



State of West Virginia *Board of Medicine*

ASHISH P. SHETH, MD
PRESIDENT

QUARTEL-AYNE AMJAD, MD, MPH
SECRETARY

101 Dee Drive, Suite 103
Charleston, WV 25311
Telephone (304) 558-2921
Fax (304) 558-2084
www.wvbom.wv.gov

JONATHAN P. LILLY, MD
VICE PRESIDENT

MARK A. SPANGLER, MA
EXECUTIVE DIRECTOR

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VIA ELECTRONIC MAIL

Members of the Rules and Administrative Procedures Committee
Interstate Medical Licensure Compact Commission
c/o Marschall Smith, Executive Director
imlccexecutivedirector@imlcc.net

Re: Comment Regarding IMLC Rule Chapter 6 and Proposed Amendments

Dear Committee Members:

The West Virginia Board of Medicine (“WVBOM”) is the state agency with the responsibility of protecting the health and safety of the public through licensure, regulation, and oversight of medical doctors (MDs), podiatric physicians (DPMs), and collaborating physician assistants (PAs) in West Virginia.¹ West Virginia was the fifth state to join the Interstate Medical Licensing Compact (“IMLC”). WVBOM issued its first expedited license on July 13, 2017. WVBOM issued its first Letter of Qualification (“LOQ”) as a State of Principal Licensure (“SPL”) on July 27, 2017. Since then, WVBOM has issued LOQs and expedited licenses to over one thousand physicians.

IMLC Rule 6, *Rule on Coordinated Information System, Joint Investigations and Disciplinary Actions* (“Rule 6”), is a critical rule to assist member states in understanding, processing and correctly applying the disciplinary principles, including the discretionary and non-discretionary reciprocal action process, established in the IMLC. WVBOM appreciates the opportunity to provide written comments regarding Rule 6 and the proposed amendments thereto.

Rule 6 was adopted by the Interstate Medical Licensure Compact Commission (“IMLCC”) on November 16, 2018, and has not been amended since. WVBOM proposes that it is time to take an in depth review of this rule, and reform it to improve

¹ The West Virginia Board of Osteopathic Medicine regulates osteopathic physicians and collaborating physician assistants.

clarity, provide greater procedural guidance for disciplinary reporting through the IMLCC, and preserve the integrity of the IMLC's disciplinary provisions. With the onboarding of additional states and a dramatic increase in the breath of IMLC membership, which now includes 39 member states, it is an opportune time to engage with this rule to assure that all member states have clear and appropriate guidance on the requirements of the compact.

Section 6.2. Definitions

WVBOM encourages the IMLCC to review and reconsider the nomenclature used within the rule vis a vis discipline and member states. For example, there is no definition for "reciprocal action." Additionally, some of the terms have the potential to create confusion, such as "Disciplining Board" and other iterations of this term as used within this rule.² Disciplining Board means "a member Board that imposes discipline upon a Compact physician." In the context of explicating reciprocal discipline, this term can be vague and ambiguous, as it can be used for the member board of original discipline, a discipling SPL member board, or a member board imposing reciprocal discipline under the terms of the compact. Discipline and reciprocal discipline are some of the most complex provisions of the Compact. Re-evaluating the terms used to describe disciplinary obligations and authority would be valuable to all member states.

Section 6.3. Coordinated Information System

Section 8 of the Compact authorizes the IMLCC to "develop rules for mandated or discretionary sharing of information by member boards." It would be beneficial to member states to have more specificity in rule regarding mandated and discretionary sharing for records that are not investigative or disciplinary in nature. As an example, at redesignation of SPL, the new SPL will very likely have licensed the redesignating physician via the Compact's expedited licensing process. Consequently, the new SPL will possess very little information regarding the licensee other than a core data sheet and, potentially, information obtained at renewal. This is problematic if the expedited licensee then seeks a new LOQ. It is reasonable and appropriate for states serving as a new SPL to receive information from the former SPL for a more robust physician record. Currently, member boards who may want to engage in such document sharing have no explicit authority to do so in rule unless the physician is subject to a joint investigation. As a result, the sharing does not occur due to confidentiality concerns under state law that could potentially be resolved if Rule 6 addressed this specific situation.³

Under the current rule, portions of the established time frames for the reporting of actions are located in two different sections. (*Compare* 6.3.b, regarding the 10 business day rule for public complaints or actions *with* 6.5.c, regarding revocations, surrenders and suspensions.) It would be helpful to reorganize this information so that it is together, which may minimize noncompliance.

