Testimony to House Health Care Committee on S.253
March 29, 2018

Robert S. Emmons, M.D.
92 Adams Street, Burlington, Vermont 05401
802 865-2863, robertsemmons@comcast.net

Summary: **The Vermont legislature is considering S.253, a bill to join the Interstate Medical Licensure Compact, in the hopes that its mechanism for expediting licenses will give out-of-state physicians a new incentive to offer telemedicine services in Vermont, thus increasing access to care for Vermonters. Participation in the Compact levies new fees on physicians, which ultimately will be passed onto ill patients seeking care. The IMLC also creates significant legal liabilities for physicians, so much so that I predict few will want to join the small number of physicians nationwide— approximately 850— who have joined so far. Other, better alternatives exist for expanding access to care for Vermont citizens.**

Controversy around the IMLC: The IMLC has been controversial around the country and in Vermont. A number of state medical societies, notably Michigan and Ohio, have rejected participation in the Compact because they view it as detrimental to patient care. Legal counsel to the Missouri Board of Medical Practice advised against participation in the Compact on the grounds that its restrictions of due process for physicians are unlawful and unenforceable; in other words, the statutory language is so broad in places that it is open to multiple interpretations. Three years ago, the Vermont Medical Society decided not to support participation in the Compact, based largely on the problem of adding unnecessary costs to patient care. Over the years that these objections have been raised, not one word of the statutory language creating the Compact has been changed, because language creating this kind of Compact cannot be changed once it is in place. Lawyers advocating for the Compact have simply devised new arguments, very carefully worded, to try to allay the concerns of physicians.

Unnecessary Fees: Under the IMLC, in exchange for the expedited process, a physician must pay hefty fees that mount up to approximately $1000, all told, on top of full licensing fees in each state where she chooses to practice. Any fees levied on physicians will ultimately be passed on to ill patients seeking care. Data published on the IMLC website indicate that it currently takes forty to sixty days to get a license through the Compact, which is comparable to to twelve states that can issue licenses in two months or less. Anecdotal reports indicate that it takes four to six months for the Vermont Board of Medical Practice to issue a new license. An alternative to joining the IMLC would be to simply direct the Vermont Board to bring its license application processing in line with other states that are more successful. Yet another approach is taken by Ohio, which has developed a concierge service for physicians applying for licenses: medical board staff, for a fee, will assemble documents for physicians and the time waiting for licenses is reduced from an average of 57 days to an average of 21.

Existing Programs for Reciprocal Licensing: The Federation of State Medical Boards is the sponsor of the IMLC, and one of its local representatives initiated the push in Vermont to join the IMLC. The FSMB is a private corporation that takes in some $50 million a year in gross receipts selling its proprietary products, including licensing exams, to

medical students, residents, and physicians. The FSMB has persuaded many, but not all, state legislatures to pass laws requiring telemedicine physicians to hold licenses in the states where their remote patients reside. This is an artificial barrier to care that adds no demonstrable clinical value, but it does increase opportunities for medical boards to collect more licensing fees.

A lot of public policy around the country eschews the approach of linking licensure to the telemedicine patient's location at the time of the clinical encounter. For the past twenty-five years, a nurse has been able practice in any one of a compact of thirty participating states with only one license. In the VA system, only one state license allows a physician to practice, including telemedicine, in any state. The United States Congress, over the objections of the FSMB, passed the Telemedicine for Medicare Act of 2015. This bill provides for physicians to be paid for providing telemedicine services to Medicare beneficiaries without licensure where patients reside. We have years of experience with these programs of reciprocal licensing, and I have been unable to find a single report of a patient harmed by an out-of-state physician specifically because she was not protected by her home state's rules and statutes.

Loss of Due Process: Physicians who get licenses in multiple states through the Compact have to give up a significant measure of due process: if the participating physician's license is suspended or revoked in one state, then the same sanction automatically goes into effect in all other participating states, *without a hearing*. If a physician gets her license outside the Compact, any sanctions in one state get reported to other states, but the physician retains her right to a hearing before sanctions can be levied in additional states. In addition, the Compact gives member states the authority to investigate and sanction physicians in other states.

My colleague Richard Levenstein is a nationally known health law attorney, licensed in Florida and Vermont. If a physician he represented was contemplating adding a license in Vermont, Mr. Levenstein would strongly advise his client to get a license through the ordinary, non-"expedited" application process rather than through the Compact. Avoiding the hassle of delayed license application is not worth the risk of losing due process, in his opinion. In fact, Mr. Levenstein would feel that he was not meeting his professional obligations to his client if he did not so advise. Participation in the Compact is indeed voluntary, but do we really want to expand access to care based on the premise that some out-of-state physicians will fail to do their personal due diligence?

The following clinical scenario illustrates the new legal liability for physicians using the Compact:

A Vermont-based gynecologist obtains her New Hampshire license through the Compact. A New Hampshire teenager consults with the Vermont doctor via telemedicine, and the Vermont doctor prescribes for her patient. The teenager specifically requests that her parents not be informed of the treatment, out of concern for her personal safety. If the Vermont doctor does not follow New Hampshire's law that requires parental notification, even though excellent, ethical care is provided lawfully according to Vermont statutes, the New Hampshire medical board can investigate the doctor and suspend her New Hampshire license. Under Compact rules, her Vermont license is automatically suspended. Suddenly, without notice, her Vermont patients do not have a doctor. If the Vermont doctor got her New Hampshire license outside the Compact, neither she nor her patients are subject to the jeopardy of an automatic sanction without a hearing. Suspension of the New Hampshire license, if that happens, must be reported to Vermont, but

outside the Compact, the Vermont Board of Medical Practice has the chance to make its own decision about whether patient safety or legal compliance is the higher moral value.

If Vermont decides to join the Compact, knowing that restriction of due process for physicians is part of the deal, it sends a message, no doubt inadvertently, but still inevitably, about the State's attitude toward physicians. I can look at a map of the states that have already joined the Compact and quickly ascertain where physicians are less likely to be treated fairly in the event of the kind of disputes that come up in everyday professional life. I can best sum up the Vermont board's attitude toward practicing physicians by quoting a physician who has served on the Board. I asked him if the Board has ever made an error in sanctioning a physician, and he answered with a flat "no." That sums up for me why the idea of a sanction by one medical board becoming automatic in multiple states is unwise and ultimately detrimental to patients. We can expand access to care through other, better mechanisms, as outlined above.