

The Interstate Medical Licensure Compact: Claims vs. Reality

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Practicing physicians and their patients have legitimate concerns about the proposed Interstate Medical Licensure Compact, developed by the Federation of State Medical Boards (FSMB) and now under consideration by legislatures in at least 14 states.¹ FSMB claims it is a simple bill to ease interstate physician licensure while maintaining state sovereignty over the licensing process.² Those who have read the 28-page Compact have discovered that what FSMB claims, and what the Compact language actually says, are vastly different.

Opposition to the Compact has been growing from a wide range of concerned parties, including legislators, medical boards, physicians, and patients. On Jan 9, the American Legislative Exchange Council (ALEC), an influential coalition of state legislators, approved a resolution strongly condemning the proposed Compact.³ Missouri's medical board has voiced "major areas of concern."⁴ In addition, the Association of American Physician and Surgeons has mobilized physicians and patients to oppose the Compact.

"Misleading public statements and distortions" are coming from those opposed to the Compact, claims the FSMB, which released a "fact sheet" to dispel such "myths."⁵

Who is telling the truth about the Compact: FSMB, or groups voicing opposition?

To answer this question, a comparison of FSMB claims vs. actual wording of the Compact is in order.⁶

[Note: The page number references given for quotations from the Compact are keyed to the final proposed Compact language that FSMB released on Sep 20, 2014. A copy can be downloaded from: <http://AAPSONline.org/InterstateMedicalLicensureCompactFinal.pdf>.]

FSMB Claim: "The Compact does not require a physician to participate in Maintenance of Certification (MOC)."

Truth: The Compact (pp 2-3) defines a physician as one who "holds specialty certification or a time-unlimited specialty certificate recognized by the American Board of Medical Specialties or the American Osteopathic Association's Bureau of Osteopathic Specialists." Except for the declining number of physicians with a lifetime certificate, MOC is required to maintain specialty board certification and thus required to be licensed through the Compact.

FSMB goes to great lengths to explain that "[t]he Compact makes absolutely no reference to Maintenance of Certification (MOC)." However its own definition of "physician" requires MOC for most physicians participating in the Compact.

The American Board of Medical Specialties (ABMS), purveyor of the MOC programs required to maintain board certification, says it is pleased that the FSMB "included it [board certification] among its criteria for this Compact." And in its statement praising the Compact, ABMS admits that this "exceeds current state licensing requirements."⁷

The Compact puts physicians who do not participate in ABMS and AOABOS products at a competitive disadvantage. A state legislature should not be passing laws that are handouts to such private, unaccountable organizations. "Compact qualification could become...a requirement for credentialing at hospitals, or for placement on insurance panels," explains the general counsel of Missouri's medical board.⁴

For more than a decade FSMB has been driving to incorporate the ABMS Maintenance of Certification (MOC) program into the renewal process for a basic medical license.⁸ Physician opposition has so far thwarted these FSMB efforts, but if the Interstate Medical Licensing Compact is enacted, FSMB will have won a strategic foothold toward its goal.

FSMB Claim: MOC will not be required as a condition of license renewal for physicians participating in the Compact.

Truth: Perhaps it is not required immediately, but the Compact (pp 7-8) states: "The Interstate Commission is authorized to develop rules to address renewal of licenses obtained through the Compact."

FSMB Claim: The Compact would not supersede state authority or change a state's medical practice act. "It is the ultimate expression of state authority."

Truth: The Compact (pp 3-4) states that rules made by the Interstate Commission have "the force and effect of statutory law in a member state."

The Compact (p 24) also states: "All laws in a member state in conflict with the Compact are superseded to the extent of the conflict." Additionally, it states: "All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the commission, are binding upon the member states."

No fewer than six times in the 24-page Compact (pp 5-8, 23), the Interstate Commission is "authorized to develop rules" that would apply to each participating state on a wide range of issues, including rules that would negatively impact physicians' due process and privacy rights, e.g. "[t]he Interstate Commission is authorized to develop rules

for mandated or discretionary sharing of information by member boards” (p 23).

Putting aside the ability of the Commission to promulgate new rules, there is already a litany of shocking rules specified in the proposed Compact that harm a physician’s rights to due process. Here are just a few:

If disciplinary action is taken against a physician by a member board not in the state of principal license, any other member board may consider the action conclusive as to matter of law and fact decided (pp 9-10);

If a license granted to a physician by a member board is revoked, surrendered or relinquished in lieu of discipline, or suspended, then any license issued to the physician by any other member board shall be suspended, automatically and immediately... (p 10);

Member boards shall share complaint or disciplinary information about a physician upon request of another member board (p 8);

Member boards may report any nonpublic complaint, disciplinary, or investigatory information not required by Subsection (c) to the Interstate Commission (p 8);

A subpoena issued by a member state shall be enforceable in other member states (p 9);

Any member state may investigate actual or alleged violations of the statutes authorizing the practice of medicine in any other member state in which a physician holds a license to practice medicine (p 9).

