

VERMONT MEDICAL SOCIETY

Date: February 16, 2018

To: Senate Health & Welfare Committee

From: Jessa Barnard, Executive Director

RE: S. 253 Interstate Medical Licensing Compact Discipline Question

The Committee heard testimony today regarding the S. 253, establishing an Interstate Medical Licensing Compact that raised the following hypothetical:

A physician is practicing in Vermont and sees a patient in Vermont. The patient is a New Hampshire resident. The physician is licensed through the compact in both VT and NH. Can the NH Board of Medical practice investigate and discipline the physician for something that happened in VT that violates ONLY the NH practice act/laws but is legal in VT where the care took place, for example, providing an abortion without parental consent?

VMS reached out for input from Kristin Schleiter, a senior attorney with the American Medical Association and an expert on the Compact. She provided the following response and offered to seek confirmation from the Commission staff, if helpful. Please let me know if I can help facilitate answering any additional questions the Committee may have.

To answer the hypothetical, no, the Compact does not allow New Hampshire's medical board to investigate a physician for care that took place in Vermont, pursuant to a Vermont license, and that does not violate Vermont law. Section 1, Purpose, states:

The Compact also adopts the prevailing standard for licensure and affirms that the practice of medicine occurs where the patient is located at the time of the physician-patient encounter, and therefore, requires the physician to be under the jurisdiction of the state medical board where the patient is located.

Similarly, the Compact only authorizes a physician to practice pursuant to the medical practice act of the state where the patient is located. That is – it doesn't allow any other state's laws to carry over into another state, just by virtue of a physician holding multiple licenses obtained through the Compact. Section 5 states:

(d) After receiving verification of eligibility under subsection (b) and any fees under subsection (c), a member board shall issue an expedited license to the physician. This license shall authorize the physician to practice medicine in the issuing state consistent with the Medical Practice Act and all applicable laws and regulations of the issuing member board and member state.

When the Compact was being drafted in 2014, [the AMA] shared with FSMB our concerns about the potential for the Compact to expose physicians to disciplinary actions for actions that were not violations of the medical practice act of the state where the physician was practicing at the time of the alleged violation, like the example [posted to the Committee today].

And vice versa -- We were concerned that the automatic disciplinary actions allowed through the Compact would allow a physician to be sanctioned for care that may have been violations of the medical practice act of the state where the treatment occurred, but was not a violation of the medical practice act

of the secondary states. E.g. modifying your example below, we wanted to make sure that the following would not happen –

A physician is practicing in New Hampshire and sees a patient in New Hampshire. The physician performs an abortion in NH without parental consent, which violates the NH medical practice act, but does not violate the VT medical practice act. The NH medical board sanctions the physician. The physician's VT license is temporarily sanctioned as a result. The VT medical board decides to follow through and impose these sanctions on the physician's VT license, even though, again, the action did not take place in VT, and did not violate the VT medical practice act.

We shared these concerns with FSMB, and so requested and FSMB included language to clarify that member boards cannot discipline a physician for violations of other states' practice acts that are not violations of the member state's practice act.

Specifically, in Section 10 you'll see the following:

SECTION 10. DISCIPLINARY ACTIONS 9

(a) Any disciplinary action taken by any member board against a physician licensed through the Compact shall be deemed unprofessional conduct which may be subject to discipline by other member boards, in addition to any violation of the Medical Practice Act or regulations in that state.

(b) If a license granted to a physician by the member board in the state of principal license is revoked, surrendered or relinquished in lieu of discipline, or suspended, then all licenses issued to the physician by member boards shall automatically be placed, without further action necessary by any member board, on the same status. If the member board in the state of principal license subsequently reinstates the physician's license, a license issued to the physician by any other member board shall remain encumbered until that respective member board takes action to reinstate the license in a manner consistent with the Medical Practice Act of that state.

(c) If disciplinary action is taken against a physician by a member board not in the state of principal license, any other member board may deem the action conclusive as to matter of law and fact decided, and:

(i) impose the same or lesser sanction(s) against the physician so long as such sanctions are consistent with the Medical Practice Act of that state;

(ii) or pursue separate disciplinary action against the physician under its respective Medical Practice Act, regardless of the action taken in other member states.

(d) 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(s) issued to the physician by any other member board(s) shall be suspended, automatically and immediately without further action necessary by the other member board(s), for ninety (90) days upon entry of the order by the disciplining board, to permit the member board(s) to investigate the basis for the action under the Medical Practice Act of that state. A member board may terminate the automatic suspension of the license it issued prior to the completion of the ninety (90) day suspension period in a manner consistent with the Medical Practice Act of that state.

Again, this language was included to address the exact concern you've raised.

If you need official confirmation that this is also the Commission's understanding, let me know, and I'll be happy to connect you to the Commission's staff.