



**Physical Therapy Compact Commission Rules and Bylaws Committee Meeting Minutes
July 19, 2018**

WebEx

COMMITTEE MEMBERS PRESENT: Kathy Arney, North Carolina, Committee Chair
Joe Shanley, New Hampshire
Andrew Wodka, Washington

COMMITTEE MEMBERS ABSENT: Scott Majors, Kentucky

COMMISSION STAFF PRESENT: T.J. Cantwell, Compact Administrator

FSBPT STAFF PRESENT: Jeffrey Rosa, Managing Director, Post Licensure Services

Call to Order

The meeting was called to order at 3:05 PM, ET. T.J. Cantwell called roll and determined a quorum was present.

Approve Minutes (Action Required)

Motion: Joe Shanley moved to approve the April 16 and April 19 minutes as submitted and the June 20, 2018 meeting minutes as amended. Andrew Wodka seconded the motion. The motion carried without objection.

Discussion of Potential Rules Changes

As part of its annual review process, the Rules and Bylaws Committee reviewed and discussed suggested edits to the drafted Rules amendments. (Attached)

Discussion of Potential Bylaws Changes

As part of its annual review process, the Rules and Bylaws Committee reviewed and discussed suggested edits to the drafted Bylaws amendments. (Attached)

Next Steps

The draft proposed Rules and Bylaws amendments will be shared with the Executive Board at its August 15, 2018 meeting for feedback and then shared with all Commission Delegates and Administrators for feedback. All feedback will be provided to Rules and Bylaws Committee for consideration at its next meeting in September.

Next Meeting

The Rules and Bylaws Committee will schedule the next meeting for September where it will finalize and vote on recommending the proposed amendments to the Executive Board.

Adjournment

The meeting was adjourned at 3:45 PM, ET.

2018 DRAFT Compact Rules and Bylaws Changes

Suggested Bylaws Changes

- 1) Article V.4 – Suspension and Termination of Membership in the Compact
Reason: Review for possible clarification regarding roles of the Executive Board in the suspension and termination process, as well as, other items that may need to be better explained to provide transparency in the process.

Proposed Change:

Section 4. Suspension and Termination of Membership in the Compact.

- A. The grounds for default include, but are not limited to, failure of a member state to perform such obligations or responsibilities imposed upon it by the Compact, or the rules and bylaws of the Commission promulgated under the Compact.
- B. If the Commission or the Executive Board ~~determines has reason to believe~~ that a Member State has defaulted in the performance of its obligations or responsibilities under the Compact or the adopted Rules, a representative of the Commission shall the following steps shall be followed:
 1. Provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default, and any action to be taken by the Commission; and
 2. A representative of the Commission shall Provide remedial training and specific technical assistance regarding the default to meet with representatives, including the Delegate of the Member State, including to discuss the potential default and identify potential ways to cure the default.
- C. If the default is not cured, the Member State’s membership in the Commission shall be suspended upon a two-thirds (2/3rds) vote of the Commission. The motion to suspend membership must include the nature of the default and proposed means of timely curing the default.
- D. Following a vote to suspend membership, a representative of the Commission ~~Commission staff~~ shall send notice of the Commission’s decision to the suspended Member State’s Delegate, Governor and majority and minority leaders of the legislature, in addition to the board administrator and Delegate of all Member States, within ten (10) business days.
- E. If the Commission determines upon a majority vote that the default is not timely cured, ~~upon a majority vote of the Commission,~~ a Notice of Intent to Terminate shall be sent to the board administrator and Delegate of all Member States and by certified mail to the Delegate, Governor and majority and minority leaders of the legislature of the defaulting state. ~~The Notice to the Governor and legislative leadership shall be sent by certified mail.~~ The Notice shall indicate that if the default is not cured as directed by the Commission within the timeframe specified in the Notice, the Commission will proceed to vote to Terminate membership in the Compact.

- 2) Article VII – Committees and Task Forces

Commented [TC1]: Scott Majors- Article V.4: No changes. (Thanks for the inclusion of the additional language in green (“or the Executive Board”.)

Commented [TC2]: Kathy Arney- change to conform with paragraph B

Commented [TC3]: Kathy Arney – clarify that Delegate notified too

Commented [TC4]: Kathy Arney – clarify that Delegate notified too

Reason: Review the need to specify term lengths for standing committees of the Executive Board and full Commission.

Proposed Change:

Section 1. Standing Committees of the Commission

A. Elections Committee.

The Elections Committee will consist of two Delegates, who are not on the Executive Board or slated for election. Committee member terms will expire at the close of the following year's annual Commission meeting.

