

**STATEMENT  
OF  
HUMAYUN J. CHAUDHRY, DO, MACP  
PRESIDENT AND CEO  
FEDERATION OF STATE MEDICAL BOARDS (FSMB)**

**SPECIAL COMMITTEE ON AGING  
UNITED STATES SENATE**

**“HARNESSING THE POWER OF TELEHEALTH:  
PROMISES AND CHALLENGES”**

**SEPTEMBER 16, 2014**

**U.S. Senate Special Committee on Aging**  
**Roundtable Meeting on *Harnessing the Power of Telehealth: Promises and Challenges***

**Introduction**

The Federation of State Medical Boards (FSMB) welcomes the opportunity to offer comments for consideration by the U.S. Senate Special Committee on Aging to explore how advances in technology can be harnessed to advance our nation's health care system and improve the quality and safety of medicine for senior citizens. The FSMB's policy recommendations contained in this submission will help facilitate multi-state medical practice and enable telemedicine throughout the United States, while ensuring that state medical boards will retain their individual authority for discipline and oversight within the system to protect all patients.

**About the FSMB**

The FSMB is the national non-profit organization representing the 70 state medical and osteopathic boards of the United States and its territories. With offices in Texas and Washington, D.C., the FSMB serves as the collective voice for state boards and supports them in protecting the public health and safety.

**The Role of the FSMB in Support of Medical License Portability and Telemedicine**

The FSMB readily agrees that more must be done to streamline the licensure process to support medical license portability, multi-state practice, and telemedicine across state lines. For nearly two decades, the FSMB has played an active role in establishing policies to promote access to quality care by expanding the availability of telemedicine. The FSMB has developed and continues to expand utilization of efficient licensure tools, processes and policies (i.e. an online uniform license application, centralized primary source credentials verification, and medical licensing examination) whereby state medical boards can significantly streamline the licensure process and maintain jurisdiction over physicians practicing in their state. At every stage of the discussion on license portability, the FSMB has emphasized that patient safety must be the highest priority.

For more than 100 years, the FSMB has demonstrated its ability to assist state medical boards in adapting to each new wave of medical innovation - while steadfastly fulfilling their role of public protection. A variety of factors - ranging from changing demographics, an aging population, the need for better and faster access to medical care, the passage of the *Affordable Care Act*, and the rise and use of telemedicine - have created circumstances in which it is important for organizations like the FSMB to explore new approaches to the issue of medical license portability.

Recognizing new approaches to providing quality care (beyond telemedicine to include other delivery models), the FSMB has assisted its member medical boards in mobilizing perhaps the fastest moving initiative in our history as an organization – a new pathway to expedite the licensing of qualified physicians seeking to practice medicine in multiple jurisdictions. The FSMB believes that an Interstate Medical Licensure Compact, now ready for states to formally consider enacting, will offer an effective solution to the question of how best to balance patient safety and quality care with the needs of an expanding and evolving health care marketplace.

**Development of an Interstate Medical Licensure Compact**

At the 2013 FSMB Annual Meeting of the House of Delegates (our policymaking body), *Resolution 13-5: Development of an Interstate Compact to Expedite Medical Licensure and Facilitate Multi-State Practice*, was unanimously adopted by the House of Delegates. The resolution directed the FSMB to convene representatives from state medical boards and special experts as needed to aggressively study the development of an interstate

compact model to facilitate medical license portability. By adopting *Resolution 13-5*, state medical boards recognized the need to enhance a system of licensing that ensures physicians seeking to practice in multiple jurisdictions can do so efficiently and without unneeded burdens.

Since the founding of the United States, the U.S. Constitution's Compact Clause has allowed states to collectively work together to address an issue of shared interest, thereby negating the need for federal intervention. A compact exists simultaneously as a contract between contracting states and a stand-alone statute within state law. A compact is enforceable by state law (statute) and contract law. Formation of a compact requires only two states; however, many compacts are drafted with provisions that require a specific number of signatories before becoming effective. Upon becoming a party to a compact, a state can delegate the rulemaking authority to a Compact Commission that is responsible for administering the compact. The Commission is comprised of appointed representatives, duly appointed from each compact state. This governance structure is an expedient and proven model, and will provide the forum for the exchange of best practices, and focus state efforts and resources in furtherance of the objectives of the compact.

