

February 13, 2023

Commissioners,

The Executive Committee has been focusing our efforts on the steps required for States to further operationalize the EMS Compact. The Executive Committee identified areas where stakeholders and Commissioners may have varied interpretations or opinions of the Compact legislation. The Executive Committee also believes it is essential for stakeholders, individual EMS providers, employers, and Commissioners to have a common understanding of the core components of the EMS Compact, and absolute confidence in the mechanics of the Privilege to Practice.

Therefore, the Executive Committee identified these four core questions:

1. Can a Member State limit the duration of the Privilege to Practice?
2. Can a Member State implement a process to require EMS personnel to apply for a Privilege to Practice prior to recognizing the Privilege in a Remote State?
3. In Section 5.3 of the model legislation, “The individual enters a remote state to provide patient care and/or transport within that remote state.” Does Section 5.3 establish a time differential between the EMS provider ‘entering’ and ‘providing care’?
4. Can an EMS provider be residing in a Remote State for an extended period of time, and function as an EMS provider on an intermittent basis?

The Executive Committee requested the Commission legal counsel to review these questions and provide us an official legal advisory opinion. Doug Wolfberg Esq. and Ken Brody Esq. of Page, Wolfberg & Wirth, LLC (PWW) provided the Executive Committee the attached legal review. Although the Executive Committee has reviewed and agrees the legal advisory, the Executive Committee respect and acknowledge that some Commissioners and stakeholders may have been provided education, advocacy, or different interpretations of the model legislation over the past decade. Therefore, rather than the Executive Committee adopting and implementing the Legal Advisory Opinion, we felt it would be more appropriate for the full commission to review the proposed Legal Advisory. The attached version, based on the advice of the Commission’s legal counsel and approved by the Executive Committee, will be presented for a vote of the full commission at the June 13, 2023 meeting.

If you have any questions, please reach out to me, any member of the Executive Committee, or to Ray Mollers, our Executive Director.

Respectfully,



Donnie Woodyard, Jr.
Chair

INTERSTATE COMMISSION FOR EMS PERSONNEL PRACTICE

Issued: June 13, 2023

Posted: [Date]

Commission Advisory Opinion No. 23-1

The Interstate Commission for EMS Personnel Practice (Commission) has established the following legal advisory opinion regarding each of the following questions pertaining to the EMS Compact (Compact) Privilege to Practice:

- 1) Can a Member State limit the duration of the Privilege to Practice?
- 2) Can a Member State implement a process to require EMS personnel to apply for a Privilege to Practice prior to recognizing the Privilege in a Remote State?
- 3) In Section 5.3 of the model legislation, “The individual enters a remote state to provide patient care and/or transport within that remote state.” Does Section 5.3 establish a time differential between the EMS provider ‘entering’ and ‘providing care’?
- 4) Can an EMS provider be residing in a Remote State for an extended period of time, and function as an EMS provider on an intermittent basis?

In responding to each of these questions, it is important to note that the Compact is merely a series of legislative enactments *by each state* that is a member of the Commission.

Accordingly, these questions must be viewed from the perspective that the Compact is a duly enacted *state law* and must be interpreted consistently with other state laws, such as the state EMS act or similar statute. In many cases, the state’s Compact law specifically preempts other state laws, but again, the Compact is a *state law* compelling that result.

1) Can a Member State limit the duration of the Privilege to Practice?

A Member State cannot implement any blanket limitation of the duration of a Privilege to Practice in that State. It also may not arbitrarily limit the duration of the Privilege to Practice of an individual practitioner in that State, other than through the process of Adverse Action (as provided in the Compact) against an individual’s Privilege to Practice as necessary and appropriate.

