COMMONWEALTH of VIRGINIA

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FROM: David E. Brown, D.C.
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RE: **Report on Reciprocal Licensing Agreement with Contiguous States**

Attached is the report of the Department of Health Professions on its progress in establishing reciprocal agreements with contiguous states for doctors of medicine and osteopathic medicine, physician assistants, and nurse practitioners pursuant to Chapters 236 and 368 of the 2020 Acts of the Assembly.

Should you have questions about this report, please feel free to contact William L. Harp, M.D., Executive Director of the Board of Medicine at William.harp@dhp.virginia.gov or (804) 367-4621 or Jay Douglas, R.N., Executive Director of the Board of Nursing at jay.douglas@dhp.virginia.gov or (804) 367-4623.

Report on Reciprocal Licensing Agreements with Contiguous States for Doctors of Medicine and Osteopathic Medicine, Physician Assistants, and Nurse Practitioners

Virginia Department of Health Professions

Pursuant to Chapters 236 and 368 of the 2020 Acts of the Assembly

October, 2020

Report on Reciprocal Licensing Agreements with Contiguous States for Doctors of Medicine, Osteopathic Medicine, and Physician Assistants

Preface

The 2020 Session of the General Assembly passed SB757 with Senator Favola as the patron and HB1701 with Delegate Tran as the patron. The text of the two § 1 bills was identical with the following text relevant to this report:

2. *§ 1. That the Department of Health Professions shall pursue the establishment of reciprocal agreements with states that are contiguous with the Commonwealth for the licensure of doctors of medicine, doctors of osteopathic medicine, physician assistants, and nurse practitioners. Reciprocal agreements shall only require that a person hold a current, unrestricted license in the other jurisdiction and that no grounds exist for denial based on § **54.1-2915** of the Code of Virginia. The Department of Health Professions shall report on its progress in establishing such agreements to the Senate Committee on Education and Health and the House Committee on Health, Welfare and Institutions by November 1, 2020.*

The pursuit of reciprocal agreements for the licensure of doctors of medicine, doctors of osteopathic medicine, and physician assistants was undertaken by William Harp, MD, Executive Director for the Board of Medicine. The pursuit of reciprocal agreement for the licensure of nurse practitioners was undertaken by Jay Douglas, Executive Director of the Board of Nursing.

Virginia's contiguous states are North Carolina, Tennessee, Kentucky, West Virginia, and Maryland, and for purposes of this report, the District of Columbia was included as a contiguous jurisdiction.

Method

To pursue the matter of reciprocal agreements for licensure, the Executive Director for the Virginia Board of Medicine communicated with the Executive Directors of the other boards. There are six contiguous jurisdictions that have eight boards of medicine or osteopathic medicine. The boards are:

North Carolina Medical Board

Tennessee Board of Medical Examiners

Tennessee Board of Osteopathic Examination

Kentucky Board of Medical Licensure

West Virginia Board of Medicine

West Virginia Board of Osteopathic Medicine

Maryland Board of Physicians

District of Columbia Board of Medicine

Physician Assistants are licensed by the medical boards listed above.

Each board of medicine has an Executive Director. An email explaining the legislative directive to pursue reciprocal licensing agreements with their boards was sent on June 17, 2020. Only one of the Executive Directors responded in writing to that email. Calls were made to the other boards in July and August, and it was learned that the primary reason responses from other boards had not been forthcoming was that the Executive Directors needed time to consult with their boards, which in most cases could not be done until a meeting of their board convened. The Virginia Board of Medicine was able to collect seven responses from Executive Directors, with the only outstanding one being the West Virginia Board of Osteopathic Medicine.

Results

Four contiguous states expressed no interest in a reciprocal licensing agreement with the Virginia Board of Medicine at this time. They were:

North Carolina

Tennessee

Kentucky

West Virginia

The chief reason that these neighboring states did not want to create a new pathway to licensure was that they are involved with the Interstate Medical Licensure Compact (IMLC). Some have just recently joined and wanted to see how that pathway to licensure plays out. Although Board staff did not hear from the West Virginia Board of Osteopathic Medicine, it is also a member of the IMLC.