Interstate compacts have proven to be effective in addressing a wide variety of circumstances and issues that have multi-state impact. As such, an Interstate Medical Licensure Compact was determined to be a viable option to support state medical boards in significantly streamlining medical regulatory processes, and facilitating multi-state medical practice.

The FSMB worked in conjunction with the Council of State Governments and state medical board representatives to develop the initial compact framework. At the same time, the FSMB confirmed that its U.S. Department of Health and Human Services Health Resources and Services Administration (HRSA) license portability grant funds (awarded in September 2012) could be purposed for the compact development initiative.

Representing a diverse collection of states, in terms of population, size, and geographic region, an appointed Taskforce outlined principles and critical elements that would need to be addressed in a compact model. The Interstate Compact Taskforce agreed to eight consensus principles to establish parameters for state participation in the compact, and define key concepts for physicians and state medical boards, as follows:

- 1) Participation in an interstate compact for medical licensure will be strictly voluntary for both physicians and state boards of medicine.
- 2) Generally, participation in an interstate compact creates another pathway for licensure, but does not otherwise change a state's existing Medical Practice Act.
- 3) 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.
- 4) An interstate compact for medical licensure will establish a mechanism whereby any physician practicing in the state will be known by, and under the jurisdiction of, the state medical board where the practice of medicine occurs.
- 5) Regulatory authority will remain with the participating state medical boards, and will not be delegated to any entity that administers the compact.
- 6) A physician practicing under an interstate compact is bound to comply with the statutes, rules and regulations of each compact state wherein he/she chooses to practice.
- 7) State boards participating in an interstate compact are required to share complaint/investigative information with each other.
- 8) The license to practice medicine may be revoked by any or all of the compact states.

## **Model Compact Legislation Completed**

For nearly a year, the Interstate Compact Drafting team solicited and considered feedback on various drafts of proposed legislative language for the model compact from state medical boards, provider groups, telehealth organizations, and other interested stakeholders. **The completed version of the model legislation for an Interstate Medical Licensure Compact was released for state consideration in September 2014.**

**Beginning in 2015, state legislatures will introduce the Interstate Medical Licensure Compact for enactment. Many state medical boards, state legislators, and stakeholders have already begun the initial work in support of the enactment process.**

## **The Interstate Medical Licensure Compact Process**

- ❖ *Please note that the following reflects the completed model compact legislative proposal, and does not reflect any final views and opinions of the FSMB, the FSMB's Board of Directors, or any state medical or osteopathic board or its members.*

The compact pathway towards multi-state licensure is an adjunct, rather than a replacement, for the traditional licensure application process. A physician's use of the compact process to obtain licensure in multiple jurisdictions will remain optional.

It is expected that this process will be expeditious for eligible physicians, given that a technical infrastructure will be in place for the Commission to support the rapid transfer and maintenance of licensing information. Complaint and disciplinary information will be shared between compact states, greatly improving the ability of states to protect against the unsafe practice of medicine. It is also important for states that the compact be virtually budget neutral in order for state medical boards to maintain their regulatory and oversight function. State medical boards are experiencing very limited resources and the costs associated with the intake and investigation and adjudication of complaints is significant. The compact process will reduce administrative costs that slow the ability of physicians to become licensed in multiple states, and which hamper the ability of state medical boards to act in the public interest. Ultimately, the compact offers a solution to questions of medical license portability by facilitating a streamlined licensing process for physicians seeking to practice in multiple jurisdictions while ensuring the availability of safe medical care across the nation.

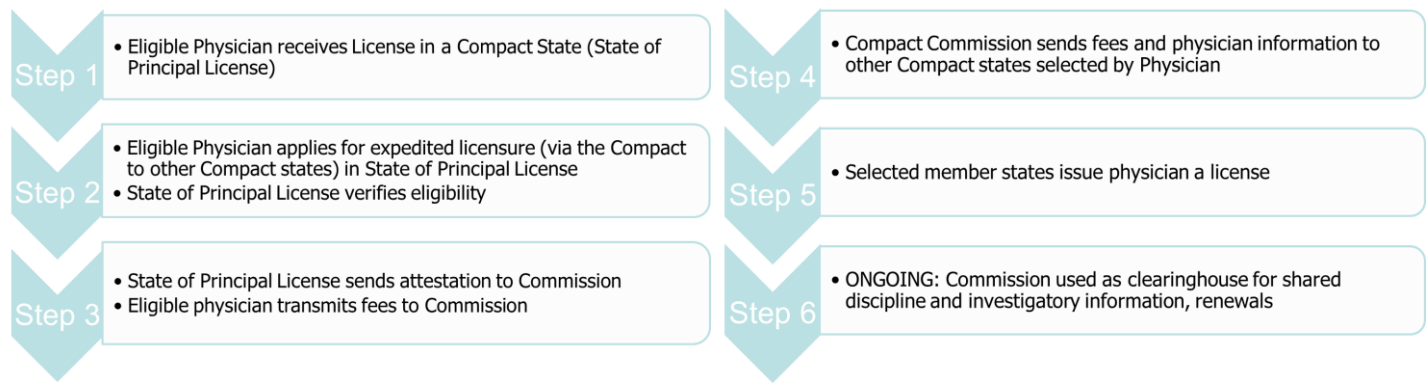
**Initial surveys estimate that nearly 80% of the physician population licensed in the United States would be eligible for expedited licensure via the Interstate Medical Licensure Compact.**

