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CLIENT ALERT

FSMB Releases Completed Draft Framework for Interstate Physician Licensure

by René Y. Quashie and Amy F. Lerman

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Background

On September 5, 2014, the Federation of State Medical Boards ("FSMB"), a nonprofit organization representing the 70 state medical and osteopathic boards nationwide, announced the completion of its drafting process for its Interstate Medical Licensure Compact ("Compact"). Finalizing the Compact is a critical step toward removing one of the major barriers preventing a greater proliferation of telehealth technologies and services. Under the Compact, a physician who is licensed in his or her principal state and who meets certain educational, certification, and disciplinary criteria would be eligible to apply for an expedited medical license in another state that has adopted the Compact. Adoption of the Compact by states not only will increase license portability for physicians by alleviating the traditional rigid state licensure requirements that impede the practice of telehealth, but also will help improve access to health care for patients across the nation who will benefit from greater adoption of telehealth.

Participation in the Compact would be voluntary for states as well as physicians. However, states choosing to adopt the Compact will likely see the best of both worlds. On one hand, the Compact takes an important step toward streamlining traditionally rigid and state-specific licensure requirements that impede the practice of medicine across state lines. On the other hand, the Compact allows states to maintain sovereign regulatory powers over physicians and the state-specific licenses that they hold. These dual goals are possible because adoption of the Compact by states will still require states to have in place a full medical licensure process and will also require physicians to maintain a separate license in each state where the physician practices. The Compact, consistent with current law, affirms that a physician be licensed in the state where the medical treatment of the patient occurs. Significantly, adoption of the Compact by states will not alter any existing exceptions to physician licensure, such as consultation, whereby states permit out-of-state physicians who are merely consulting with in-state licensed physicians to practice without obtaining an in-state license.

The final draft Compact incorporates only minor changes as compared to previous drafts released by the FSMB.[1] For example, state medical boards voiced concerns in response to previous drafts about physicians with criminal histories (e.g., DUIs) who would be able to obtain interstate licenses without being required to report such incidents. In response to these concerns, the final draft Compact includes a requirement that applicants must submit to fingerprinting and background checks.[2] Other minor revisions include the addition of language that states that a physician may qualify for an expedited license if that physician is board-certified or holds a time-unlimited specialty certificate, and the elimination of the requirement that a physician be in practice for at least three years in order to even qualify for an expedited license under the Compact.

Who's on Board?

A first important statement of support for the final draft Compact came in late September, shortly after the FSMB's announcement, from the American Medical Association ("AMA"). The AMA is supporting not only the final draft Compact, but also, more generally, the FSMB's efforts to increase physician licensure portability on a national scale.[3] The AMA, like the FSMB, has publicly supported the principle that a physician must be licensed in the same state(s) as the patient(s) he or she cares for, while other telehealth advocacy groups (including the American Telemedicine Association) have stated that every state should honor medical licenses granted in every other state. In his statement voicing support for the Compact, AMA President Robert Wah, MD, said, "State-based licensure is an important tenet of accountability, ensuring that physicians are qualified through the review of their education, training, character, and professional and disciplinary histories. . . . The interstate compact . . . aligns with our efforts to modernize state medical licensure, allowing for an expedited licensing pathway in participating states."[4]

Some state medical boards also have quickly shown support for the Compact. Notably, 10 state medical boards, including those in Oklahoma and Texas, as well as the Washington State osteopathic medical board, already have endorsed the concept of the

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[1] *See* Epstein Becker Green's February 2014 and May 2014 Client Alerts regarding the FSMB Interstate Medical Licensure Compact for specifics regarding the framework and the various versions that the FSMB has released: *Draft Framework for Interstate Medical Licensure Compact Released* (Feb. 21, 2014), *available at* http://www.ebglaw.com/publications/draft-framework-for-interstate-medical-licensure-compact-released; *FSMB Releases Revised Draft Framework for Interstate Physician Licensure* (May 9, 2014), *available at* http://www.ebglaw.com/publications/fsmb-releases-revised-draft-framework-for-interstate-physician-licensure.

[2] *Physician Licensure Compact a Work in Progress*, GlobalMed (July 30, 2014), *available at* http://www.globalmed.com/telehealthanswers/interstate-physician-licensure-compact-still-work-progress/.

[3] "The American Medical Association has long supported reform of the state licensure process to reduce costs and expedite applications while protecting patient safety and promoting quality care," Robert Wah, M.D., President of the American Medical Association, said in a Sept. 2014 media statement. *Interstate Medical Licensure Effort Advances*, Health Leaders Media (Sept. 29, 2014), *available at* http://www.healthleadersmedia.com/content/PHY-308464/Interstate-Medical-Licensure-Effort-Advances##.

[4] Ken Terry, *Final Interstate Medical Licensing Compact Released*, Medscape Medical News (Sept. 11, 2014), *available at* http://www.medscape.com/viewarticle/831550.