No provision of the Model Compact other than Section 8.D authorizes a Member State to limit the duration of the Privilege to Practice of an individual in that State. That provision authorizes a Remote State to terminate the individual’s exercise of the Privilege to Practice in that State by taking an Adverse Action against an individual’s Privilege to Practice in that State. The Adverse Action would need to be based upon some conduct prohibited by the Remote State’s laws that permit the Adverse Action.¹

The above analysis relates to the ability of a Member State to limit the duration of a privilege to

practice under the express language of the Model Compact. This does not limit the ability of an EMS Agency (as defined in Section 2.8 of Commission Rules) to use licensure vs. Privilege to Practice in its hiring or employment decisions. For instance, if an EMS Agency elects to require an employee (or volunteer) to obtain a license after a certain period of time – such as utilizing the Privilege to Practice for 90 days and then requiring the employee to obtain in-state licensure – the EMS Agency would have the ability to impose such a limitation.

2) Can a Member State implement a process to require EMS Personnel to apply for a Privilege to Practice prior to recognizing the Privilege in a Remote State?

A Member State cannot implement a process to require EMS personnel to apply for a Privilege to Practice in that State as a condition for recognizing the Privilege to Practice of that individual. The Model Compact contains no provision permitting a Remote State to implement a process to require an EMS provider to apply for a Privilege to Practice in the Remote State before recognizing the Privilege to Practice of the EMS provider.

A Privilege to Practice under the Model Compact is granted automatically to an EMS provider if the EMS provider's Home State satisfies the requirements of Section 3.C of the Model Compact and the EMS provider satisfies the requirements of Section 4.B of the Model Compact.²

Again, this is limited to the ability of a Member State to require a separate application process for a Privilege to Practice. Nothing in the Model compact limits the ability of an EMS Agency or Medical Director to perform skill verification processes, pre-employment testing or other processes required by the EMS Agency. Possessing a Privilege to Practice does not exempt an EMS practitioner from the customary pre-employment and employment practices of an EMS Agency to assure the competence of providers in their employ (including volunteers).

3) In Section 5.3 of the model legislation, “The individual enters a remote state to provide patient care and/or transport within that remote state.” Does Section 5.3 establish a time differential between the EMS provider ‘entering’ and ‘providing care’?

Nothing in Section 5.3 of the Model Compact, or any other provision of the Model Compact, expressly establishes any duration of time or differential in which EMS provider operating under the Privilege to Practice enters a Remote State to provide patient care and/or transport within the Remote State. Also, nothing in Model Compact expressly authorizes a Remote State to limit the period of time an individual under the Compact Privilege may provide permitted services in the Remote State. We note that it would be practically difficult, if not wholly impossible, to identify and implement such a specific standard given the geographic and operational differences in EMS nationwide.

It should be noted that although the Model Compact does not establish any time limitations on exercising the Privilege to Practice, Section 4.B.3 of the Model Compact provides that the Privilege to Practice must be exercised under the supervision of a Medical Director. Also, Commission Rule 4.0 expressly states that the Privilege to Practice is limited to situations when “the individual is performing EMS duties that are assigned by an EMS Agency that is authorized

in the remote state.” In other words, the exercise of the Privilege to Practice is not independent and is effective only when directed by an EMS Agency and under the supervision of a Medical Director.

4) Can an EMS provider be residing in a Remote State for an extended period of time, and function as an EMS provider on an intermittent basis?

An EMS provider functioning under a Privilege to Practice may reside in a Remote State for an extended period of time and function on an intermittent basis as an EMS provider in the Remote State. The period of time, if any, that an EMS provider of a Member State resides in a Remote State is not relevant to the licensee’s exercise of the Privilege to Practice in the Remote State. An EMS provider may reside in a Remote State and be licensed in a Home State in which the EMS provider does not reside. The Privilege to Practice of an EMS provider allows the EMS provider to provide EMS in a Remote State whenever the EMS provider is providing EMS as assigned by an appropriate authority³ and under the supervision of a Medical Director.⁴

It is important to note that the EMS Compact, unlike some other healthcare licensure compacts in the United States, uncouples the concept of “residency” or “domicile” from licensure. Some compacts require that an individual hold a license in their state of residency (i.e., the state in which the licensee is domiciled), but the EMS Compact essentially defines a Home State as any in which the individual is issued a license. For that reason, there is no limitation on the Privilege to Practice that is based on the place of residence or domicile of the licensed provider.

