

July 10, 2023

Rules and Administrative Procedures Committee
Interstate Medical Licensing Compact Commission
5401 South Prince Street, Office 111
Littleton, CO 80120

Re: IMLC Rule Chapter 6 Comments

To the Committee:

This is to submit comments regarding the proposed amendments to IMLC Rule Chapter 6. I am a Commissioner of the IMLCC and represent the Vermont Board of Medical Practice on the Commission.

The following comments pertain to each numbered section of the Rule that is proposed for amendment.

6.4(f). We submit that the provision making subpoenas issued by a member state enforceable in all other member states is overly broad. This provision regarding enforceability of subpoenas should be limited to the states that opt into participation in a joint investigation. It is overly broad for no good reason because there are existing provisions in law that create an orderly process for subpoenas to be enforced in other states. It is called the Uniform Interstate Discovery and Depositions Act. That law, adopted in the vast majority of US jurisdictions, provides a reasonably streamlined process for subpoenas to be made enforceable in other jurisdictions while still providing a forum for a subpoena to be contested, which would provide the opportunity for any conflicts in state laws to be worked out. If a member state opts into a joint investigation with knowledge of what that means in terms of subpoenas from other states that is one thing. Forcing that on all member states would create a disincentive for some states to join or to continue to participate in the compact.

6.5(g). The concern with 6.5(g) is similar to the concern with 6.4(f). A distinction should be drawn between a member board that has opted into a joint investigation and a member board that has declined to opt into such an investigation. The rule could be rewritten to require a board that has opted into a joint investigation to issue a subpoena, and could allow for a request to be made to a board that is not participating in the joint investigation, but the obligation to issue a subpoena should not be forced on a board that has not opted into the joint investigation.

The changes proposed here have become more important over the course of the past year,



as some jurisdictions have worked to modify their laws or signaled an intent to do so in order to make it illegal for physicians licensed in the state to engage in certain medical care, while located in another state where the conduct is legal. The efforts of those states that seek to control practice outside their own jurisdictions are contrary to fundamental concepts stated in Section 1 of the IMLC law. Section 1 sets forth the concept “that the practice of medicine occurs where the patient is located at the time of the physician-patient encounter, and therefore, requires the physician to be under the jurisdiction of the state medical board where the patient is located.” In addition to saying that a physician must have a license where the practice occurs, that language reminds us that they are practicing under the jurisdiction of the state where the patient is located. Section 15(a) of the IMLC law tells us that rules made by the Commission are “to effectively and efficiently achieve the purpose of the Compact.” Rules making subpoenas of a member state enforceable in all other member states would not support the fundamental purpose of having the standards of practice determined under the law of the state where the patient is located.

Thank you for your consideration of these comments and for all the Committee’s work on this important matter.

Sincerely,

David K. Herlihy
Executive Director