



## MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

Kenneth Cleveland, M.D. | Executive Director

September 20, 2022

IMLCC Rules and Administrative  
Procedure Committee  
5401 South Prince Street, Office  
111 Littleton, CO 80120

Re: IMLC Rule Chapter 6 Comments

To the Rules and Administrative Procedure Committee:

I write to express concerns about the proposed amendments to IMLCC Rule Chapter 6 posted on August 28, 2022. The Commission has expressed its intention to hold a rulemaking hearing with the purpose of amending the Rules at its November 8, 2022 meeting. The proposed amendment history list would state that Section 6.5 was “amended to reflect statutory requirements.” However, several of the proposed changes would contravene or conflict with the text of the Compact itself. The statutory text imposes several mandatory, non-discretionary obligations on member states regarding reciprocal discipline. The proposed rule changes would replace those mandatory obligations with permissive or discretionary language.

It is axiomatic that an administrative entity may not promulgate a rule that conflicts with applicable statutory text:

Statutory provisions control with respect to the rules and regulations promulgated by such a[n] [administrative] body. Accordingly, such a body may not make rules and regulations which conflict with, or are contrary to, the provisions of a statute, particularly the statute it is administering or which created it.

*Mississippi Pub. Serv. Comm’n v. Mississippi Power & Light Co.*, 593 So. 2d 997, 1000 (Miss. 1991) (citing 73 C.J.S. *Public Administrative Law and Procedure* § 89 (1983)).

The rulemaking power of the Commission, and the limitations thereon, are set forth in Section 15 of the Compact:

The Interstate Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purpose of the Compact. Notwithstanding the foregoing, in the event the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of the Compact, or the powers granted hereunder, then such an action by the Interstate Commission shall be invalid and have no force or effect.

IMLCC Statute, Section 15.

### **Proposed Amendment to Rule 6.5(e)**

Section 10(b) of the Compact states, in relevant part:

If a license granted to a physician by the member board in the state of principal license is revoked, surrendered or relinquished in lieu of discipline, or suspended, then all licenses issued to the physician by member boards **shall automatically be placed, without further action necessary by any member board, on the same status.**

IMLC Statute, Section 10(b) (emphasis added). The change to Rule 6.5(e) proposed by the Rules and Administrative Procedures Committee would supplant the mandatory and “automatic” statutory language with a purely permissive provision:

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 may take action in a manner consistent with the Medical Practice Act of that state.

Proposed Amendment to Rule 6.5(e) (emphasis added). The current text of Rule 6.5(e) is inconsistent with Section 10(b), as it contemplates further action by a member board instead of the automatic requirement in the statute. However, the current Rule retains the mandatory nature of reciprocal discipline set forth in Section 10(b). The amendment would eliminate the requirement in the Compact that mirror discipline be automatic and mandatory. Therefore, the proposed amendment to Rule 6.5(e) would directly conflict with the statutory text and would not be a reasonable and permissible exercise of the Commission’s rulemaking authority.

### **Proposed Amendment to Rule 6.5(g)**

The proposed change to Rule 6.5(g) would also effectively change a mandatory

statutory requirement to a permissive or discretionary provision. Section 10(d) states, in relevant part:

If a license granted to a physician by a member board is revoked, surrendered or relinquished in lieu of discipline, or suspended, then any license(s) issued to the physician by any other member board(s) **shall be suspended, automatically and immediately without further action necessary** by the other member board(s), for ninety (90) days upon entry of the order by the disciplining board, to permit the member board(s) to investigate the basis for the action under the Medical Practice Act of that state.

IMLCC Statute, Section 10(d) (emphasis added). The proposed change to Rule 6.5(g) states:

Upon receipt of notice from the Interstate Commission of an action taken by a ~~non-state of principal licensemember board~~, 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.

Proposed Amendment to Rule 6.5(g) (emphasis added). The proposed amendment to Rule 6.5(g) would conflict with the mandatory language in Section 10(d) and would not be a reasonable and permissible exercise of the Commission's rulemaking authority.

### **New Proposed Rule 6.6 – Restrictions on Subpoena Enforcement**

The Committee has proposed a new Rule 6.6 concerning subpoenas which provides:

**Nothing in this Compact authorizes a Member Board 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 at the time of service.**

Proposed Rule 6.6. However, existing Rule 6.4(h) requires a "local member Board" to issue a subpoena under certain circumstances, and does not contain any similar limitation concerning "lawful practice":

Should an individual or entity refuse to comply with the enforceable subpoena, the member Board that issued the subpoena may request the local member Board to issue a subpoena on the investigating member Board's behalf. The local member Board **shall issue** such a subpoena and shall share the resulting information with the investigating member Board.

Rule 6.4(h) (emphasis added). Thus, New Proposed Rule 6.6 is inconsistent with existing Rule 6.4(h).

Further, the statutory text and current rules reflect a policy of cooperation in relation to subpoenas that the new rules do not. The only use of the word “subpoena” in the IMLCC Statute is in Section 9(c):

A subpoena issued by a member state shall be enforceable in other member states.

Rule 6.4(g) reiterates that statement, and clarifies that the subject of the subpoena does not have to be a Compact physician:

A subpoena issued by a member Board shall be enforceable in other member states, whether or not the subpoena concerns a Compact physician or applicant.

Neither Section 9(c) of the IMLCC Statute nor Rule 6.4(g) contains the limitation on subpoenas concerning “lawful practice.” The limitation in Rule 6.6 would at least potentially conflict with Rule 6.4(g) and Section 9(c) in some circumstances. Further, Rule 6.6 does not further the policy of cooperation expressed in both the statute and the current rules concerning the use of subpoenas. The conflict between the rules, and the inconsistency with statutory text, require resolution.

### **New Proposed Rule 6.7 – Restrictions on Disciplinary Action Enforcement**

The Committee has also proposed a new Rule 6.7 concerning discipline which provides:

**Nothing in this Compact authorizes a Member Board to impose discipline against a physician who is licensed pursuant to the requirements of this Compact for otherwise lawful practice of the member state.**

With respect, the mandatory suspension and reciprocal discipline provisions in Section 10 of the IMLCC Statute, including those subsections quoted above, would not merely authorize discipline “for otherwise lawful practice,” but would *require* it. Further, the proposed new Rule 6.7 would have a substantial and substantive impact on operations of the Compact, inconsistent with the IMLCC statutory text.

### **Amendments to the Compact Statute Require Unanimous Consent of the Member States**

Taken collectively, the proposed rule changes would have a significant impact on

the substance of the Compact. In our view, changing mandatory statutory language to permissive language would require amendment of the IMLCC Statute itself, and cannot be accomplished through the rulemaking authority:

The Interstate Commission may propose amendments to the Compact for enactment by the member states. No amendment shall become effective and binding upon the Interstate Commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

IMLCC Statute, Section 20(d).

Thank you for accepting and considering our comments and positions concerning the proposed changes to Rule 6.5 and new Rules 6.6 and 6.7. For the foregoing reasons, we do not support the proposed Rule changes.

Sincerely,



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