



MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

Kenneth Cleveland, M.D. | Executive Director

April 26, 2024

IMLCC Rules and Administrative
Procedures Committee
5401 South Prince Street, Office
111 Littleton, CO 80120

Re: State of Mississippi Comments on Proposed Amendments to Article III
("Officers") and Article VII ("Committees") of the IMLC Bylaws

To the Rules & Administrative Procedures Committee:

On March 15, 2024, the Executive Director sent an email expressing the intention of the Commission to hold a rulemaking hearing at the regularly scheduled Commission meeting on November 12, 2024. Copies of proposed changes to Articles III and VII of the IMLC Bylaws were attached. The email provided an April 29, 2024, deadline for submitting Commissioner comments to be considered at the May 2024 meeting of the Rules Committee.

Please accept this letter as the official comments from the Mississippi Commissioners on the proposed changes to the Bylaws.

Article VII ("Committees")

Section 1

The proposed amendments to Article VII, Section 1 would:

- (1) Limit the Executive Committee's authority to act between Commission meetings by adding the word "policymaking" to the current limitations, which bar the Executive Committee only from "rulemaking or amendment of the Compact or these Bylaws";

- (2) Require that “[p]olicies approved by the Executive Committee be ratified by the full Commission at the next Commission meeting before becoming effective”;
- (3) Require the Executive Committee to provide notice of all meetings, keep minutes for both public and executive session meetings, post reports and other documents presented to the Committee on the Compact website before the meeting, post regular meeting minutes on the website; and
- (4) Prohibiting the Executive Committee from excluding any commissioners from executive sessions.

The proposed changes to Section 1 would severely limit the role of the Executive Committee in shaping policy. Those changes would violate the spirit and letter of the Compact itself. Section 11(k) of the Compact establishes that oversight of day-to-day business and operations of the Commission is the role of the Executive Committee, **not** the role of the full Commission.

The Interstate Commission **shall** establish an executive committee, which **shall** include officers, members, and others as determined by the bylaws. The executive committee **shall have the power to act** on behalf of the Interstate Commission, **with the exception of rulemaking**, during periods when the Interstate Commission is not in session. When acting on behalf of the Interstate Commission, the executive committee **shall oversee** the administration of the Compact including enforcement and compliance with the provisions of the Compact, its bylaws and rules, **and other such duties as necessary**.

(emphasis added). The Compact thus gives near-plenary oversight authority to the Executive Committee when the Commission is not in session, with the only express limitation being rulemaking. Further, Section 11(k) contains expansive language giving the Executive Committee the authority to perform “other such duties as necessary.” Unreasonably limiting the Executive Committee’s ability to carry out its required statutory duties would violate the Compact and interfere with the performance of the Committee’s essential functions.

Further, the proposed language to require any policies approved by the Executive Committee to be ratified by the full Commission, before such policies would take effect, could prevent new policies (deemed immediately necessary by the Executive Committee) from taking effect for up to six months. The day-to-day oversight of a complex, multi-state enterprise like the Commission cannot be effectively and efficiently carried out at six-month intervals. The delay in the implementation of Executive Committee-approved policies could obstruct Commission operations.

Additionally, preventing the Executive Committee from holding meaningful executive sessions when business necessities so require would impair the Committee's ability to provide leadership and oversight at those times when it is most needed. Transparency is usually a virtue, but there are times when open meetings would be detrimental to the Compact and the Commission. Opening executive sessions to any person other than Executive Committee members and essential management personnel could place the legally confidential and privileged nature of executive sessions at risk. Section 11(k) specifies that the members of the Executive Committee "shall include officers, members, and others as determined by the bylaws." Executive Committee members and the persons whose presence is deemed absolutely necessary by the Committee (such as legal counsel) are the only people who can safely be permitted to attend executive sessions of the Executive Committee while maintaining legally protected status.

The full Commission has the opportunity to review the actions of the Executive Committee and check any untoward decisions, policies, or actions every six months. There is no need to impose such a limitation on the front end. That is why Section 11(k) of the Compact mandates the creation of the Executive Committee in the first place: to oversee Commission business when the full Commission is not in session.

The proposed changes to Article VIII, Section 1 would result in an inefficient and unwieldy system that would negatively impact the Compact and the Commission.

Section 2

The proposed changes to Article VII, Section 2 would:

- (1) Remove the power of the ex-officio members of each established committee (the chairperson, vice-chairperson, and executive director) to make motions or have a vote at committee meetings; and
- (2) Remove the authority of committees to act themselves without a vote of the Commission. Committees would be "authorized [only] to create reports containing recommendations for the full Commission." Mandatory Notice and quorum requirements for committees would be established, and committees would be prohibited from excluding any commissioner from their meetings, including executive sessions.

The proposed changes to Section 2 would undermine the existing and effective committee system and invite micromanagement. Limiting the ability of the duly-elected officers and duly-appointed Executive Director to participate in committee proceedings would hinder those officers from providing effective and efficient leadership, oversight, and guidance.

Limiting the authority of established committees from taking any action other than preparing reports recommending action by the full Commission every six months would impair the efficiency and effectiveness of the committee system itself. Opening executive sessions of committee meetings to non-member Commissioners carries the same risks as opening executive sessions of the Executive Committee and is not a sound practice or policy.

The Compact statute, bylaws, and rules should promote effective and efficient oversight, leadership, and operations. The proposed changes to Article VII, Sections 1 and 2, would do the opposite, promoting an inefficient system of governance. For those reasons, Mississippi opposes the proposed changes to Article VII.

Article III (“Officers”)

Section 2

The proposed amendment to Article III, Section 2 would require the chairperson to take into account each Commissioner’s preference and the size of the respective committees in making committee assignments.

Taken in isolation, this change appears innocuous on its face. However, to the extent this language might be interpreted to impose an affirmative duty on the chairperson, or to limit the discretion of the chairperson to consider all relevant factors in making committee assignments, Mississippi opposes this change.

Conclusion

The proposed changes would undermine the leadership and effectiveness of Commission officers and management. For that reason, Mississippi does not support any of the proposed changes to the IMLC Bylaws. Thank you for accepting and considering our comments.

Respectfully submitted,

A handwritten signature in blue ink that reads "Ken Cleveland". The signature is fluid and cursive, with the first name "Ken" and last name "Cleveland" clearly distinguishable.

Executive Director
Mississippi State Board of Medical Licensure
Suite 200-B
1867 Crane Ridge Drive
Jackson, Mississippi 39216
kcleveland@msbml.ms.gov