² Section 6.5.b utilizes the term "disciplining board" and "disciplinary board."

³ Rule 4 also does not address information sharing by former and newly designated SPLs.

Section 6.5 Disciplinary Actions

WVBOM respectfully recommends that the IMLCC consider reforming this section for clarity and so that it is aligned with Section 10 of the Compact, which provides the following guidelines for discipline:

1. Regardless of the action taken, action by any member board is unprofessional conduct which may be subject to discipline by other member boards.
2. If a license granted by an SPL is revoked, suspended, or surrendered/relinquished in lieu of discipline all licenses issued to the physician by member boards must be automatically placed into the same status. If the SPL reinstates the license, the licenses that automatically mirrored the SPL action remain encumbered until each member board takes action under the board's medical practice act to reinstate the license.
3. Revocation, suspension, or license surrender/relinquishment in lieu of discipline by any member board requires all licenses issued to the physician by other member boards to be automatically suspended for 90 days during which time the other member boards may investigate whether there is a basis for action under the Medical Practice Act in the other member states. Automatic suspensions may be terminated prior to 90 days if the other member board chooses to do so.
4. If a non-SPL member board (Board A) takes action against a physician's license, another member board (Board B) may elect to deem Board A's action conclusive as to the matter of law and fact decided and:
 - a. Impose the same or lesser sanctions against the physician so long as the sanctions are consistent with Board B's Medical Practice Act; or
 - b. Pursue separate disciplinary action against the physician consistent with Board B's Medical Practice Act

Section 6.5. is not fully harmonious with the provisions of Section 10 of the Compact. WVBOM has concerns that both the original language and the proposed amendments to 6.5.(e), (g), and (h) add ambiguity to the rule, are inconsistent with the Compact, or may be interpreted as such.

Subsection 6.5(b)(3) indicates that "Any member Board, including the state of principal license, may: . . . (3) Take no action." This is vague and ambiguous, and potentially not aligned with the provisions of the Compact. Member states have a statutory duty to take certain actions when another member state or an SPL imposes revocation, suspension or accepts surrender/relinquishment in lieu of discipline. These obligations should be clearly established in the rule.

Section 6.6. Restrictions on Subpoena Enforcement

Section 6.6., which is proposed new language, is inconsistent with the provisions of Section 6.4. Additionally, it is vague and ambiguous:

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.

The phrase “for otherwise lawful practice in the state at the time of service” is difficult to parse. As two different states are referenced as “Member State” in this section, the amendment lacks clarity regarding who determines the purpose of the subpoena, whether it relates to lawful practice, or what state is referred to. Some states may seek attendance or testimony for investigatory, non-adjudicatory purposes. If the IMLCC seeks to impose limitations regarding cooperative subpoenas, it may be useful to consider modifications in section 6.4 which are consistent with Section 10 of the Compact.

Section 6.7. Restrictions on Disciplinary Action Enforcement

WVBOM believes that the purpose of this proposed amendment is to affirm that disciplinary action to be rationally related to the practice requirements in a specific state. WVBOM appreciates and supports this sentiment. Medical boards are charged with protecting the public, and by and large, the cohort of conduct which may result in professional discipline is substantially similar, but there will always be some variations. The Compact does not contain any language that permits a member board to opt out of any action when an SPL revokes a license, even if the conduct which forms the basis of the revocation would not result in a revocation in another member state. WVBOM is concerned that this amendment is inconsistent with the language of the Compact, but hopes that there may be a way to reform the language to give voice to this principle in the rule.

Thank you for the opportunity to submit written comments on Rule 6. This is an important rule. Having a clear, unambiguous rule for member states to refer to is vital, even if doing so requires additional time and resources. WVBOM respectfully requests that the IMLCC reconsider the current amendments and undertake a full review to develop a product that provides as much clear direction as possible on this very complex issue.

For the West Virginia Board of Medicine,


Mark A. Spangler