

September 19, 2022

Mr. Marschall S. Smith
Executive Director
Interstate Medical Licensure Compact Commission
5401 S. Prince Street, Office 111
Littleton, CO 80120

Re: AMA Comments on Draft Amendments to IMLCC Rule Chapter 6

Dear Mr. Smith:

On behalf of the American Medical Association (AMA) and our physician and medical student members, I am writing to provide comments on the proposed amendments to the Interstate Medical Licensure Compact Commission (IMLCC) Rule Chapter 6. We understand the proposed amendments are in response to potential conflicts among state laws and concerns over state sovereignty in regulating the practice of medicine.

The Interstate Medical Licensure Compact (IMLC) was established and adopted by state legislatures at a time when there was general alignment among state medical practice acts. Today there are stark differences and direct conflicts among many state laws regulating the practice of medicine. For example, over half the states have passed or are expected to pass laws severely restricting abortion services, while other states have passed laws protecting abortion services and those who provide such care to patients. Even among states that restrict abortion services, exceptions vary widely, as does the potential for civil or criminal liability for such activity. Moreover, states on both sides have passed laws aimed at abortion services provided outside their state borders, including not just the provision of such services but also actions that “aid or abet” the provision of such care. How these laws are implemented by state regulatory agencies, including state medical boards and other regulatory and enforcement bodies, is still unknown, as is the impending interjurisdictional jurisprudence on these issues. This confusing legal landscape creates a web of uncertainty for physicians and state medical boards and has a significant impact on many aspects of the IMLC.

The AMA understands the challenges the IMLC faces and strongly supports many of the proposed amendments to Chapter 6 of the IMLCC Rules. We believe these proposed amendments align with the foundational principles of the IMLC that are supported by the AMA, including the belief that: (1) the practice of medicine occurs where the patient is located; (2) physicians must be licensed to practice medicine in the state where the patient is located; and (3) that each state has authority over the practice of medicine within its borders. The AMA believes the proposed amendments are a good first step by the IMLCC to address some of the most pressing concerns raised by Member States and strongly encourages the IMLCC to provide further clarification and amendments as necessary to support these foundational principles. We offer the following comments on the proposed amendments, as well as additional issues that we believe merit further consideration by the IMLCC Rules and Administrative Procedures Committee (Committee).

Section 6.5 Disciplinary Actions

The AMA generally supports the amendments to Section 6.5, which align with the principle of state sovereignty—that each state has the authority over the practice of medicine within its borders and does not have the authority to regulate the practice of medicine in other states. Section 6.5 as amended recognizes the current conflicts among states’ laws that may impact a medical board’s decision to discipline a physician. Moreover, it gives Member Boards the appropriate leeway to discipline physicians who provide medical care to patients located in their state based on the laws of their state but does not compel or authorize disciplinary action based on the laws of another member state. To that end, the AMA supports the proposed amendments to sections 6.5(a); 6.5(b)(1); 6.5(e); 6.5(g); and 6.5(h)(1).

The AMA, however, encourages the Committee to consider additional changes to 6.5(f) and 6.5(h)(2)—both of which address the responsibilities of a Member Board when the state of principal license terminates suspension of and subsequently reinstates a physician’s license. The proposed amendments to 6.5(f) and 6.5(h)(2), which refer back to IMLC Statute Section 10, would require Member Boards to keep a physician’s license encumbered until taking action to reinstate the license in a manner consistent with the medical practice act of that state. *While we appreciate the Committee’s efforts in maintaining sovereignty of the respective Medical Boards by not requiring the Member Board to reciprocate the action of the state of principal license, we are concerned this language mandates a state Medical Board to keep a physician’s license suspended until the Board has an opportunity to affirmatively take action rather than giving the Medical Board the option to reinstate the physician’s license based on reinstatement by the state of principal license.* This could unnecessarily prolong the suspension of a physician. It is also contrary to the proposed amendments to Section 6.5(a), 6.5(e), and 6.5(g) which replace mandatory language with permissive language and allow, but do not require, Member Boards to act when a state of principal license or another member state has revoked, surrendered, suspended, or relinquished a license. If a Member Board deems continued suspension warranted, the proposed amendments to Section 6.5(h)(4) support state sovereignty by giving Member Boards the ability to continue a suspension until completion of its own investigation. For these reasons, the AMA asks the Committee to consider the following amendments to sections 6.5(f) and 6.5(h)(2):

