

Marschall,

Please see the following Letter of Concern from the Maryland Board of Physicians.

Thanks,

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The Maryland Board of Physicians has significant concerns about the proposed revisions to the regulations and for that reason the Board opposes the proposed changes.

First, the rules seem rushed. The window for proposing rules just closed and it appears that the rules were drafted without significant input from the Commissioners and exhibit no clear objective other than to react to the Dobbs decision.

Second, several of the proposed modifications make the rules more opaque and provide less clarity for practitioners. In light of the Dobbs decision, it is now more important than ever for the rules to clearly lay out the possible sanctions by states in the compact and provide for clear procedures in implementing the statute. Several of the changes to the current rules remove the clarifying language, leaving the rules more open to multiple interpretations. While the more ambiguous language may allow physicians and boards to interpret the rules as they wish, it will not protect compact physicians, and instead may mislead compact physicians about the risk to their licensees under the compact law.

Third, there are proposed changes that do not comport with the language in the Compact.

Below are the specific concerns that I have with modifications to Rule 6.5:

a. Any disciplinary action by a disciplining Board shall be considered unprofessional conduct and is may be subject to discipline by other member Boards. ~~This shall include any action that does not have a corresponding ground by the other member Board's Medical Practice Act or in addition to any other specific violation of the Medical Practice Act in the other member state.~~

Rule 6.5(a) clarified that actions without corresponding grounds in the practice act may still result in discipline. The proposed modification to the first sentence is appropriate. The second sentence is clarifying language to make sure that licensees understand the full implications of the first clause. The first clause, based on the Compact Statute explicitly makes any disciplinary action a violation of unprofessional conduct. By removing this second sentence, the IMLC may mislead individuals to believe that they will certainly avoid discipline in a state if there is no corresponding ground in that state. However, the language of the statute does allow states to take action even when there is no corresponding ground, since all violations are deemed unprofessional. It is important to explain that such an action is possible, for full disclosure to licensees. **The Board opposes removal of the second sentence in Rule 6.5(a).**

e. Upon receipt of notice from the Interstate Commission of an action as outlined in IMLC Statute, Section 10 ~~taken by the state of principal license, the other member Boards shall immediately place the Compact physician on the same status as the state of principal license~~ a member Board shall take action in a manner consistent with the Medical Practice Act of that state.

For context, Rules 6.5 (c) through (h) create the processes to allow notice about discipline to be shared and to explain the differences between Section 10(b) and (d). Rule 6.5(e) and (f) clarified Section 10(b) of the Compact. Rule 6.5(e) explains that if an action is taken by an SPL to suspend or revoke then other Boards shall take the same action. The purpose of the rule was to take the lengthy and confusing 10(b) and break it down to easily understood sections with 6.5(e) discussing the initial immediate action and 6.5(f) discussing any subsequent reinstatement. The suggested update to Rule 6.5(e) doesn't clarify or explain Section 10(b) and gives no notice to licensees that their license will likely be suspended if imposed by the SPL as required by Section 10. **The Board opposes the proposed modification to Rule 6.5(e).**

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 ~~reinstate the license in accordance with the Medical Practice Act of that state~~ take appropriate action as outline in IMLC Statute, Section 10.

In Rule 6.5(f), the IMLC clarified that if a license was automatically suspended or revoked under Section 10(b), then a removal of the suspension or revocation should result in the member Board taking action to reverse the suspension that was imposed under §10(b). Because §10(b) is mandatory removal of the ability to practice, a reversal should result in the reinstatement. If the Committee believes that a different interpretation is more accurate, the rule should state that. Here there is only a reference to §10 and no clarification at all leaving the interpretation ambiguous. **The Board opposes the proposed modification to Rule 6.5(f).**

g. Upon receipt of notice from the Interstate Commission of an action taken by a non-state of principal license, the other member Boards ~~shall~~ may suspend the Compact physician for 90 calendar days on entry of the order of the disciplining Board to permit the member Board to investigate under the Medical Practice Act of that state.

The edit to Rule 6.5(g) is improper. Rule 6.5(g) is taken directly from §10(d) which says a license *shall* be suspended. It is not clarifying to change the "shall" to a "may," rather it is a simple contradiction of the statute. The Rules cannot override the clear language of the statute. **The Board opposes the proposed modification to Rule 6.5(g)**

(h) ~~After an investigation has been completed, but within~~ Within 90 calendar days of a suspension, one of the following may occur:

(1) a state of principal license may terminate the suspension of the license in a manner consistent with the Medical Practice Act of that state;

(2) a non-state of principal license may terminate the suspension in a manner consistent with the Medical Practice Act of that state, provided the action was not taken as a result of IMLC Statute, Section 10, paragraph (b)-if the state of principal license has already terminated the suspension;

(3) any member Board may impose reciprocal discipline or pursue reciprocal discipline pursuant to Rule 6.5(b) or (c); or

(4) any member Board may continue the suspension until the member Board that initially took the action has taken a final action or until its investigation is complete in a manner consistent with the Medical Practice Act of that state.