To be eligible for expedited licensure via the compact, physicians must:

- Possess a full and unrestricted license to practice medicine in a compact state
- Possess specialty certification or be in possession of a time unlimited specialty certificate
- Have no discipline on any state medical license
- Have no discipline related to controlled substances
- Not be under investigation by any licensing or law enforcement agency
- Have passed the USMLE or COMLEX within 3 attempts
- Have successfully completed a graduate medical education (GME) program

Physicians who are ineligible for the expedited licensure process facilitated by the compact would still be able to seek additional licenses in those states where they desire to practice, using traditional licensure processes.

## Diagram of Licensure Process via the Interstate Medical Licensure Compact



### Growing Support for the Interstate Medical Licensure Compact

On January 9, 2014, a bi-partisan group of sixteen (16) U.S. Senators publicly commended state medical boards and the FSMB for their recent efforts to streamline the licensing process for physicians who wish to practice in multiple states – thus helping facilitate the use of telemedicine and increasing access to care throughout the United States. In the letter, the Senators noted that the proposed compact system retains important patient-protection advantages of the current state-based medical licensing process. *“We agree that allowing states to share information while allowing each state to retain jurisdiction over physicians who choose to practice in the state is in the best interest of both physicians and patients,”* the letter said. The Senators noted that the new expedited licensure system would help ensure telemedicine is practiced in a *“safe and accountable manner.”*

On February 26, 2014, Maureen K. Ohlhausen, Commissioner, Federal Trade Commission, before the Connecticut Bar Association Antitrust & Trade Regulation and Consumer Law Sections in Hartford, Connecticut, offered the following statement:

*“In what I view as a positive development, a bipartisan group of sixteen U.S. Senators recently commended state medical boards and the Federation of State Medical Boards (FSMB) for their efforts to streamline the licensing process for physicians who wish to practice in multiple states. More specifically, the Senators applauded the boards’ development of the Interstate Medical Licensure Compact (Compact), which would provide a new licensing option under which qualified physicians seeking to practice in multiple states would be eligible for expedited licensure in all states participating in the Compact, which would be voluntary, for both states and physicians. This Compact, while still in development, would appear to greatly facilitate the use of telemedicine while still allowing states to regulate medicine within their borders.”*

On September 5, 2014, Robert M. Wah, MD, President, American Medical Association (AMA), released the following statement:

*“The American Medical Association (AMA) has long supported reform of the state licensure process to reduce costs and expedite applications while protecting patient safety and promoting quality care. 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 released today by the Federation of State Medical Boards (FSMB) aligns with our efforts to modernize state medical licensure, allowing for an expedited licensing pathway in participating states. We applaud the FSMB for developing the interstate compact and other reforms*

*designed to simplify and improve the licensure process for physicians practicing across state lines as well as providing telemedicine services in multiple states."*

### **New Model Policy for Telemedicine Standard of Care**

In April 2014, at the FSMB Annual Meeting, representatives of state medical boards unanimously adopted the *Model Policy on the Appropriate Use of Telemedicine Technologies in the Practice of Medicine*, providing much-needed guidance and a basic roadmap that state medical boards can use in regulating the use of telemedicine technologies in the practice of medicine. The policy will also serve to educate licensees as to the appropriate standards of care in the delivery of medical services using telemedicine technologies.

