Testimony to Senate Health and Welfare Committee on S.253
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Summary: **The Vermont legislature is considering S.253, a bill to join the Interstate Medical License 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 creates significant liabilities for physicians, so much so that I predict few will want to join. Data posted on the Compact Commission's own website indicates that its process, so far, does not even reduce the number of days from application to licensure, compared to regular licensing, so the Compact may not be able to fulfill the promise of its main function. Thus, passage of this bill is unlikely to improve Vermont's physician workforce, or quality of care, in a meaningful way, at the cost of creating an unnecessary new administrative structure in an already cluttered health care field. If the State of Vermont wishes to expedite licensure as a way to improve the availability of telemedicine, then the State of Ohio models a good alternative: a concierge service, under the direction of its own medical board, that expedites license applications. I recommend that the Health and Welfare Committee table S.253, in order to further study the Ohio alternative, which accomplishes exactly the same goals without excess administrative baggage and new costs for patients.**

Biography: I am a psychiatrist who has maintained a full-time private practice In Burlington for more than twenty-eight years. I have served as Chair of the Ethics Committee for the Vermont Psychiatric Association. I also serve as a forensic consultant to physicians facing disciplinary action, which gives me the opportunity to observe up-close how medical boards conduct investigations and levy sanctions. Neither I nor any of my associates have ever accepted an expense-paid trip to a conference from the Federation of State Medical Boards, the organization promoting the Interstate Medical License Compact.

Rationale for Compact: Joining the Interstate Medical License Compact is seen as a way to increase the effective physician workforce in Vermont. Vermont does suffer from a severe shortage of physicians in nearly all medical specialties: since 2011, I have personally observed a calamitous climb in wait times for appointments with doctors, Bad things happen to patients as they wait. One highly effective way to increase the physician workforce in Vermont would be to raise compensation: but that would require new expenditures. Increasing telemedicine appears to be a way to increase the effective workforce without new expenditures, but remove visits are substituted for face-to-face visits. National surveys indicate that physicians now spend about half of their time dealing with data collection. Please don't forget that the physician workforce could be increased, with no need to raise fees or salaries, and with face-to-face care resulting, by reducing doctors' burdens of data collection.

High Fees, No Results: 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. Whenever a program is funded through fees levied on physicians, the costs are passed onto sick, vulnerable patients—I call this an illness tax. So far, according to a recent post on the Compact Commission's website, the average length of time from initial application to issuance of license is forty to sixty days, which is not expedited at all relative to ordinary licensing!

In-State Versus Out-of-State Telemedicine: Using telemedicine to maintain continuity of care with a physician one has already met in person, or as a way to promote collaboration between Vermont physicians is one thing, and it is quite another thing for patients to get treatment from out-of-state physicians they have never met in person. To put it another way, it is one thing for a patient in Island Pond to visit via telemedicine with a physician in Burlington, and it is quite another thing for that rural Vermont patient to consult with a doctor in California. The IMLC is not needed for in-state telemedicine.

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. My observations of how medical boards actually operate make me feel very uneasy about automatic sanctions.

My friend 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 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. This is the primary basis for my prediction that few physicians would join the IMLC to serve Vermonters.

The physician leaders of the Vermont Medical Society who have offered initial support for joining the Compact find it reassuring to note that the loss of due process seems to apply only to physicians who voluntarily opt in to the Compact. However, on closer reading, some of the language about investigative and disciplinary powers in S.253 turns out to be so broad that multi-state physicians who choose to avoid the Compact could, depending on how state boards interpret the language, unknowingly fall under its provisions, sometimes even in matters unrelated to medical licensure. Representatives of FSMB have offered reassuring messages that the provisions of the Compact apply only to participating physicians, but narrower statutory language would have been preferable to reassurances during a lobbying phase.

Burdensome Board Certification: Finally, physicians who join the Compact must purchase a proprietary product, a certificate offered by a member the American Board of Medical Specialties. More and more physicians are opting out of Board Certification because it is widely viewed as unreasonably expensive, unreasonably time-consuming, and irrele-

vant to quality clinical practice. This is another reason I predict that few physicians will want to join the Compact; thus, this particular bill is unlikely to improve Vermont's medical workforce in a material way. Many physicians currently Board Certified are choosing not to renew, so that will, over time, reduce the pool of available physicians if the IMLC mechanism is used.

Low Initial Participation: So far, the IMLC has processed applications from only 878 physicians nationwide. I have been inquiring, and no one has been able to name a single physician in Vermont who wishes to participate, nor can I identify any physicians in any other states just waiting to for Vermont to join the Compact before they start offering telemedicine services in our state.

To put it another way, the legislature is not considering joining the Compact because Vermont physicians have asked for it. The Federation of State Medical Boards initiated this legislation. The FSMB is a private corporation, and its spinoff organization, the IMLC, sells a proprietary product to physicians.

Rather than ease in obtaining a license, I suspect that a much greater motivation for out-of-state doctors to serve Vermonters would be the opportunity to make more money in Vermont relative to somewhere else. I have scoured the text of S.253 and I find no provision to raise fees for physicians.

Existing Programs for Reciprocal Licensing: The FSMB has persuaded 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 fees. A lot of public policy around the country eschews the approach of linking licensure to the telemedicine patient's state of residence. 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.

Ohio's Expedited Licensing Program: The State of Ohio rejected participation in the Compact based on concerns about financial conflicts of interest: the FSMB wins allegiance from state medical boards by offering their employees and members expense-paid trips to conferences. Ohio 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. If physicians in VMS support the concept of an expedited license mechanism,

then the Ohio model provides an excellent alternative that avoids the harmful side effects of expensive, time consuming, Board Certification and loss of due process.

Red Flags: On top of adding little to improve quality of care in Vermont, some red flags are waving in the Compact's performance to date. Part of the Compact scheme is to make money selling personal physician information from its proprietary database. So far, minutes from Compact Commission meetings indicate that they cannot proceed yet with this database because the FBI considers it unlawful to turn over personal information on physicians to Compact officials.

Also, the Treasurer of the Compact resigned last summer, citing concerns that the Commission has "do it now and fix it later" attitude rather than "do it right the first time." Finally, minutes from the Compact indicate that they are having trouble reconciling their Chase Bank account with QuickBooks. Apparently, they can't keep track of the fees they are collecting because they have yet to build a database.

Loss of State Sovereignty: Finally, the language of this statute creates a number of sovereignty issues that might give pause to Vermont legislators. S.253 gives the Compact unlimited authority to assess fees on member states, which could become an issue after initial federal grants expire. The officers of the Compact, a private corporation, generously grant themselves complete immunity for any negligence. This statute provides that all laws in member states are superseded by the Compact. (Maryland's medical board has lobbied against the Compact because they believe it provides a mechanism for participating physicians to circumvent their ability to enforce child support collection.) Tennessee initially joined the IMLC and is already so dissatisfied that it is considering leaving; under the rules laid out in S.253, the Compact can sue or assess fees on departing states.

Finally, the Compact gives member states the authority to investigate and sanction physicians in other states. Under this provision, a Vermont-based physician who participates in the Compact could have his Vermont license revoked without a hearing, based on a decision by another state's board, because he inadvertently violated that state's statutes. In this scenario, his Vermont patients are left without care on no notice. Missouri's Attorney General rejected participation in the Compact largely on the grounds that this part of the Compact is unlawful and unenforceable.