In addition, the Compact language appears vague regarding whether some of the above due-process changes apply only to physicians participating in the Compact, or whether they might apply to all physicians in a state that signs on. The Compact’s rules regarding disciplining physicians are “one of the more streamlined processes coming out of the Compact,” explains Texas Medical Board Executive Director Mari Robinson.⁹

Imagine the impact of such rules if a state decides to make participation in a state or federal program (e.g. “ObamaCare”) mandatory for licensure. A physician who refuses and has his license revoked could face severe challenges practicing in any state that participates in this Compact!

FSMB Claim: The American Legislative Exchange Council’s criticism of the Compact contradicts its own policies and goals, because in the past ALEC has supported interstate compacts related to other matters.

Truth: This epitomizes a logical fallacy and insults the intelligence of American physicians and patients. ALEC, an influential and respected coalition of state legislators, opposes the Interstate Medical Licensing Compact on several grounds, including concerns about increased costs to states, the need to protect citizens from “regulatory excesses,” the Compact’s inappropriate definition of “physician,”

and diminution of states’ “autonomy and control over the practice of medicine.”³

FSMB Claim: The Compact won’t increase expenses for participating states, and in fact it will reduce costs.

Truth: When has the creation of a new bureaucracy ever reduced costs? Implementation of this Compact and creation of an “Interstate Commission” to oversee it will be expensive. How much will it cost? No one knows for sure. The promise to states that it won’t increase costs is pure fantasy.

“This organization that is being formed is tremendous in its breadth and scope and it is going to cost a ton of money to fund it. We may find the funding borne on the backs of the physicians of this state,” stated South Dakota Sen. Blake Curd, M.D., during debate in his state senate.¹⁰

The Compact (p 15) states: “the Interstate Commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff.” This is “binding upon all member states.”

Here are other ways outlined in the Compact (pp 13-14) that the Interstate Commission is authorized to spend funds. It can:

- pay, or provide for the payment of the expenses related to the establishment, organization, and ongoing activities of the Interstate Commission;
- establish and maintain one or more offices;
- borrow, accept, hire, or contract for services of personnel;
- purchase and maintain insurance and bonds;
- employ an executive director who shall have such powers to employ, select, or appoint employees, agents, or consultants, and to determine their qualifications, define their duties, and fix their compensation;
- lease, purchase, accept contributions or donations of, or otherwise own, hold, improve or use, any property, real, personal, or mixed.

In an attempt to protect the state’s budget, the South Dakota Senate added a provision stating that funding for the Compact can’t come out of the state’s general fund. Who would then pay for this Compact? Likely physicians would pay through increased licensing fees, possibly whether they participate in the Compact or not.¹⁰

FSMB Claim: States can easily withdraw from the Compact.

Truth: States joining the Compact are potentially signing a blank check. According to the Compact (p 22), a withdrawing state “is responsible for all dues, obligations, and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.”

In addition, a state is obligated to remain in the Compact for one year after it decides to withdraw.

As Sen. Curd sees it, “[W]e are signing up for an open-ended extended period of expenditure for this body that we

will have very little oversight over. Since I've been in Pierre that's not how we do business."¹⁰

Here is one more power the Compact (p 15) grants to the Interstate Commission: It is granted the ability to "seek and obtain trademarks, copyrights, and patents." It is not yet clear what the Commission intends to do with this power, but other "non-profits" abuse them, e.g. the AMA's CPT code monopoly and the ABMS's proprietary MOC product. Some physicians have had their careers ruined by punitive lawsuits filed by "non-profits" protecting their copyrights.

That FSMB claims about the Compact are so greatly different from what the Compact actually says should be a strong warning to legislators considering this legislation.

In addition to FSMB and ABMS, large healthcare systems are pushing for the Compact.¹¹ The reason is apparently "more telemedicine reimbursement payments," explains Iowa State Rep. Linda Miller.¹² The Compact could facilitate the effort by healthcare systems and insurers to further narrow patients' options about which physician they can see. Instead of seeing the independent doctor down the street, a patient may only be able to have a telemedicine appointment with an out-of-state physician if he wishes to be "covered" by his health plan.

Conclusion

The Interstate Medical Licensure Compact, despite representations to the contrary, will have the effect of undermining state sovereignty, as well as increasing the power of a private bureaucratic organization to intervene in, define, and control the practice of medicine.

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