



November 1, 2022

Commissioners of the Interstate Medical Licensure Compact:

The State Medical Board of Ohio (“SMBO”) discussed the proposed amended Interstate Medical Licensure Compact Commission (“IMLCC”) Rule Chapter 6 at its October 11<sup>th</sup> meeting and appreciates the opportunity to formally comment on it. SMBO has concerns that the amended proposed rules (1) conflict with and violate the IMLC statute; (2) were promulgated in a hurried and procedurally deficient manner; and (3) lacked consideration of the proposed rule’s interplay with license renewal.

### **Proposed amended rules conflict with and violate IMLC statute**

The amended proposed rules conflict with and violate IMLC statute Sections 10(b) and 10(d) in several ways. First, proposed rule 6.6 states that: “A member board authorized or required to impose an automatic licensing action against a Compact physician, under IMLC Statute, Section 10(b) and (d), may immediately terminate, reverse, or rescind such automatic action pursuant to the Medical Practice Act of that state.” This language conflicts with and violates both Sections 10(b) and 10(d).

In Section 10(b), when the Member Board in the state of principal license revokes, surrenders or relinquishes the license in lieu of discipline, or suspends the license, that license is automatically placed on the same status in all Member Boards. Because all IMLC licenses issued by Member Boards derive from the initial grant of license from the Member Board in the state of principal license, the automatic discipline by the member boards cannot be changed unless and until the member board in the state of principal license reinstates the physician’s license. The text of Section 10(b) only provides for the reinstatement of a Member Board license if the state of principal license Member Board first reinstates the license.<sup>1</sup> Section 10(b) of the IMLC statute does not allow a Member Board to unilaterally immediately terminate, reverse, or rescind the automatic discipline as rule 6.6 proposes.

Proposed rule 6.6 is also in conflict with Section 10(d) of the IMLC statute. 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. This ninety (90) day suspension is provided “to permit the member board(s) to investigate the basis for the action under the Medical Practice Act of that state” pursuant to IMLC statute Section 10(d). By allowing a Member Board to “immediately terminate, reverse or rescind” the automatic action, proposed rule 6.6 renders the statutorily required investigation

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<sup>1</sup> (b) 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. **If the member board in the state of principal license subsequently reinstates the physician's license, a license issued to the physician by any other member board shall remain encumbered until that respective member board takes action to reinstate the license in a manner consistent with the Medical Practice Act of that state.**

meaningless. Instead, proposed rule 6.6 encourages Member Boards to take hasty action without the evidence and information that would be obtained by the statutorily required investigation.

Proposed rule 6.6 is both in conflict with the statute and unnecessary because Section 10(d) already allows a Member Board to terminate the automatic suspension prior to the completion of the ninety (90) day suspension consistent with the Medical Practice Act of that Member Board's state after an investigation has occurred.

Proposed amended rule 6.5(h) also conflicts with Section 10(d) because it removes the statutory requirement of an investigation before a change in the ninety (90) day suspension can occur.

Overall, proposed amended Rule Chapter 6 attempts to change the statutorily required automatic discipline in Sections 10(b) and 10(d) into discipline that is "authorized" but allowed to be immediately undone at the discretion of a Member Board. This misuse of the rules process to override or undo requirements in the IMLC statute is troubling. The discussion during the October 3<sup>rd</sup> Rules and Administrative Procedures Committee meeting confirmed that the first draft of the proposed rules attempted to make statutorily required automatic discipline discretionary in the rules, in effect telling Member Boards to follow the proposed rules instead of IMLC statute Sections 10(b) and 10(d). Now, the revised draft offers a more sophisticated, but equally objectionable method to avoid following the statute by crafting a rule that proposes to allow a Member Board to immediately and selectively undo any statutorily required automatic discipline that it does not like.

If the IMLCC does not like certain sections of the IMLC statute, then the proper avenue for changing the statute is not the rulemaking process, but rather a vote by the state legislatures on amending the IMLC statute pursuant to IMLC statute Section 20(d).

The proposed revised Rule Chapter 6 conflicts with and exceeds 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."