Maryland and the District of Columbia (DC) are also members of the IMLC. However, both have expressed interest in a possible reciprocal licensing agreement with Virginia. As background, the three Executive Directors have had conference calls over the years to discuss matters of common interest. Those calls have been more frequent in 2020 and have provided the opportunity to discuss reciprocal licensing agreements in some detail.

The language of SB757 and HB1701 indicate that such agreements "*shall only require that a person hold a current, unrestricted license in the other jurisdiction and that no grounds exist for denial based on § **54.1-2915** of the Code of Virginia*". However, such an agreement with Maryland and DC would need to go beyond the specific restrictions on a reciprocal agreement that are expressed in SB757 and HB1701. Maryland and DC have already noted that any

reciprocal agreement would need to include requirements for criminal background checks, five years of professional practice, no pending investigations and a review of the applicant's disciplinary history. The three jurisdictions would need to develop a document to which all could agree to facilitate reciprocity of licensure.

In Virginia, there is already statutory authorization for health regulatory boards to enter into reciprocal agreements with other jurisdictions, as provided in § 54.1-103 of the Code of Virginia:

> ***§ 54.1-103. Additional training of regulated persons; reciprocity; endorsement.***
>
> *A. The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.*
>
> *B. The regulatory boards may enter into agreements with other jurisdictions for the recognition of certificates and licenses issued by other jurisdictions.*
>
> *C. The regulatory boards are authorized to promulgate regulations recognizing licenses or certificates issued by other states, the District of Columbia, or any territory or possession of the United States as full or partial fulfillment of qualifications for licensure or certification in the Commonwealth.*

Maryland has indicated that its statutory and regulatory framework would currently facilitate the Maryland Board of Physicians developing such a document and entering into a memorandum of understanding with Virginia. The DC Executive Director has yet to have the same posture confirmed by Board Counsel.

The Virginia Boards of Medicine and Nursing have statutory authority for reciprocal agreements for licensure of doctors of medicine, osteopathic medicine, physician assistants, or nurse practitioners, but the restrictions placed on such agreements in SB757 and HB1701 may preclude any such agreements if those restrictions are not acceptable to another jurisdiction.

Overview of licensing b the Virginia Board of Medicine

To provide context for reciprocal agreements, the following is a brief overview of licensing of physicians by the Virginia Board of Medicine:

There are two pathways to licensure, traditional (by examination) and endorsement.

The traditional pathway requires that primary source entities submit a number of documents to the Board relating to a person's application for licensure. Included are medical school transcripts, examination scores, documentation of postgraduate training, state verifications from states in which licenses have been held, and a National Practitioner Data Bank report. For international medical graduates, a certificate from the Educational Commission for Foreign Medical Graduates is required. The speed of the licensing process depends upon the diligence

with which the applicant works his/her application. It is possible to be issued a license in less than two weeks, but most applicants take a few months to have all required documentation sent to the Board.

The second pathway is licensure by endorsement. As early as 2012, the Board of Medicine was aware that the U.S. Congress was interested in more rapid licensure of physicians to facilitate the interstate practice of medicine. The Federation of State Medical Boards studied the topic of licensure and facilitated the creation of the Interstate Medical Licensure Compact (Compact). The Virginia Board of Medicine had been aware of this effort for several years prior to its detailed discussion in 2016 about whether it would be beneficial for applicants and the Board to join the Compact. In 2016, the Board decided not to join the Compact at that time, but to utilize the foundation in the law to develop regulations for a pathway to licensure by endorsement. The regulations became effective in the fall of 2018, and the endorsement pathway became operable in December 2018.

