



State of West Virginia *Board of Medicine*

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April 29, 2024

VIA ELECTRONIC MAIL

Marschall Smith, Executive Director
Interstate Medical Licensure Compact Commission
imlccexecutivedirector@imlcc.net

Re: IMLC Bylaws Amendments – Commissioner Comments

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 two thousand one hundred and fifty physicians.

As Commissioner for the WVBOM, I appreciate the opportunity to comment upon the proposed amendments to Articles III and VII of the duly adopted Bylaws of the Interstate Medical Licensure Compact Commission. By way of this submission, I offer the following comments. As a preface to these comments, I would like to thank the delegation and Commissioners who participated in the development of the proposed amendments. We all serve the common cause of seeking to protect the public while maintaining an efficient mechanism for expedited multi-state physician licensure. Reasonable people may differ concerning the need to amend the governing bylaws, or to what extent such amendments serve the mission of the IMLCC, the health and functionality of the Commission, and the common interests of the member boards as a whole. I submit these comments with the primacy of these goals in mind.

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

Proposed Amendments to Article III

Having served as Commissioner of the IMLCC, and having worked closely with my fellow honorable Commissioners, some of whom have also served as Chairperson, I am confident that Chairpersons customarily consider Commissioner preference and committee size when making appointments and constituting committees. This is a necessary executive function of the Chairperson's role in making appointments and does not require iteration within the bylaws. Chairpersons seek to ensure that the IMLCC is a healthy and functioning organization. Appointing Commissioners where their strengths and interests best serve the Commission as a whole is vital to an effective board and commission.

Including the proposed amendment language does not advance or improve the processes of the Commission. Moreover, "taking into account" is vague and undefined and may serve to support non-meritorious challenges to the Chairperson's exercise of reasonable discretion in making appointments. As an example, if a chairperson, having considered Commissioner A's interest in serving on the Rules Committee nonetheless elected to place Commissioner A on a different committee, Commissioner A may seek to interpret the Chairperson's obligation to "take into account" Commissioner A's interest as directive or prescriptive. Obviously, this cannot be the case, or Commissioners could self-appoint to their preferred Committee, but the language could be misconstrued and sow discord where harmonious engagement would be more beneficial to the IMLCC and its member states. Amendments to bylaws should add to or clarify process, not create less clarity or foster misunderstandings.

In the event that the Commission determines that a modification to describe factors the Chairperson must consider in exercising discretion is a reasonable and appropriate amendment to the Bylaws, I encourage consideration of a modified version of the proposed amendment which reinforces that these decisions are within the scope of the Chairperson's discretion and which alters the other provisions of this section for the purpose of clarity by breaking up the duties into discrete sentences and clauses, such as:

Section 3. Duties

The officers shall perform all duties of their respective offices as provided by the Compact and these Bylaws. Such duties shall include, but are not limited to, the following:

- a. *Chairperson.* The chairperson shall call and preside at all meetings of the Commission, and, in conjunction with the Executive Committee, shall prepare agendas for such meetings. The chairperson shall, having considered Commissioner preference and committee size, make appointments to all committees of the Commission. ~~and, in~~ In accordance with the Commission's directions, or subject to ratification by the Commission, the chairperson shall act on the Commission's behalf during the interims between Commission meetings.

Proposed Amendments to Article VII

The proposed amendments to Article VII are more substantial and more concerning. My concern regarding these proposed amendments is two-fold. First, some of the proposed amendments address processes which are already in place and, while unnecessary, seem benign. Second, some of the proposed changes would implement processes which will hobble the ability of the IMLCC and its Executive Committee to function efficiently and effectively. Consequently, I urge fellow Commissioners to conclude that changes to Article VII are unnecessary at this time. However, in the event that it is determined that some of the proposed modifications would benefit the mission of the IMLCC or the governance of the body, I provide the following additional comments which are specific to the proposed amendments.

Paragraph 1 of Article VII, Section 1 should not be amended to include policymaking as an exception from the interim powers of the executive committee. The IMLCC needs to be nimble and have the ability to address unexpected matters in the interim between Commission meetings. It is appropriate to except rulemaking and Compact or bylaws amendments from the interim powers exercised by the executive committee. However, policymaking is different. As we learned in March of 2020, unexpected developments may occur at any time and with little warning. Stripping the ability of the executive committee to adopt policies during the interim between Commission meetings substantially limits the ability of the Commission to remain on course and effective between meetings. It also divests the Commission to respond to unanticipated occurrences in that same interim. I urge rejection of this proposed amendment.

Paragraph 3 of Article VII, Section 1 requires policies approved by the executive committee to be ratified by the Commission at its next meeting. Policies would not be effective until ratification. For all of the reasons set forth in the preceding paragraph, I oppose this proposed amendment to the extent that it would prohibit policies approved by the executive committee from taking effect until ratified by the Commission.

The proposed amendments to **Paragraph 4 of Article VII, Section 1** are partially a codification of current meeting notice processes and practices. Other portions incorporate new obligations into the functioning of the executive committee, executive sessions and meeting minutes:

The executive committee is subject to the requirements of Article VI of these Bylaws. The executive committee shall provide notice of the date, time, and, if electronic, the link to all meetings. The executive committee may enter executive session but may not exclude commissioners from executive session. The executive committee shall keep minutes for both public and executive session meetings. Reports and other documents presented to the Executive Committee shall be posted on the Compact website

before the meeting. Regular meeting minutes shall be posted on the Compact website.