As noted above, nothing would prevent an EMS Agency from requiring an employee (or volunteer) to possess a state license – either immediately or at some point in time after employment begins – as determined by the EMS Agency.

¹ Pursuant to the definition of “Adverse Action” at Section 2.B. of the Model Compact such an action must be as permitted by the Remote State’s laws.

² Section 3.C. of the Model Compact provides that a Home State license authorizes an individual to practice in a Remote State under the Privilege to Practice if the Home State satisfies the five requirements listed under that subsection. Section 4.B provides that to exercise the Privilege to Practice an individual must satisfy the three requirements listed under that subsection. Section 4.A. of the Model Compact provides that Member States shall recognize the Privilege to Practice of an individual licensed in another Member State that is in conformance with Section 3.

³ Section 5 of the Model Compact.

⁴ Section 4.B.3 of the Model Compact.

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January 12, 2023

PRIVILEGED AND CONFIDENTIAL **ATTORNEY-CLIENT COMMUNICATION**

VIA ELECTRONIC MAIL

Ray Mollers
Executive Director
Interstate Commission for EMS Personnel Practice
5010 E Trindle Road, Suite 202
Mechanicsburg, PA 17050

Dear Ray:

This is in reply to your request on behalf of the Interstate Commission for EMS Personnel Practice ("Commission") Executive Committee for a legal opinion responding to each of the following questions pertaining to the Privilege to Practice.

In responding to each of these questions, it is important to note that the Compact is a legislative enactment *by each state* that becomes a member of the Commission by having enacted the Compact. Accordingly, these questions must be viewed from the perspective that the Compact is a duly enacted *state law*. As a state law, if there is any inconsistency between the Compact and a previously enacted state law (including the state's EMS statute), the provision in the Compact preempts that inconsistent provision of the other state law. If there is no inconsistency between the Compact and another state law, the Compact does not interfere with the other state law.

The individual questions and our responses are as follows:

Questions

- 1) Can a Member State limit the duration of the Privilege to Practice?
- 2) Can a Member State implement a process to require EMS personnel to apply for a Privilege to Practice prior to recognizing the Privilege in a Remote State?
- 3) In Section 5.3 of the model legislation, “The individual enters a remote state to provide patient care and/or transport within that remote state.” Does Section 5.3 establish a time differential between the EMS provider ‘entering’ and ‘providing care’?
- 4) Can an EMS provider be residing in a Remote State for an extended period of time, and function as an EMS provider on an intermittent basis?

Responses

1) Can a Member State limit the duration of the Privilege to Practice?

A Member State cannot implement any blanket limitation of the duration of a Privilege to Practice in that State. It also may not arbitrarily limit the duration of the Privilege to Practice of an individual practitioner in that State, other than through the process of Adverse Action (as provided in the Compact) against an individual’s Privilege to Practice as necessary and appropriate.

No provision of the Model Compact other than Section 8.D authorizes a Member State to limit the duration of the Privilege to Practice of an individual in that State. That provision authorizes a Remote State to terminate the individual’s exercise of the Privilege to Practice in that State by taking an Adverse Action against an individual’s Privilege to Practice in that State. The Adverse Action would need to be based upon some conduct prohibited by the Remote State’s laws that permit the Adverse Action.¹

The above analysis relates to the ability of a Member State to limit the duration of a privilege to practice under the express language of the Model Compact. This does not limit the ability of an EMS Agency (as defined in Section 2.8 of Commission Rules) to use licensure vs. Privilege to Practice in its hiring or employment decisions. For instance, if an EMS Agency elects to require an employee (or volunteer) to obtain a license after a certain period of time – such as utilizing the Privilege to Practice for 90

¹ Pursuant to the definition of “Adverse Action” at Section 2.B. of the Model Compact such an action must be as permitted by the Remote State’s laws.

days and then requiring the employee to obtain in-state licensure – the EMS Agency would have the ability to impose such a limitation.

