BOLIM believes the authority delegated to the Committee pursuant to Section 11(k) does not eliminate the majority Commission vote requirement contained in Section 17(b) regarding the initiation of legal action, and for good reason. Initiating litigation against a Commission member state is a serious action which should be fully vetted and agreed upon by a majority of Commission members.

In addition, Article III section 3 (a) of the Commission bylaws states the Chairperson, "in accordance with the Commission's directions, or subject to ratification by the Commission, shall act on the Commission's behalf during the interims between Commission meetings." In this case, the Chairperson was not given direction to initiate legal proceedings against a member. Further, the action was not ratified, nor was the commission ever asked to ratify any such action.

Thank you in advance for recognizing the importance of this issue and the need for full Commission discussion.

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