With respect to meeting notices, the IMLCC already engages in posting Commission meeting and Committee meeting notices and minutes, on its website:

As a part of its policy of public transparency, the Commission posts all of its agendas and public notices for public view. Materials related to Commission and Executive Committee meetings are kept in "pending" status until they are finalized. When minutes summarizing pending Commission and Executive Committee actions are approved, they are then posted in the "Commission Meeting Minutes" section on this page.

Commission committee meeting information is provided below. The committee meeting information is updated regularly but is not archived - only the current committee meeting information is available.²

If there is a substantial need to amend the bylaws to incorporate a requirement that the IMLCC continue to engage in current operations, the language should be modified to clarify that the notice requirement is satisfied if the notice is published on the IMLCC website, and include a notice time frame, such as five days.

The posting of reports presented at an executive committee meeting in advance of the meeting is burdensome and while potentially good practice in most situations, may not always be practicable, and therefore should not be included in the bylaws. This may be a good policy for the Commission to consider in all instances where practical, but it is not a required component of bylaws, and incorporating this requirement into the bylaws could result in collateral consequences.

The executive committee has the authority to enter executive session without a bylaw change. Requiring the admittance of Commissioners who are not on the executive committee as part of the bylaws is not prudent. Every Commissioner, regardless of committee membership, is welcome at all committee meetings. That has always and will always be the case. The purposes of executive sessions are limited, and each of those purposes involves legal advice or confidential deliberations of some nature. It would frustrate the operation of the executive committee if the bylaws compel the committee to invite a larger audience to witness such deliberations. Moreover, it undermines the process and functioning of an organization that delegates executive governance to an executive committee. As an example, if Commissioner B,

² See <https://www.imlcc.org/imlc-commission/public-notices-agendas-and-minutes/> (accessed April 29, 2024).

who is not on the executive committee, is engaging in a campaign of opposition against a matter properly before the executive committee, permitting Commissioner B to be present for executive sessions chills the ability of the executive committee to engage in frank and full discussions and deliberations. Additionally, if all eighty commissioners elected to exercise the right to participate in executive sessions for committees, the process becomes so unwieldy as to undermine the committee process and could foster the potential for inadvertent lapses in confidentiality. Additionally, Commissioners who may have an actual conflict if seated on the committee would be permitted to remain in the room despite such actual conflicts. For example, in the event that a commissioner is adverse to the Commission in litigation, this amendment would arguably permit the adverse commissioner to enter executive sessions which relate to the executive committee receiving legal advice on the adverse litigation. Finally, I foresee the possibility that Commissioners may seek to utilize designees for the purpose of witnessing executive sessions when they are unavailable. This is a potential hazard for abuse and unnecessary conflict which we should avoid. I urge rejection of the amendment for these reason.

The IMLCC executive committee does not currently keep executive session minutes. I encourage the Commission to retain this practice and reject an amendment to the bylaws which would require them to be kept.

Paragraph 2 of Article VII, Section 2 includes an amendment that establishes that ex-officio members of IMLCC committees “shall not have a vote or make motions.” This is a sound amendment and offers clarity that serves the IMLCC and its member states. I support this amendment.

Paragraph 4 of Article VII, Section 2 seeks to: (1) divest from committees the ability to engage in any action other than the creation of recommendation reports to the Commission; (2) establish quorum requirements for committees which are unrealistic in light of the breadth of the IMLCC membership and the current constitution of its committees; (3) codify the notice requirements which are already implemented by IMLCC staff; and (4) implement similar Commissioner access provisions to meeting and executive session as set forth in Section 1, paragraph 4.

In order for the IMLCC to fully function, it must be able to act, when necessary and as appropriately delegated, through its committees. This bylaw change would prohibit things, such as the Technology Committee to react with agility to security audits or the Communications Committee to approve website changes and pertinent updates in a timely fashion. If all Commission action must be vertically integrated and authorized by the body as a whole, the benefit of the committee structure is undermined. I urge rejection of this proposed amendment.

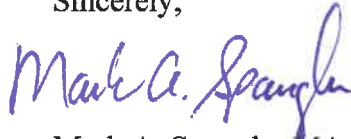
The quorum requirements suggested by the proposed amendment would bring the operations of the IMLCC, through its committee structure, to an unavoidable cycle of delay and inaction. I urge rejection of this proposed change to the bylaws. If the Commissioners seek to consider a quorum requirement for committees other than the executive committee, something other than a simple majority is required to ensure functionality of processes. This is something that requires careful consideration and debate.

Meeting notices are already being posted. To the extent the Commission believes adding this requirement to the bylaws to be beneficial, the language should be modified to clarify that the notice requirement is satisfied if the notice is published on the IMLCC website, and include a notice time frame, such as five days.

As noted previously, Commissioners may attend any meeting or committee meeting. There is no need for this to be memorialized in the bylaws. With respect to the admission of commissioners to executive sessions, I adopt my comments concerning similar proposed amendments Paragraph 4 of Article VII, Section 1 in opposition to the same.

Thank you for the opportunity to comment on the proposed bylaws amendments. I appreciate the time and effort the IMLCC, its staff and Commissioners, have spent on these amendments. The comments are offered with respect for the process and a desire to ensure that the IMLCC's bylaws support a process that balances transparency with efficiency and institutional vigor.

Sincerely,



Mark A. Spangler MA, CMBE