



July 8, 2015

To Physicians Licensed in the State of Ohio,

You may be aware of the Interstate Licensure Compact for physicians that has been adopted by some states to address multi-state licensure. The State Medical Board of Ohio has decided not to pursue legislation to implement the Interstate Licensure Compact at this time, and would like to provide you with the reasoning behind that decision.

For those of you who are not familiar with the Interstate Licensure Compact, it is a formal agreement between states to address licensure for physicians seeking licensure in multiple states. The Compact Agreement was developed in September 2014 and to date has been adopted by the legislatures of nine states (Alabama, Idaho, Minnesota, Montana, Nevada, South Dakota, Utah, West Virginia and Wyoming). According to the Federation of State Medical Boards' website, an additional 10 states have legislation pending to adopt the Interstate Licensure Compact (Iowa, Illinois, Maryland, Michigan, Nebraska, Oklahoma, Rhode Island, Texas, Vermont and Wisconsin). The Compact is governed by the Interstate Compact Commission which was activated when seven states adopted the Compact. It is estimated that the Interstate Compact Commission will become fully operational in the next 12 to 18 months.

In order to be eligible for a license through the Compact process, physicians must meet the following criteria:

- Hold a full, unrestricted license to practice medicine in a Compact state;
- Hold specialty board certification or hold a time unlimited specialty certificate;
- Have no discipline on any state medical license;
- Have no discipline related to controlled substance prescribing;
- Not be under investigation by any licensing or law enforcement agency;
- Passed the USMLE or COMLEX within 3 attempts;
- Successfully completed a graduate medical education program.

The Board has identified several areas of concern with the Interstate Licensure Compact, including loss of self-determination, financial issues, legal issues, and the administrative burden associated with additional bureaucracy and lack of operational clarity.

**Loss of Self-Determination: The Compact would remove the Ohio Medical Board's authority to regulate its licensees.**

- The Compact Commission will adopt rules that have the force of law in the member states and supersede any conflicting state law. If Ohio becomes a member of the Interstate Compact, the rules would be applicable to Ohio even if Ohio votes in opposition to their adoption at the Compact Commission.
- The rules of the Compact Commission will determine the application process for the interstate expedited license, the application fee, the issuance of the license, the renewal fee and determine what disciplinary or investigatory information is required to be shared with other member boards.

- Ohio would have no ability to deny or restrict a license to a physician who has been determined to be eligible for the Interstate Compact license by another member board, even if that individual would be denied a license under Ohio law.

### **Financial Issues: The Compact imposes duties without providing for appropriate funding to the Ohio Board**

- Licensure and renewal fees are virtually the exclusive source of funding for the Board.
- The Compact requires states to provide services without receiving a fee. For example, if Ohio is designated as the “state of principal license” by the applicant, Ohio must determine whether the applicant is eligible for the interstate expedited license without receiving any fee. If Ohio finds the applicant to be ineligible, it must incur the costs of an administrative hearing under the Ohio Administrative Procedures Act, without any fee.
- The Commission will levy an annual assessment to the member states to cover the operations of the Commission, with the assessment determined by a formula adopted by the Commission. At this time, the amount of this fee is unknown.
- Renewals must be made through the Commission. The Commission will collect the fee for renewal in each state of licensure and then distribute the allotted amount to each state. Currently, the Board receives the majority of its funding from the biennial renewal fees.

### **Legal Concerns: The Compact may not be legally permissible, and violates the confidentiality of investigations**

- Under the Compact, licensure records for physicians granted an interstate license are deemed to be investigatory records, and, therefore, confidential. Under the Ohio Public Record Law, licensure records are public documents and are regularly shared with hospitals, physicians and other members of the public. This discrepancy will create legal challenges under the Ohio Public Record Law.
- There is a strong likelihood that the Compact will create a due process legal challenge to the Ohio disciplinary requirements. If a license is suspended in one state, it is automatically suspended without a hearing in all states. Even if the state that originally imposed the suspension reinstates the license, the other states must hold a hearing before reinstating the license.
- The requirement to share investigatory information with other member states puts Ohio’s participation with DEA and law enforcement task forces at risk. Although the information is classified as “confidential” it doesn’t preclude another state from providing the information to the physician being investigated. This is in direct conflict with DEA and law enforcement task force requirements.

### **Additional Bureaucracy and Confusion: The Compact will likely add an administrative burden and slow the licensure processes**

- If Ohio adopts the Compact, there will be two different licensure processes: (1) Ohio law and (2) the Compact. Both processes include an “expedited” license but the requirements are different. This will confuse applicants and the staff.
- There will be duplicative reporting of licensure and disciplinary information to the FSMB and to the Commission.
- All complaints against physicians who hold the interstate expedited license must be reported to the Commission. However, many states have a different interpretation of the word “complaint,” and there will likely be inconsistencies in the application of this requirement.

- Because renewal of an interstate expedited license must be completed through the Commission, renewal will likely take longer to be reflected in Ohio's database.

Ohio currently has numerous options for physicians considering licensure in this state, including an expedited license available to physicians who have already practiced for five years in another state. The Interstate Licensure Compact would not create any new services or options for physicians in Ohio, and it will likely increase the costs to the physicians and limit the Board's authority to regulate its licensees. For these reasons, the Board is not pursuing legislation to adopt the Compact in Ohio.

We would like to hear from you on this issue. Please send any comments to Joan Wehrle at [Joan.Wehrle@med.ohio.gov](mailto:Joan.Wehrle@med.ohio.gov).

Sincerely,

*The State Medical Board of Ohio*



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