For Rule 6.5(h), the initial clause, while not necessary, is directly derived from §10(d) “to permit the member board(s) to investigate the basis for the action under the Medical Practice Act of that state.” The Board opposes removing that clarifying language. I would propose adding “under IMLC Statute, Section 10, paragraph (d)” after the word suspension, to clarify that this section is dealing with §10(d). **New recommendation: Add “under IMLC Statute, Section 10, paragraph (d)” after the word suspension. Oppose removing the first clause.**

The Board would also suggest in paragraphs 6.5(h)(1) and (2) the words “or rescind” after terminate. In situations such as Dobbs where one state may not want to issue the suspension at all, I believe, that the suspension is mandatory, but terminate, I believe is not well defined, and could include a rescission in addition to a more traditional understanding of termination. Finally, I think that language in (1) and (2) are less clear than the existing language. While not as problematic as the other changes, the Board opposes modifying (1) and (2). **Recommendation: Add “or rescind” after terminate in 6.5(h)(1) and (2). The Board opposes the remainder of the modifications to rule 6.5(h)(1) and (2).**

The Board supports the clarifying modification to paragraph Rule 6.5(h)(4).

New Rules 6.6 and 6.7

6.6 RESTRICTIONS ON SUBPOENA ENFORCEMENT

NOTHING IN THIS COMPACT SHALL AUTHORIZE A MEMBER STATE TO DEMAND THE ISSUANCE OF SUBPOENAS FOR ATTENDANCE OR

TESTIMONY OF WITNESSES OR THE PRODUCTION OF EVIDENCE FROM ANOTHER MEMBER STATE FOR OTHERWISE LAWFUL ACTIONS TAKEN WITHIN THE SCOPE OF PRACTICE OF THE MEMBER STATE WHERE THE PATIENT IS LOCATED AT THE TIME OF SERVICE BY THAT PHYSICIAN WHO IS LICENSED PURSUANT TO THE REQUIREMENTS OF THIS INTERSTATE COMPACT.

6.7 RESTRICTIONS ON DISCIPLINARY ACTION ENFORCEMENT

NOTHING IN THIS COMPACT SHALL AUTHORIZE A MEMBER STATE TO IMPOSE DISCIPLINE AGAINST A PHYSICIAN WHO IS LICENSED PURSUANT TO THE REQUIREMENTS OF THIS COMPACT FOR OTHERWISE LAWFUL ACTIONS TAKEN WITHIN THE SCOPE OF PRACTICE OF THE MEMBER STATE WHERE THE PATIENT IS LOCATED AT THE TIME OF TREATMENT BY THAT PHYSICIAN.

The Board also has significant concerns about the two newly added rules. Rule 6.6 and 6.7 are very convoluted and confusing. It is not clear what these 5 and 7 line run-on-sentences accomplish and I do not think members of the public will understand them either. It appears that it is imposing new limits on investigations and disciplinary actions performed by Boards.

Placing limits on Boards' authority to investigate and discipline licensees is beyond the scope of the compact's authority. The compact is a process to provide increased licensure portability through a pathway to licensure. Rule 6.7 directly contradicts §1 of the Compact, which states: "State medical boards that participate in the Compact retain the jurisdiction to impose an adverse action against a license to practice medicine in that state issued to a physician through the procedures in the Compact." To the extent the Rule limits State authority to impose discipline, it contradicts the purpose of the compact. Similarly, it is beyond the Compact's authority to limit any Board's authority to issue a subpoena.

Reading the language charitably, perhaps it is the new Rule's intent to explain that the compact does not act to enlarge authority beyond what is already in a State's medical practice act in these circumstances. If so, I would recommend modifying Rule 6.7 to read:

"Nothing in this Compact expands a member state's authority to impose disciplinary against a physician beyond that State's own Medical Practice Act."

For 6.6 "Nothing in this Compact limits a state Board's authority to refuse to comply with another state Board's subpoena beyond already existing limits."

The Board opposes Compact language that limits Member Board's ability to investigate and discipline their own licensees as beyond the Compact's authority and purpose. The Board opposes the addition of Rule 6.6 and 6.7. As an alternative, the Board may support adding language to Rule 6.6 such as:

“Nothing in this Compact limits a state Board’s authority to refuse to comply with another state Board’s subpoena beyond already existing limits.” And adding language to Rule 6.7 as follows: “Nothing in this Compact limits a state Board’s authority to refuse to comply with another state Board’s subpoena beyond already existing limits.”

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Maryland Board of Physicians

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