



State of West Virginia *Board of Medicine*

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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 Chapters 3, 4 and 6,
and the Proposed Amendments Thereto**

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 Licensure Compact (“IMLC”). WVBOM issued its first expedited license on July 13, 2017, and 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 fifteen hundred physicians.

WVBOM appreciates the opportunity to comment upon proposed amendments to Rules 3, 4 and 6. By way of this submission, WVBOM offers the following comments.

Rule 3

WVBOM is in accord with the substance of the proposed change to Rule 3, *Rule on Fees*, but proposes that the language be modified for clarity. Additionally, WVBOM suggests that the definition section be modified to change “license fee” to “licensure fee” for consistency

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

throughout the rule. Alternatively, WVBOM suggests that “licensure fee” be replaced with the term “license fee” in sections 3.3 and 3.5.

The IMLCC proposed amendment to section 3.3. provides:

3.3 Delegation of collection and disbursement of fees

- (1) Member states are deemed to have delegated and assigned to the Interstate Commission the following responsibilities in collection and disbursement of service fees and licensure fees paid by applicants seeking expedited licensure through the compact:
 - (a) The Interstate Commission shall provide and administer a process to collect service fees and licensure fees from the applicant and remit these fees to the member boards and the Interstate Commission.
 - (b) Service fees and licensure fees collected by the Interstate Commission, member boards shall be notified of the availability of fees and then those fees shall be disbursed to member boards no more than 15 days after the member board request or authorization. ~~no less frequently more than once every 30 - 15 days upon request or authorization from the member board.~~

WVBOM suggests that the modifications would benefit from an active construction and additional clarity. WVBOM proposes:

3.3 Delegation of collection and disbursement of fees

- (1) On its own behalf and on behalf of member boards, the Interstate Commission shall provide and administer a process to collect service fees and licensure² fees from applicants. The Interstate Commission shall remit collected fees to the member boards and the Interstate Commission in accord with the provisions of this rule.
- (2) The Interstate Commission shall notify member states when fees are collected and available, and shall provide an itemization sufficient to permit the member board to reconcile the fees.
- (3) To receive the license and service fees identified by the Interstate Commission as available, a member board shall make a written request for disbursement of funds to the Interstate Commission.

² If the definition section retains the term “license fee”, WVBOM would propose to use that term here as well.

(4) The Interstate Commission shall effectuate fund disbursement within 15 days of receiving a member board request.

Finally, the substance of the proposed amendment to section 3.3, which requires disbursement no more than 15 days after the member board request, appears to be at odds with Rule section 3.5(3), which continues to reference a 30 day distribution. WVBOM recommends the harmonization of these divergent sections.

Rule 4

WVBOM appreciates the goal of the proposed revision to Rule 4, *Rule on State of Principal License*, but is concerned that the language, as proposed, may not successfully limit the use of nominal employers. The IMLCC proposes to amend the definition of employer as follows:

“Employer” means a person, business or organization located in a physician’s designated state of principal license that employs or contracts with a physician to practice medicine. Excluded from this definition is:

1. The mere registration of an employer with the Secretary of State of a member state.
- ~~2.~~ The mere presence of a registered agent of the employer who is located in a member state.

WVBOM respectfully suggests that it may be more effective to couch the amendment in a definition of the term “located”, rather than as an exception to the definition of the term employer. WVBOM proposes the following modification:

“Employer” means a person, business or organization located in a physician’s designated state of principal license that employs or contracts with a physician to practice medicine. For the purposes of this definition, “located” means that the person, business, or organization has a presence within the state, and conducts business within the state beyond: (1) holding a business registration with the Secretary of State; (2) being authorized to do business in the state without, in fact doing business within the state; and (3) maintaining a registered agent in the state.

Additionally, WVBOM suggests that while Rule 4 is under amendment, it is an opportune time to provide some additional guidance and standards for the 25% rule so that this pathway to SPL designation has uniformity and member states have guidance on how to calculate whether 25% of a physician’s practice occurs in a member state. This would be especially helpful in light of the rule language in section 4.3(b), which directs SPLs to apply the requirements to designate a

state as the SPL “contemporaneously.” By its very nature, determining whether or not 25% of a physician’s practice occurs in a member state requires data points, at a minimum, in the near past. Providing a uniform process for establishing when this standard is met would be beneficial to member boards.

Rule 6

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 previously provided comments regarding this rule on September 20, 2022 and resubmits many of its initial comments herewith.

As it originally suggested in September 2022, WVBOM proposes that it is time to take an in depth review of this rule, and reform it to improve clarity, provide greater procedural guidance for disciplinary reporting through the IMLCC, and to preserve the integrity of the IMLC’s disciplinary provisions. With the onboarding of additional states and a dramatic increase in the breath of IMLCC membership, it remains 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.³ 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

³ Section 6.5.b continues to utilize the term “disciplining board” and “disciplinary board.”

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 SLP 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.⁴


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.

Section 6.4. Joint Investigations

WVBOM respectfully suggests that section 6.4.g is arguably inconsistent with the language of the compact, and may impose obligations on member states that were not contemplated by the compact itself. Section 9(c) of the Compact indicates that “a subpoena issued by a member state shall be enforceable in other member states.” It does not obligate member boards to issue subpoenas on behalf of other member states. Consistency with the compact is recommended.

Thank you for the opportunity to comment on the proposed amendments to Rules 3, 4 and 6. The Board appreciates the time and effort the IMLCC, and its committees, have spent on these rules, and appreciate the policy goals the IMLCC seeks to achieve by the proposed amendments.

For the West Virginia Board of Medicine,


Mark A. Spangler

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