Section 2. Standing Committees of the Executive Board

A. Finance Committee

The Committee will consist of at least three members. The Secretary/Treasurer shall serve as Chair of the Committee. Committee member terms will expire at the close of the following year's annual Commission meeting.

B. Rules and Bylaws Committee

The Committee will consist of at least three members. The Vice Chair shall serve as Chair of the Committee. Committee member terms will expire at the close of the following year's annual Commission meeting.

3) Article V. Section 11 – Conflict of Interest

Proposed Change:

A. Delegates shall recuse themselves from voting on any issue where a conflict of interest is determined to exist.

4) May need to address in policy instead of rules regarding need to represent commission vs. state board in role as delegate?

Suggested Rules for Review

1) Rule 3.8 – Jurisprudence

Reason: Review the need to specify if jurisprudence requirements are only for initial compact privilege purchase or can also be required at renewal/repurchase.

Proposed Change:

Rule 3.8 – Jurisprudence

If a member state has a jurisprudence requirement to be eligible to obtain a compact privilege in accordance with Section 4.A.7. of the Compact that may be completed after the issuance of the compact privilege, the deadline to complete the jurisprudence requirement is thirty (30) days.

A member state may choose to have a jurisprudence requirement in accordance with Section 4.A.7 of the Compact for both initial purchase and renewal of a compact privilege.

Commented [TC5]: SM-Article VII: No changes. Regarding your comment 4), while I am open to the suggestions of others here as to placement (i.e., whether in Bylaws or Policy), I don't think this needs to be particularly lengthy or complicated – something along the lines of: "While serving as a member of a Standing Committee of the Commission, the member's primary fiduciary obligation shall be to act in the best interest of the Commission as a whole, as opposed to the individual state board for which the member is serving as a delegate."

Commented [TC6]: Scott Majors – No changes.

2) Rule 3.5 –Expiration or Termination of a Compact Privilege

Reason: Review the need to add language addressing the eligibility of someone who has a revoked license and/or has a licensed revoked while holding compact privileges.

Proposed Change:

(A) All compact privileges shall expire on the actual expiration date of the home state license even if the home state allows practice beyond the license expiration date.

(B) Impact of changing the primary state of residence.

1) Moving to another member state.

a. The compact privilege holder must hold an active license in the new home state prior to changing the primary state of residence or all current compact privileges will be terminate.

b. When a compact privilege holder obtains the license in the new home state and changes the primary state of residence, the expiration date of all current compact privileges will be updated to match the expiration date of the new home state license.

2) Moving to a non-member state.

If the compact privilege holder's new primary state of residence is a non-member state, all current compact privileges will be immediately terminated.

(C) If an individual's license is revoked, the individual is deemed to have an encumbrance until the revoked license is reinstated/restored without restrictions, conditions or terms (Note to Committee: This new paragraph probably needs some wordsmithing assistance)

3) Rule 2.1 – Member States Participation

Reason: Review need to adopt a rule to clarify that when the statute refers to 42 USC 14616, it really means the other section

a. Article III subsection (b) refers to 42 U.S.C. 14616 which appears to have been transferred to 34 U.S.C. 40316. It does appear the 42 U. S. Code Section 14616 was editorially reclassified as section 40316 of Title 34, Crime Control and Law Enforcement.

Proposed Change:

(A) To avoid default, member states must have completed all required processes, requirements, and applications necessary to request the ability to receive the results of the Federal Bureau of Investigation (FBI) record search on criminal background checks, as required by the Compact.

(B) Results of the criminal background check shall be reviewed solely by the member state in accordance with state law and shall not be shared, unless otherwise permitted under state law, with individuals, other member states, or the Commission.

(C) A member state cannot participate in issuing compact privileges until such member state has completed the requirements to fully implement the ~~Federal Bureau of Investigation (FBI)~~ Criminal Background Check requirement established in Section 3 of the Compact.

Commented [TC7]: Scott Majors and Kathy Arney - Suggest your red text for (C) may need further wordsmithing. My concern with the proposed language is that the inference to be drawn from the language as proposed is that reinstatement/restoration of a revoked license will necessarily equate to an unencumbered license, and that is not the case. For example, it is not that unusual for a state board to revoke a license and, upon considering a reinstatement application after the passage of some period of time, to reinstate the license with restrictions/conditions/terms, which themselves would serve as encumbrances. Therefore, I would suggest your proposed language be modified as follows: "If an individual's license is revoked, the individual is deemed to have an encumbrance until the revoked license is reinstated/restored without restrictions, conditions or terms."