2) Can a Member State implement a process to require EMS Personnel to apply for a Privilege to Practice prior to recognizing the Privilege in a Remote State?

A Member State cannot implement a process to require EMS personnel to apply for a Privilege to Practice in that State as a condition for recognizing the Privilege to Practice of that individual. The Model Compact contains no provision permitting a Remote State to implement a process to require an EMS provider to apply for a Privilege to Practice in the Remote State before recognizing the Privilege to Practice of the EMS provider.

A Privilege to Practice under the Model Compact is granted automatically to an EMS provider if the EMS provider’s Home State satisfies the requirements of Section 3.C of the Model Compact and the EMS provider satisfies the requirements of Section 4.B of the Model Compact.²

Again, our response is limited to the ability of a Member State to require a separate application process for a Privilege to Practice. Nothing in the Model compact limits the ability of an EMS Agency or Medical Director to perform skill verification processes, pre-employment testing or other processes required by the EMS Agency. Possessing a Privilege to Practice does not exempt an EMS practitioner from the customary pre-employment and employment practices of an EMS Agency to assure the competence of providers in their employ (including volunteers).

3) In Section 5.3 of the model legislation, “The individual enters a remote state to provide patient care and/or transport within that remote state.” Does Section 5.3 establish a time differential between the EMS provider ‘entering’ and ‘providing care’?

Nothing in Section 5.3 of the Model Compact, or any other provision of the Model Compact, expressly establishes any duration of time or differential in which EMS provider operating under the Privilege to Practice enters a Remote State to provide patient care and/or transport within the Remote State. Also, nothing in Model Compact expressly authorizes a Remote State to limit the period of time an individual under the Compact Privilege may provide permitted services in the Remote State. We note that it

² Section 3.C. of the Model Compact provides that a Home State license authorizes an individual to practice in a Remote State under the Privilege to Practice if the Home State satisfies the five requirements listed under that subsection. Section 4.B provides that to exercise the Privilege to Practice an individual must satisfy the three requirements listed under that subsection. Section 4.A. of the Model Compact provides that Member States shall recognize the Privilege to Practice of an individual licensed in another Member State that is in conformance with Section 3.

would be practically difficult, if not wholly impossible, to identify and implement such a specific standard given the geographic and operational differences in EMS nationwide.

We should note that although the Model Compact does not establish any time limitations on exercising the Privilege to Practice, Section 4.B.3 of the Model Compact provides that the Privilege to Practice must be exercised under the supervision of a Medical Director. Also, Commission Rule 4.0 expressly states that the Privilege to Practice is limited to situations when “the individual is performing EMS duties that are assigned by an EMS Agency that is authorized in the remote state.” In other words, the exercise of the Privilege to Practice is not independent and is effective only when directed by an EMS Agency and under the supervision of a Medical Director.

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It is important to note that the EMS Compact, unlike some other healthcare licensure compacts in the United States, uncouples the concept of “residency” or “domicile” from licensure. Some compacts require that an individual hold a license in their state of residency (i.e., the state in which the licensee is domiciled), but the EMS Compact essentially defines a Home State as any in which the individual is issued a license. For that reason, there is no limitation on the Privilege to Practice that is based on the place of residence or domicile of the licensed provider.

As noted above, nothing would prevent an EMS Agency from requiring an employee (or volunteer) to possess a state license – either immediately or at some point in time after employment begins – as determined by the EMS Agency.

³ Section 5 of the Model Compact.

⁴ Section 4.B.3 of the Model Compact.

Interstate Commission for EMS Personnel Practice
January 12, 2023
Page 5

We hope these answer your questions. Please let us know if you need anything else.

Very truly yours,

A handwritten signature in black ink, appearing to read "Douglas M. Wolfberg". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Douglas M. Wolfberg