Among its key provisions, the policy states that the same standards of care that have historically protected patients during in-person medical encounters must apply to medical care delivered electronically. Care providers using telemedicine must establish a credible "patient-physician relationship," ensuring that patients are properly evaluated and treated and that providers adhere to well-established principles guiding privacy and security of personal health information, informed consent, safe prescribing and other key areas of practice.

The guidelines are designed to provide flexibility in the use of technology by physicians – ranging from telephone and email interactions to videoconferencing – as long as they adhere to widely recognized standards of patient care. The guidelines are advisory, meaning that state medical boards are free to adopt it as is, modify it, or retain their own current policies regarding telemedicine.

### **Concern with Legislative Proposals that Compromise State Medical Boards' Ability to Protect the Public**

The FSMB would like to strongly convey its concern regarding federal legislative proposals that seek to: 1) implement a national medical licensure system; 2) expand state licensure exceptions (i.e. 'one-state license to practice nationwide' model); 3) waive state licensure requirements; or 4) redefine the practice of medicine as occurring at the location of the provider, rather than the patient. The FSMB believes that such proposals, though well-intentioned, would significantly undermine state boards' ability to protect their own citizens and discipline physicians for unprofessional conduct. These proposals would inadvertently create an inefficient system where each individual state board would be required to regulate medical practice across the nation.

The FSMB has regularly affirmed that the practice of medicine occurs where the patient is located, rather than where the provider is located. This patient-centered model is both time-tested and practice-proven, and is the nationwide standard that ensures that state medical boards have the legal capacity and practical capability to regulate physicians treating patients within the borders of their state, and to attest that those physicians meet the qualifications necessary to safely practice medicine.

The current fee structure of the state board licensing and renewal system allows state boards to use their limited resources to fund investigations and subsequent prosecutions of physicians suspected of unprofessional medical conduct. Some of the aforementioned proposed licensure models would create a significant and unsustainable financial burden on the state board where the physician is licensed, forcing the board to conduct its disciplinary proceedings and utilize their limited resources, at a much greater cost, to be able to conduct investigations in other states. Generally, state boards' legal authority does not expand beyond their state borders.

Each state determines its own licensing and medical practice standards that meet the individual needs of its citizens. Proposals to expand state licensure exceptions would compromise patient safety by making it less likely that improper or unprofessional care will be identified, properly reported to the state medical board of jurisdiction, and made subject of an investigation.

In the time-tested system of state-based medical licensure, patients and others may file a complaint with their own state medical board in the event of an adverse action by a physician. Proposed legislation that seeks to redefine the practice of medicine at the location of the provider, in the event of such an adverse action, would place the burden solely on the patient to navigate through the complaint filing and investigatory process (including identifying the state of licensure of the physician) across one or more state lines.

### **Recommendation**

**The FSMB sincerely hopes that Senators serving on the Special Committee on Aging will consider and support the efforts of states in adopting an Interstate Medical Licensure Compact that will expand access to care to senior citizens by facilitating multi-state practice and license portability, support the use of telemedicine, and ensure that state medical boards have the ability to protect the public through state-based licensure and regulation.**

The Interstate Medical Licensure Compact is the most widely acceptable and feasible option for reducing barriers to efficient multi-state licensure, while ensuring patient protection. The compact represents the most significant change in the process of state medical licensing in decades, and strikes the right balance between expanding access to care while ensuring that access is extended in a prudent way – protecting patients, first and foremost, in the process.

The Interstate Medical Licensure Compact is not to be confused with other existing health care compacts. The Interstate Medical Licensure Compact model is completely unique – it is not a new bureaucratic layer, but rather, a new alternative licensing pathway that will expedite the licensing process for qualified physicians and remove the requirement for a physician to apply state-by-state for licensure. It creates an interoperable system between state medical boards – linking them in a new way for licensing and information sharing.

The compact provides for the key component of regulation at the point of care – a fundamental principle of medical regulation that must remain in place – while dramatically streamlining the licensing process for qualified physicians who wish to practice in multiple states. It accomplishes the major goals that telemedicine advocates promote: faster licensure, reduced barriers, and a system that can be applied nationwide, creating an enhanced environment for multi-state practice.

The Federation of State Medical Boards (FSMB) welcomes the opportunity to work with the Committee on this important issue, and commends you for your bi-partisan leadership on the advancement of telehealth policy. Please contact Jonathan Jagoda, FSMB Director of Federal Government Relations, at [jjagoda@fsmb.org](mailto:jjagoda@fsmb.org) or 202-463-4003, should you or your staff have any questions.

Thank you.