
BOARD OF MEDICAL EXAMINERS

TO: IMLCC Bylaws and Rules Committee
FROM: Ian Marquand, Exec. Officer, Montana BOME
DATE: September 22, 2016
RE: Comments on proposed IMLCC rules (Chapter 5)

I make the following comments following consultation with the Montana Department of Labor and Industry's Licensing Bureau and Compliance Unit, as well as a conversation with the National Crime Prevention and Privacy Compact Council's Planning and Outreach Committee on Sept. 14, 2016.

COMMENT 1.

In several places in the proposed rules, the term "state of principal licensure" is used. The Compact uses the term "state of principal license." The rules should conform to the language of the Compact.

COMMENT 2.

In proposed rule 5.4 (Eligibility for expedited licensure), Section (1)(f) requires that the applicant has never been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction.

Proposed rule 5.2 (Definitions) includes a definition for "offense" that includes the terms "felony," "gross misdemeanor" and "crime of moral turpitude," all of which are defined elsewhere in proposed rule 5.2.

Despite those definitions, the words "any offense" has raised concerns about what constitutes a disqualifying offense and about who determines that threshold. Since the Compact defines "offense" statutorily, I suggest the following amended language to proposed rule 5.4(1) to clarify the requirement regarding criminal convictions:

(f) Has never been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense felony, gross misdemeanor or crime of moral turpitude, as those offenses are defined in IMLCC Rule 5.2, by a court of appropriate jurisdiction.

COMMENT 3.

In proposed rule 5.4 (Eligibility for expedited licensure), Section (1)(i) requires that the applicant cannot be under active investigation by a licensing agency or law enforcement authority in any state, federal, or foreign jurisdiction. This repeats the requirements of the statutory language of Compact Section 2, Sub-section (11)(i).

In my consultations and conversations, I have been advised that it will be difficult, if not impossible, for a licensing board in a state of principal license to acquire information about ongoing investigations, whether from other licensing boards or from law enforcement. In my own state, investigations of complaints made to the Board of Medical Examiners are confidential until they result in a finding of reasonable cause. In addition, information about ongoing investigations by law enforcement is confidential under statute.

In contrast, a Notice of Proposed Board (or agency) Action is considered a public document in my state, even though it does not constitute a final disciplinary order by a Board. Meanwhile, in the criminal justice system, arrest records and criminal charges filed with a court are matters of public record.

I suggest the following amended language to proposed rule 5.4(1):

- i. ~~Is not under active investigation by a licensing agency or law enforcement authority in any state, federal, or foreign jurisdiction.~~ Is not the subject of a notice of proposed action by a licensing agency.
- j. Is not under arrest by a criminal justice agency or subject to pre-trial supervision by a court or criminal justice agency.
- k. Is not the subject of an un-adjudicated criminal charge, complaint or indictment filed in a court of appropriate jurisdiction alleging a felony, gross misdemeanor or crime of moral turpitude as those offenses are defined in IMLCC Rule 5.2.

COMMENT 4.

In proposed rule 5.5 (Expedited licensure process), Section (1)(a) states that an applicant shall designate a state of principal license. Section 4 of the Compact places conditions on that designation, namely:

- 1) The physician must possess a full and unrestricted license in that state.
- 2) The state is either the physician's primary residence, location of practice, location of an employer, or the state of residence for purposes of federal income tax.

I suggest the following amended language to proposed rule 5.5(1):

- a. Designate a state of principal license. The physician must meet the requirements of Section 4 of the Compact in order to designate a state of principal license.

COMMENT 5.

In proposed rule 5.5(1)(b), an applicant must submit an online application to the state of principal license. In addition, 5.5(1)(d) requires the applicant to submit a sworn statement to the state of principal license attesting to the truthfulness and accuracy of information provided by the applicant.

As of this date, the IMLCC has not approved an application form for physicians to use when applying for licensure via the Compact. I suggest that 5.5(1) be amended to read:

- b. Submit an online application to the designated state of principal license through the coordinated information system. As part of that application, the applicant must attest as to whether or not the applicant meets each of the qualifications found in Section 4 of the Compact and IMLCC rule 5.4.

COMMENT 6.

In proposed rule 5.5(2), sub-section (b)(1) states that the designated state of principal license shall "evaluate the applicant's eligibility for expedited licensure" (and perform a criminal background check) and ultimately issue a letter of qualification verifying or denying the applicant's eligibility. The proposed rule contains no standards for evaluation.

I suggest that the language of this rule be amended to read:

- 1) Evaluate the applicant's eligibility for expedited license. An applicant's eligibility for an expedited license shall be verified only if all the requirements of Section 4 of the Compact and IMLCC rule 5.4 have been met by the applicant. The state of principal license shall deny eligibility when it finds evidence, whether through investigation or the applicant's attestations on an application, that any of the requirements of Section 4 of the Compact or IMLCC rule 5.4 have not been met.

Thank you for the opportunity to comment on these proposed rules.