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IOWA BOARD OF MEDICINE
KENT NEBEL, J.D., EXECUTIVE DIRECTOR

June 30, 2020

Interstate Medical Licensing Compact Commission
Commissioners & Executive Committee
5401 S. Prince Street, Office 111
Littleton, CO 80120

RE: Letter of concern regarding member state compliance with IMLCC rules and laws & lack of communication from IMLCC office

Dear IMLCC Commissioners and members of the Executive Committee:

We, the Iowa Board of Medicine (Board), write this letter to inform the Executive Committee, as well as the Commissioners of the IMLCC at large, about concerns we have regarding compliance with IMLCC rules and laws by member state boards as well as what we feel is a lack of communication from or participation by the IMLCC staff leadership.

Concerns regarding member state compliance with IMLCC rules and laws

We have reason to believe that not all states who are qualified to act as states of principal licensure under the Compact are complying with the relevant provisions of the Compact rules or their analogous state implementing statutes. Specifically, we have discovered that member states are issuing letters of qualification without the completion of a criminal background check, failing to refuse qualification on the basis of out-of-state discipline, and repeatedly failing to verify necessary core data.

Failure to perform background checks

In applying for expedited licensure through the Compact, IMLCC Rule 5.5(1)(c) requires applicants to “[s]ubmit to the state of principal license a completed fingerprint packet or other biometric data check sample approved by the state of principal license.” Rule 5.5(2)(b)(II) then requires the state of principal licensure to “[p]erform a criminal background check pursuant to Public Law 92-544 as required by terms and provisions of the Compact” before verifying or denying an applicant’s eligibility. Similarly, Iowa Code § 147B.1(5)(b)(2) requires the Board to perform a criminal background check of applicants for expedited licensure under the Compact, “including the use of the results of fingerprint or other biometric data checks compliant with the requirements of the federal bureau of investigation.”

Our staff became aware that the Colorado Medical Board was issuing letters of qualification very rapidly after receiving them. The following is a sampling of applications for a letter of qualification (LOQ) made to the Colorado Medical Board that were approved in a suspiciously short period of time:

CO License	Last Name	Date Submitted	Date Approved	Turnaround Time
36121	Samuel	08/09/2019	08/16/2019	7 days
39880	Rousseau	07/18/2019	07/25/2019	7 days
59946	Ross	08/17/2018	08/23/2018	6 days
44953	Doyle	05/08/2019	05/13/2019	5 days
59513	Bryant-Greenwood	11/02/2019	11/06/2019	4 days
58867	Marks	10/31/2019	11/01/2019	1 day
60049	Pilgrim	12/03/2019	12/04/2019	1 day

Given these extremely short turnaround times from when applications are submitted to when the LOQ is issued, we believe that the Colorado Medical Board is not performing sufficient background checks as required by law and rule. In the history of our Board, an FBI background check has never been completed in seven days, let alone in *less than twenty-four hours*. Colorado is under the same obligation to perform background checks for LOQ applications that Iowa is. See Colo. Rev. Stat. § 24-60-3602(5).

The FBI’s own website states that, “[c]urrent processing time for Identity History Summary requests submitted via the mail is 2-4 weeks,” excluding the additional time needed for mail delivery. FEDERAL BUREAU OF INVESTIGATION, *Services, Identity History Summary Checks*, <https://www.fbi.gov/services/cjis/identity-history-summary-checks>. Even the FBI’s Electronic Departmental Order system, which permits the electronic submission of fingerprints, requires “three to five business days upon receipt of the fingerprint card” for processing. FEDERAL BUREAU OF INVESTIGATION, *IDHS*, <https://www.edo.cjis.gov/#/>.

Importantly, while some of these applications are in fact “reapplications” for LOQs, neither the law nor rules make any distinction between the requirements for “applications” and “reapplications;” all applications require background checks after the application is submitted and before the issuance of the LOQ.

We have serious concerns that the Colorado Medical Board is not performing background checks as required by rule and law, and ask that this Committee take corrective action. We recommend an audit of *all* states serving as states of principal licensure to determine if similar irregularities are common outside of Colorado.

Failure to verify discipline reported to NPDB

We also have concerns that not every member state is properly verifying whether an applicant for a LOQ has been subject to discipline from another state’s medical board, and whether there is uniformity in how member states are responding to such discrepancies.

Specifically, we are concerned about the case of Dr. Lucas Birmelin. On September 24, 2001, the New Mexico Board of Medical Examiners and Dr. Birmelin entered into a stipulation whereby Dr. Birmelin was placed on probation and agreed to abstain from drugs and alcohol and participate in the New Mexico Monitored Treatment Program as a condition of receiving a license to practice

medicine in New Mexico. This was reported as disciplinary action by the New Mexico Board to the National Practitioner Data Bank (NPDB). The Arizona Medical Board similarly entered into a consent order with Dr. Birmelin, placed him on probation, and reported the agreement to the NPDB.

