



September 15, 2022

Commissioners of the Interstate Medical Licensure Compact:

The State Medical Board of Ohio (“SMBO”) discussed the Draft Amended Interstate Medical Licensure Compact (“IMLC”) Rule Chapter 6 at its September 14th meeting and appreciates the opportunity to formally comment on it. SMBO has concerns that the proposed rule action (1) conflicts with and violates the IMLC statute, and (2) adversely affects patient health and safety through the elimination or delay of disciplinary action.

Proposed rule conflicts with IMLC statute

The draft amended IMLC Rule Chapter 6 conflicts with the IMLC statute passed by the Ohio General Assembly. This is a concerning encroachment on the province of the Ohio General Assembly and the other state legislatures who voted to ratify and enact into law all the provisions of the IMLC statute, including those that the proposed rule action seeks to change.

Proposed amended rule 6.5(e) and (g) seek to overwrite the IMLC statute by eliminating the automatic reciprocal discipline required by Section 10(b) and (d) of the IMLC statute. In Section 10(b), when the Member Board in the state of principal licensure revokes, surrenders or relinquishes in lieu of discipline, or suspends the IMLC license, that license in all Member boards is automatically placed on the same status. Likewise in Section 10(d), when any Member board revokes, surrenders or relinquishes in lieu of discipline, or suspends the IMLC license, that license is automatically suspended for 90 days by all other Member Boards. Despite the clear direction of the IMLC statute, the proposed amended rule confusingly changes this automatic discipline into discretionary discipline.

Also, the draft rule conflicts with Section 9 of the IMLC statute which authorizes Member Boards to investigate the conduct of physicians in other Member states as it provides:

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

(e) Any member state may 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.

Under the statute, Member states may investigate, including through the use of subpoenas, potential violations of the statutes in any other member state in which a physician holds an IMLC license. Draft proposed rule 6.6 seeks to limit this statutory investigative and subpoena authority by prohibiting “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.”

Not only does draft proposed rule 6.6 conflict with IMLC statute Section 9 which does not limit subpoenas, but it also undermines the purpose of investigative subpoenas to discover whether unlawful conduct has occurred, which may not become clear until evidence is gathered through subpoenas and the investigation has been completed.

These draft amended rule provisions conflict with and exceed the scope of the IMLC statute. Section 15(a) of the IMLC statute states that “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.”

Further, this raises separation of powers concerns as state legislators voted to approve the IMLC statute based on what they thought was a clear understanding of the text of the IMLC statute. Now, the law could effectively be changed, not by the state legislatures, but rather by a majority vote of the unelected IMLC Commissioners on the proposed rule. Section 20(d) of the IMLC statute is clear that the only way to change the IMLC statute is through unanimous consent of the member states to any proposed amendment to the IMLC statute.

Proposed rule’s adverse effect on patient safety

Section 1 of the IMLC statute states its purpose includes “enhancing the portability of a medical license and ensuring the safety of patients.” Increased portability of licenses and increasing physician use of telehealth in multiple states poses a danger to patient safety in multiple states if a physician is practicing in an unlawful manner. The IMLC statute recognizes this and protects patients through its inclusion of automatic reciprocal disciplinary provisions in Section 10(b) and (d) and the authority for a Member State to investigate and discipline a physician for conduct that occurred in another state included in Sections 9 and 10(a) and (c).

SMBO is concerned that draft amended rule 6.5 would threaten patient safety through the elimination of required, automatic reciprocal discipline by all Member Boards when an IMLC license is revoked, surrendered or relinquished in lieu of discipline, or suspended by one Member Board as required by IMLC statute Sections 10(b) and (d). Without the statutorily required, automatic reciprocal discipline, disciplinary action could be delayed or not rendered at all by Member Boards potentially resulting in harm to patients. Further, an IMLC license holder may seek to avoid discipline altogether by letting the IMLC license expire while a Member Board’s disciplinary processes are ongoing. The statutory automatic reciprocal discipline, reserved for the serious disciplinary actions of revocation, surrender or relinquishing of a license in lieu of discipline, or suspension, avoids all of these issues and immediately protects patients.

Also, SMBO is concerned that amended rule provision 6.5(a) and proposed rules 6.6 and 6.7¹ exceed the scope of the IMLC statute and inhibit SMBO’s ability to protect patients by

¹ 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.~~

6.6 RESTRICTIONS ON SUBPOENA ENFORCEMENT - 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.

6.7 RESTRICTIONS ON DISCIPLINARY ACTION ENFORCEMENT - 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.

limiting its ability to investigate and discipline physician conduct that occurred in another state. Despite Section 1 of the IMLC statute directing that the Compact “creates another pathway for licensure and **does not otherwise change a state's existing Medical Practice Act**”, amended rule 6.5(a) and proposed rules 6.6 and 6.7 seek to limit a Member Board’s ability to investigate and discipline out of state conduct of a physician licensed by the Member Board.

Medical Boards have long imposed discipline based on actions that occurred in another state due to the threat that the physician’s practice poses to patients in their state. For example, under Ohio Revised Code section 4731.22(B)(10), (12), or (14), SMBO may discipline a licensee for the commission of an act that constitutes a felony, misdemeanor in the course of practice, or misdemeanor crime of moral turpitude in Ohio, regardless of the jurisdiction in which the act was committed. Because state statutes vary greatly in whether and how they criminalize such important matters as sexual misconduct or use or abuse of drugs, these statutory bases of discipline still allow SMBO to protect the health and safety of Ohio’s patients for conduct that occurred in another state.

Sections 9 and 10(a) and (c)² of the IMLC statute allow a Member Board to investigate and take disciplinary action for conduct that occurs in another state whether or not the ground for discipline exists in the other state. Because the Ohio disciplinary statute is not inconsistent with IMLC Sections 9 and 10(a) and (c), the IMLC statute allows for its enforcement as it states: “[n]othing herein prevents the enforcement of any other law of a member state that is not inconsistent with the Compact.” IMLC Statute, Section 24(a).

Draft amended Rule Chapter 6 would inhibit SMBO’s ability to investigate and discipline under its statutes for conduct occurring in another state, including violations of R.C. 4731.22(B)(10), (12), and (14). Instead of protecting patient safety, the draft rules could endanger patients by allowing physicians to avoid discipline under Ohio’s Medical Practice Act.

In conclusion, the State Medical Board of Ohio appreciates the opportunity to voice its concerns and urges the Commissioners to change the proposed amended Rule Chapter 6 to comply with the IMLC statute and to protect patients.

Sincerely,

Stephanie Loucka

Stephanie Loucka, Executive Director
On behalf of the State Medical Board of Ohio

² Section 10. Disciplinary Actions - (a) Any disciplinary action taken by any member board against a physician licensed through the Compact shall be deemed unprofessional conduct which may be subject to discipline by other member boards, in addition to any violation of the Medical Practice Act or regulations in that state.
(c) If disciplinary action is taken against a physician by a member board not in the state of principal license, any other member board may deem the action conclusive as to matter of law and fact decided, and:
1) Impose the same or lesser sanction(s) against the physician so long as such sanctions are consistent with the Medical Practice Act of that state; or
2) Pursue separate disciplinary action against the physician under its respective Medical Practice Act, regardless of the action taken in other member states.