### **Procedural Deficiencies**

Making disciplinary rules is among the IMLCC's most important duties because it directly impacts patient safety. A deliberate and methodical process that maximizes transparency and the input of all committee members and the public should be expected in fulfilling this significant responsibility. The rulemaking process has failed to meet this expectation.

Instead, the amended proposed rules have been rushed without opportunity for measured review or comment so that they can be voted on at the IMLC Commission's annual meeting on November 8, 2022. The chronology of the rulemaking process shows a hurried process with missed opportunities for commissioner input and public comment.

On September 26, 2022, the Rules and Administrative Procedures Committee met to discuss the 13 comments received on the original proposed rule action. Then, on September 28, 2022 significant changes were made to the rule after the September 26<sup>th</sup> public meeting and published on the IMLCC website without an opportunity for public comment. Five days later,

these major changes were discussed at the October 3<sup>rd</sup> committee meeting without the benefit of public comments. At the October 3<sup>rd</sup> meeting, even more changes were made and then approved with only a fraction of the committee membership present. A scheduled October 4<sup>th</sup> committee meeting that could have allowed more members of the committee to undertake a comprehensive review of all of the changes was also cancelled. Despite this cancellation, the proposed amended rules were not published until four (4) days later on October 7<sup>th</sup> leaving the minimum required thirty (30) days for notice of rulemaking.

The rush to have these rules voted on by November 8<sup>th</sup> has created the illogical result that the same rule chapter (Chapter 6) will be undergoing a comprehensive review that could start on November 8<sup>th</sup>. Discussion at the September 26<sup>th</sup> committee meeting generated a desire to perform a complete review of the entire IMLCC rule Chapter 6 as a second track of rulemaking related to this rule chapter. The IMLCC will be discussing whether or not to undertake this more comprehensive review on the complete set of Chapter 6 rules at its November 8<sup>th</sup> meeting when it will be voting on rushed revised rule 6.5 and proposed rule 6.6 minutes after the public hearing has ended.

Also, the urgency to have the rules approved by November 8<sup>th</sup> has resulted in less than desirable committee member participation in the formulation and approval of the rules. The revisions to Chapter 6 were voted on by less than half of the 14 members assigned to the committee. In fact, the major changes proposed in rule 6.6 were approved by only 5 committee members. Further, even though the IMLCC has placed the issue of whether ex officio members of committees should be allowed to vote in committees on its November 8, 2022 annual meeting agenda, ex officio members of the committee were allowed to vote on changes to the proposed rules at the October 3<sup>rd</sup> committee meeting.

This rush to have a rule approved by November 8<sup>th</sup> has resulted in procedural irregularities and the substantive issues described above.

### **Interaction of revised rule with license renewal**

Also, the rushed process did not facilitate a discussion on the interaction of this revised rule with IMLC license renewal. This interaction has not been fully considered to determine whether this rule change is necessary, desirable, or a prudent use of IMLCC and Member Board resources.

Section 7(a)(3) of the IMLC statute is clear that for a physician to qualify for license renewal the physician shall not have “a license authorizing the practice of medicine subject to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to non-payment of fees related to a license.” Pursuant to Section 7(a)(3), the revocation, surrender or relinquishment of a license in lieu of discipline, or suspension of a license by a Member Board under Section 10(b) or 10(d) that triggers the automatic discipline by other Member Boards disqualifies a physician from license renewal. In light of this, it is difficult to discern what purpose is served by proposed rule 6.6 in allowing a Member Board to immediately terminate, reverse, or rescind the automatic discipline as the physician would already be ineligible for IMLC license renewal in all Member Board states.

### **Conclusion**

The rushed rulemaking process has led to the proposed amended Rule Chapter 6 that conflicts with and violates the IMLC statute. The State Medical Board of Ohio appreciates the

opportunity to voice its concerns and urges the Commissioners forego these hurried rule changes and instead include all existing Chapter 6 rules in the comprehensive Rule Chapter 6 review that is likely to be initiated at the November 8<sup>th</sup> annual meeting. In the alternative, the State Medical Board of Ohio requests that the proposed revisions to Rule Chapter 6 be changed to comply with the IMLC statute including the removal of proposed rule 6.6.

Sincerely,

*Stephanie Loucka*

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