Compact in principle.[5] Moreover, approximately 15 state medical boards have confirmed that they are actively considering endorsement of the Compact in its final form.[6]

The Compact has also seen support from Congress in the form of a January 2014 letter from a bipartisan group of 16 U.S. Senators. In the letter, the Senators applaud the progress being made by the FSMB and state medical boards through their efforts to "advance[] solutions toward multistate practice through more efficient sharing of medical licensure information" by developing and supporting the Compact.[7]

Nevertheless, some critics remain skeptical and believe that adoption of the Compact by states will actually make the physician licensure process ***more*** complicated by adding additional layers of regulation, coordination (between states), and oversight to an already cumbersome process for both states and individual physicians seeking licensure.[8] Others question the fundamental prospect of other state boards licensing physicians who practice in their states and the practical challenge of obtaining necessary funds to finance this new endeavor.[9]

Looking Ahead

With the drafting process complete and consideration by states under way, the medical regulatory community awaits legislative approval of the Compact in order to begin to

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[5] *FSMB Compact Could Ease Multistate Licensing*, Medscape (Aug. 5, 2014), *available at* http://www.medscape.com/viewarticle/829430.

[6] *Interstate Medical Licensure Effort Advances*, Health Leaders Media (Sept. 29, 2014), *available at* http://www.healthleadersmedia.com/content/PHY-308464/Interstate-Medical-Licensure-Effort-Advances##. One such state medical board is in Iowa. The Iowa State Medical Board has stated that an interstate Compact is "a good thing for Iowa – preserving the state accountability in medical licensure while improving the ease in which qualified physicians can secure permanent licensure in several states." *Iowa Considers Interstate Physician Licensure Compact*, Iowa Medical Society (July 18, 2014), *available at* http://www.iowamedical.org/legis/advocate_issue.cfm?advocateDate=2014-07-18.

[7] Signers of the letter included John Thune (R-SD), Michael Enzi (R-WY), Lamar Alexander (R-TN), John Barrasso (R-WY), Roy Blunt (R-MO), John Boozman (R-AR), Tom Carper (D-DE), Tom Coburn (R-OK), Thad Cochran (R-MS), Al Franken (D-MN), James Inhofe (R-OK), Johnny Isakson (R-GA), Tim Johnson (D-SD), Amy Klobuchar (D-MN), John D. Rockefeller IV (D-WV), and Mark Warner (D-VA).

[8] *Telemedicine and the Interstate Medical Licensure Compact is Here: Will it Succeed?*, Health Care Law Today (Sept. 25, 2014), *available at* http://www.healthcarelawtoday.com/2014/09/25/telemedicine-and-the-interstate-medical-licensure-compact-is-here-will-it-succeed/.

[9] Blake T. Maresh, *The Interstate Medical Licensure Compact: Making the Business Case*, 100 J. MED. REG. 8 (2014), *available at* http://mss.fsmb.org/FSMBJournal/2014-V100_N2.pdf. The author is the Executive Director of the Washington State Board of Osteopathic Medicine and Surgery and states the following in the article:

> [W]e also should have no illusions that bringing an interstate compact to life will be uncomplicated or a consequence-free panacea. Such a sea change will require continued critical thinking to refine the compact's language; extensive communication and change management efforts with the public and our licensees, partners, and stakeholders; and the passage of new laws in Legislatures across the country.

Mr. Maresh concludes, however, that "the interstate compact is the best solution for adapting to the forces of current and future trends."

operationalize the Compact. The legislative approval process requires enactment in at least seven states before an interstate governing commission can be formed. This interstate commission would not have actual licensing authority in any of the states that adopt the Compact; rather, the commission would serve as a "hub" for collecting physician information common to all states as part of their licensure processes, such as credentialing and disciplinary histories. All information collected by the interstate commission to be shared between Compact states would be considered confidential. Once collected, this information would allow the interstate commission to begin accepting physician applications for expedited licensure in Compact states.

It is important to recognize that adoption of the Compact is not the final solution to the challenge of license portability, but rather a first and critical step. The Compact does not completely eliminate all challenges associated with multistate physician licensure. For example, a major barrier related to multistate licensure is the varied timetables that states have for issuing licenses to physicians in states other than their home states. While states that adopt the Compact would implement an ***expedited*** process by exempting certain information from primary-source verification requirements (if such information already has been primary-source verified by the principal state of licensure), the Compact still relies on individual states to issue licenses, which certainly will add time to the overall efforts by physicians to obtain multistate licensure, even in Compact states. The interstate commission overseeing the Compact will need to monitor the process that the Compact envisions, in case as-yet-unrecognized efficiencies can be gained. Compact member states, in turn, will need to be flexible about adopting additional procedural modifications once the process is in motion.

Proponents of telehealth eagerly await the fate of the Compact in the states. Providers interested in the advancement of telehealth and the interstate practice of medicine should closely monitor the activities of any states that are considering becoming early adopters.

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This Client Alert was authored by **René Y. Quashie** *and* **Amy F. Lerman**. **Wandaly E. Fernández**, *a Law Clerk – Admission Pending (not admitted to the practice of law) in the Health Care and Life Sciences practice, in the firm's Washington, DC, office, contributed significantly to the preparation of this Client Alert.* ***For additional information about the issues discussed in this Client Alert, please contact one of the authors or the Epstein Becker Green attorney who regularly handles your legal matters.***

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