Commented [TC8]: Scott Majors – No changes

As used in Section 3.A.4 of the Compact, full implementation of the ~~Federal Bureau of Investigation~~ FBI Criminal Background Check requirement means that the member state's licensing board is using the results of the ~~Federal Bureau of Investigation~~ FBI record search on criminal background checks in making licensure decision for all applicants seeking an initial license to practice as a physical therapist or work as a physical therapist assistant in the member state.

(D) ~~Due to editorial reclassification the reference to 42 U.S.C. §14616 in Section 3.B. of the Compact actually refers to 34 U.S.C. §40316 due to editorial reclassification.~~

Commented [TC9]: Kathy Arney – reorder the wording

4) Rule 6.7 – Indicating Availability of Investigatory Information

Reason: Review need to adopt a rule that accepting states will comply with confidentiality statutes of the receiving states with regard to investigatory information

Proposed Change:

Rule 3.7 – Joint Investigations

(A) When participating with other member states in joint investigations, the member state where the violation initially occurred will take the lead on any investigation.

(B) ~~A member state that receives investigative information shall comply with the same requirements regarding confidentiality as those with which the supplying member must comply.~~

Commented [TC10]: Scott Majors - Rule 3.7: I suggest the following minor change to (B): A member state that receives investigative information shall comply with the same confidentiality requirements regarding confidentiality as those with which the supplying member must comply.

Rule 6.7 – Indicating Availability of Investigatory Information

A member state shall notify the Commission that investigatory information is available to party states when a member state has determined probable cause exists that the allegations against the licensee may constitute a violation of the member's state statute or regulations. ~~The actual investigative information shall be shared directly with the party state and not through the Commission.~~

Commented [TC11]: Scott Majors – No changes

5) Rule 4.1 – Active Duty Military Personnel or Their Spouses

Reason: Suggestion from Oregon retired PT. Regarding Chapter 4 Active Duty Military Personnel or Their Spouses, I'd like to point out that unless the Compact definition of Military includes all 7 of the federal uniformed services (Army, Navy, Air Force, Marines, Coast Guard, US Public Health Service and NOAA) there may be unintended complications created by using the term "Military" here rather than "Uniformed Services". I know the US Public Health Service has stationed Commissioned Officers in Oregon who would usually be entitled to most/all considerations intended for the other uniformed services with regard to designating a home of record. Unless Oregon's intent is to specifically exclude USPHS or NOAA from the Home State Designation guidelines, it might be worth considering the language now rather than after a problem arises.

Commented [TC12]: Scott Majors - No changes

Proposed Change:

Rule 4.1 – Home State Designation ~~(NEED RICK'S DOCUMENT TO CONFIRM WHO ACTIVE DUTY INCLUDES)~~

Commented [TC13]: Scott Majors – No Change

For the purposes of Section 5. of the Compact, the following definitions shall apply:

- (A) "Home of record" means, for purposes of the Compact only, the active duty military personnel's State of Legal Residence on record with the military.
- (B) "Permanent Change of Station" or "PCS" means the state of the duty station noted in the active duty military personnel's PCS orders.
- (C) "State of current residence" means the state in which the active duty military personnel or spouse is currently physically residing.
- (D) The active duty military member or spouse of an individual who is active duty military may change the member state designated as the individual's home state by notifying the Commission.

6) New Chapter 2 Rule – Member State Participation

Reason: Review the need to add a section delineating all the requirements a member state needs to complete before issuing compact privileges in order to avoid any confusion in the future.

Proposed Change:

New Rule- Rule 2.4 – Requirements to Issue Compact Privileges

A member state cannot participate in issuing compact privileges until such member state has completed all the following requirements:

- 1) Fully implement the Federal Bureau of Investigation Criminal Background Check requirement established in Rule 2.1.
- 2) Require continuing competence for renewal for physical therapists and physical therapist assistants.
- 3) Fully implement the requirements of Rule 6.1

7) Under Chapter 3 Compact Privilege Eligibility, Adverse Actions, and Encumbrances, Rule 3.1 Home State License please consider if changing the rule as follows:

(c) In addition to complying with reporting name and address changes as required by the home state, compact privilege holders must also notify the Commission of a change of name and/or home (physical and mailing) addresses within thirty (30) business days of the change.

An individual may report a mailing address they keep in the compact privilege state but may be residing in another State.