On May 7, 2018, the Arizona Medical Board issued a LOQ to Dr. Birmelin. On January 23, 2019, Dr. Birmelin applied for licensure in Iowa with the LOQ. While Iowa was aware of the New Mexico and Arizona actions from a Physician Data Center (PDC) report, we assumed Arizona would not have issued an LOQ if the same actions were reported to the NPDB. (Interestingly, Dr. Birmelin also applied for licensure in Washington at this time, but Washington denied the license. It remains unclear why or how Washington did not issue the license when presented with the LOQ from Arizona; Washington has not responded to repeated requests from our staff for clarification.)

When Dr. Birmelin reapplied for licensure in Iowa, our staff took a closer look at the PDC report and decided to run a NPDB report, which is not part of our usual licensing process for Compact licenses. Staff then became aware that both the New Mexico and Arizona actions were reported to the NPDB, and confirmed with the New Mexico Medical Board that its action in 2001 was disciplinary. Our staff concluded that Dr. Birmelin was therefore never eligible to receive a LOQ from Arizona pursuant to IMLCC rule 5.2(p), which defines “Discipline by a licensing agency in any state, federal, or foreign jurisdiction” as “discipline reportable to the National Practitioner Data Bank.”

We are concerned that the Arizona Medical Board issued a LOQ despite Dr. Birmelin’s ineligibility due to his 2001 discipline by the New Mexico Board. We are also confused as to why or how Washington refused to issue Dr. Birmelin a license. We believe that corrective action is needed, including but not limited to refining the definition of “discipline” and ensuring that all member states are verifying discipline reported to the NPDB prior to issuing a LOQ.

Failure to verify core data

Last, we are concerned that member states are failing to accurately verify all core data prior to issuing a LOQ. In reviewing licensees that were issued a LOQ by the Colorado Medical Board, our staff identified several pieces of information on the Core Data Sheets that were incorrect. Six of the eight applicants identified above, as well as two additional applicants who were reviewed, were found to have incorrect information on their Core Data Sheets, including the following errors identified below:

CO License	Last Name	Issues Identified on Core Data Sheet
39880	Rousseau	Incorrect email/ mailing address, no clarification from Colorado Board on erroneous response to Question #11
59946	Ross	Incorrect email/ mailing address
44953	Doyle	Incorrect exam information
58867	Marks	Incorrect Board certification, Incorrect specialty expiration date
60049	Pilgrim	Incorrect email/ mailing address
60227	Doering	Incorrect email/ mailing address, Incorrect medical school, incorrect specialty expiration date
----	Webster	Incorrect email/ mailing address, Incorrect exam information, no verification of residency

We, and our staff, rely on the accuracy of the information in applications for LOQs to ensure that we are only approving qualified applicants for licensure in Iowa. Further, our ability to rely on information provided by other member state boards is crucial to our ability to protect the safety of patients in Iowa and to facilitate the seamless administration of medical licensure through the Compact. We recommend an audit of *all* states serving as states of principal licensure to determine if similar irregularities are common outside of Colorado.

Lack of communication from IMLCC office

Finally, we are frustrated with the lack of communication we receive from the IMLCC staff. It is difficult for our staff to comply with Compact requirements when the IMLCC staff does not respond to important inquiries in a reasonable amount of time, or when policy decisions or rule interpretation and implementation are initiated and not communicated to member states.

For example, our staff has indicated a lack of presence of IMLCC staff at the monthly member state teleconferences. Because these teleconferences are not mandatory, not all states participate. However, IMLCC staff will often announce new policy during the calls. This is an ineffective way to communicate new policies to member states. As a result, not all states end up following the same policies and procedures. IMLCC staff leadership is often very slow to respond to correspondence, and member states do not have open lines of communication with key members of the IMLCC staff. For example, when our staff has questions about remittances, they do not have access to IMLCC's staff bookkeeper, causing unnecessary delays in resolving these issues.

The level of disorganization and lack of communication with the IMLCC staff are greatly frustrating member states' efforts to comply with the mandates of the compact to streamline the licensure process.

In sum, our Board has serious concerns about the efficacy of the IMLCC staff's role in maintaining an efficient and effective multistate licensure compact. We hope that the Commission will agree, and will take action to ensure that these concerns are addressed.

Sincerely,

A handwritten signature in cursive script that reads "Warren E. Gall".

Warren E. Gall, M.D.
Chair