Section 6.5(f)

If the state of principal license reinstates the disciplined Compact physician’s license, it shall notify the Interstate Commission that the suspension has been terminated as soon as reasonably possible, but no later than 5 business days after the suspension has ended. The Interstate Commission shall immediately notify the other Member Boards. Those Member Boards ~~shall~~ may reinstate the license in accordance with the Medical Practice Act of their state ~~take appropriate action as outlined in IMLC Statute, Section 10.~~

Section 6.5(h)(2):

A Member Board may terminate the suspension in a manner consistent with the Medical Practice Act of their state, ~~provided the action was not taken as a result of IMLC Statute, Section 10, paragraph (b).~~

The AMA believes these amendments reflect and align with the proposed amendments to 6.5(a), 6.5(e), 6.5(g), and 6.5(h)(1), while still allowing Member Boards to act in a manner consistent with the medical practice act of their state.

6.6 Restrictions on Subpoena Enforcement

The AMA appreciates the additional language in Section 6.6 clarifying that the IMLC does not authorize Member Boards to demand the issuance of subpoenas for attendance or testimony of witnesses or the production of evidence from another Member Board for otherwise lawful practice in the state. The AMA requests further clarification about whether this language extends to subpoenas issued for attendance or testimony of witnesses or the production of evidence from physicians who are licensed in Member States through the IMLC. If not, the AMA respectfully requests the IMLCC to provide this same protection to physicians licensed in member states through the IMLC. The AMA also requests the IMLCC to consider additional amendments to Rule 6.4(g) clarifying that this provision is limited to member states that are part of a joint investigation.

6.7 Restrictions on Disciplinary Action Enforcement

The AMA supports the language proposed in Section 6.7, which solidifies one of the foundational principles of the IMLC: that each state has the authority over the practice of medicine within its borders. We agree that the IMLC should not authorize a Member Board to discipline a physician for the lawful practice of medicine in another member state.

It is unclear, however, how Section 6.7 aligns with Section 9(e) of the IMLC statute and Section 6.4(j) of the IMLCC Rules, which allow any member state to investigate actual or alleged violations of the statutes authorizing the practice of medicine in any other member state in which a physician holds a license to practice medicine. The AMA encourages the Committee to clarify and confirm that Section 6.7 of the IMLCC Rules supersedes IMLC Section 9(e) and Rule 6.4(j).

Additional Changes

The AMA also asks the IMLCC to clarify which member state's laws have jurisdiction over a physician's license when the patient's location and residence are not in the same state. The Information Release dated July 29, 2022, states:

The physician must be licensed in the state *where the patient is located* and receiving care. That license is used to provide care to the patient and is governed by the medical practice act of the patient's *state of residence* and where the physician was issued the license pursuant to the Compact. (emphasis added)

A different part of the July 29, 2022, Informational Release states:

The care received is based on the medical practice act in the state *where the patient is located* at the time they are receiving care. (emphasis added)

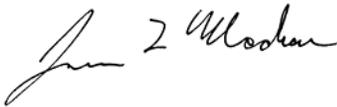
Patients often travel to receive care, and a patient's location at the time of treatment may not be the same as the patient's state of residence. We are concerned that these statements, taken together, indicate that a physician may be subject to potentially conflicting laws in different states: the laws of the state where the patient receives care govern the provision of care and the laws of the state where the patient resides govern the physician's license. The AMA asks the IMLCC to clarify and confirm that the physician's license is governed by the medical practice act of the state where the patient is located, which may or may not be the same state as the patient's state of residence.

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Finally, the AMA encourages the Commission to consider future amendments to the IMLCC Rules to address other areas of concern such as sharing of information among member states, privacy of physician information, duty of member states to other member states, joint investigations, and renewal requirements.

The AMA appreciates the IMLCC and the Committee's efforts to provide further clarification and amendments to the IMLCC Rules to address conflicts between member states and ensure continuation of the IMLC. The AMA welcomes the opportunity for future discussions on these issues. If you have any questions or would like to discuss further, please contact Kim Horvath, Senior Attorney, Advocacy Resource Center at kimberly.horvath@ama-assn.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim L. Madara". The signature is written in a cursive, flowing style.

James L. Madara, MD