Proposed Change:

Rule 3.1 – Home State License

- (A) Compact privilege holders may be audited at any time by the Commission to verify compliance with home state residency requirements.
- (B) An individual holding a temporary permit, temporary license, or temporary authorization to practice shall not be eligible for a Compact Privilege.
- (C) In addition to comply with reporting name and address change as required by the home state, compact privilege holders must also notify the Commission of a change of name and/or home state address within thirty (30) business days of the change.

Commented [TC14]: Kathy Arney – May want to add other requirements into the policy for further clarity

Commented [TC15]: Scott Majors - New Chapter Rule 2.4: One minor suggested edit: As we already have in the proposed change to Rule 2.1(A) the language "... results of the Federal Bureau of Investigation (FBI) record . . .", and as new Rule 2.4 will appear later in the same Chapter (i.e., Chapter 2), I suggest your propose language for Rule 2.4 1) state: Fully implement the FBI Federal Bureau of Investigation Criminal Background Check requirement established in Rule 2.1."

Commented [TC16]: TJ - This was the initial suggestion that prompted discussion

Commented [TC17]: Scott Majors – No change. (Thank you!)

(D) Member states may require compact privilege holders to notify the licensing board of the physical location(s) where the individual is providing physical therapy services within that remote state.

Additional Rules comments from the State of Washington AAG Office and Response from Compact Staff

Comment 2: Article IV (1)(h) says notice must be provided within 30 days of the date the adverse action is taken. This section appears to significantly shorten the time for self-reporting. It's unclear why a licensee would be given less time to report than the time frame established by statute. (Rule 3.2)

Response 2: You are correct. Rule 3.2 is unenforceable as written. The early drafts of the Rule stated the correct 30 day timeframe to give notice however at some point during the deliberation process the timeframe was changed to match the reporting requirement for jurisdictions and the conflict with statute was overlooked. This is an item that will need to be corrected by the Rules and Bylaws Committee and amended at the 2018 annual meeting of the Commission. Until that time it will be unenforceable and instead we will rely on the statute language.

Proposed Change:

Rule 3.2 – Self-Reporting of an Encumbrance or Adverse Action on a License

A compact privilege holder must report to the Commission any encumbrance or adverse action placed upon any physical therapist or physical therapist assistant license held by the compact privilege holder in a non-member state within ~~two (2) business~~ thirty (30) days of the effective date.

Commented [TC18]: Scott Majors – No change.

Comment 3: "the Board order of the" seems unnecessary in this sentence. Also, this section is confusing and could use rewriting consistent with Article IV 5, 6, and 7. (Rule 3.3)

Response 3: The wording can be considered by the Commission Rules and Bylaws Committee.

Proposed Change:

Rule 3.3 – Eligibility for Compact Privilege after an Adverse Action or Encumbrance

(A) An individual immediately loses any and all compact privilege(s) upon the effective date of either of the following actions taken by a Licensing Board:

- (1) Adverse action taken against a license or compact privilege; or
- (2) Encumbrance placed upon the individual's license or compact privilege.

(B) Following an adverse action or encumbrance, an individual regains eligibility for compact privilege(s):

- (1) Immediately after the removal of all non-disciplinary encumbrance(s), provided there are no current adverse actions against the license or compact privilege; or

(2) ~~Two~~ (2) years from the effective date of the adverse action as specified in the Board Order. Board order of the adverse action. *(Note to Committee: This change probably needs some wordsmithing assistance)*

- a. If the timeframe imposed by the Licensing Board is greater than two years, the individual will not regain eligibility until the greater timeframe has elapsed; or
- b. If the timeframe when all disciplinary encumbrances have passed and all fines are paid is greater than two (2) years, the individual will not regain eligibility until that timeframe has elapsed.

Comment 5: The statute includes the words "without prior authorization from the other member state." (Rule 3.6)

Response 5: You are correct. The exact wording does not match statute in which case statute would be followed. The Rules and Bylaws Committee will need to address this to add the additional wording.

Proposed Change:

Rule 3.6 – Participation in an Alternative Program
Member state Licensing Boards must add language to any alternative program agreements entered into with a licensee or compact privilege holder prohibiting practice or work in any other member states without prior authorization from the other member state.

Commented [TC19]: SM - Comment 3, Rule 3.3: I may not be appreciating the awkwardness of this language as you have intimated, as I actually have no changes to what you have proposed....

Commented [TC20]: Kathy Arney - typo

Commented [TC21]: Kathy Arney – Should clarify what effective date means in policies

Commented [TC22]: Scott Majors – No change