Licensure by endorsement is intended to be a more expeditious pathway. It requires that the applicant hold a license in at least one state continuously for the last five years, that he/she has been engaged in active practice for five years after postgraduate training, that all other state licenses are in good standing, that he/she is board certified, and that a National Practitioner Data Bank report shows that there has been no history of board actions or paid malpractice claims within the last 10 years. The Board has observed that there are two groups of physicians that apply for endorsement. There are those that want a license quickly, and there are those that want to deal with fewer submissions of primary source documents. The latter group takes longer to get the required documents to the Board, because speed is not their issue.

Was the Virginia Board of Medicine's decision in 2016 to promulgate regulations for licensure by endorsement and not to join the Interstate Medical Licensure Compact a wise one? The goal of the Compact is expeditious licensure. The Compact homepage says that it is "a faster pathway to physician licensure" and that it is an "expedited pathway to licensure for physicians who wish to practice in multiple states." A physician pays $700 to the Compact to participate and also pays the licensing fee for any state in which the physician seeks licensure. The Board reasoned that it could save money for its applicants and expedite licensure by a pathway of endorsement. The latest discernible data from the Compact is that it takes more than 50 days from initial application to the issuance of a license. In the last month or so, the Compact announced it had issued its 11,000th license. In contrast, the Virginia Board's endorsement pathway averages less than 30 days. And in the instance of a physician that got her documents to the Board simultaneously with the download of her application, she was issued a license in **one day**. To date, the Board of Medicine has issued 678 physician licenses by endorsement. The Executive Director for the Maryland Board of Physicians is also the Treasurer of the Compact. She is developing regulations for licensure by endorsement for the Maryland Board based on those of the Virginia Board.

Based on the information gathered and responses from contiguous jurisdictions, there appear to be three options:

Option 1 – Take no further action at this time

Physicians in neighboring states can be quickly licensed through both the traditional and endorsement pathways. The speed of licensure depends on the effort of the applicant.

Option 2 – Pursue a reciprocal licensing pathway with Maryland and DC

At the present time, these are the only two jurisdictions that will consider agreements for licensure by reciprocity. It is clear that such a pathway would involve requirements that go beyond those in SB757 and HB1701. Tri-jurisdictional development of standards agreeable to all would require the coordination of the Executive Directors, Board Counsels, the Full Boards and their Committees. A reasonable timeframe to be able to establish this pathway would likely be early to middle 2022.

Option 3 – Join the Interstate Medical Licensure Compact

The Compact helps physicians that wish to be licensed in more than one state. This is particularly helpful to those physicians that seek a nationwide telemedicine practice. It may not be as advantageous to physicians in Virginia's border states who just wish to practice into Virginia. Licensing through the Compact is more costly for an applicant (an additional $700) and does not appear to expedite the process for someone seeking licensure to practice in Virginia.

Report on Reciprocal Licensing Agreements with Contiguous States for Nurse Practitioners

Background

In the majority of jurisdictions in the United States Nurse Practitioners (NP) or Advanced Practice Registered Nurses (APRN) are solely regulated by the Board of Nursing. In five states nurse practitioners are jointly regulated by the Board of Nursing and the Board of Medicine. Out of the six continuous jurisdictions to Virginia, North Carolina is the only other state that has joint regulation of nurse practitioners in place.

Nursing, through the National Council State Boards of Nursing (NCSBN) tackled the issues of licensure portability and need for cross border practice through the implementation of the Nurse Licensure Compact (NLC) for registered nurses in 1999. Today, 34 states belong and several other states are moving towards participation. Virginia has been a member of the compact since 2005. All contiguous jurisdictions to Virginia are members of the compact via legislative authority with the exception of the District of Columbia.

This model of licensure provides for the ability of a RN holding one license in her home state to practice via a multi-state privilege in all 34 states. There are no regulatory requirements or additional fees required for a nurse to practice across borders physically or via telehealth. Employers and nurses are supportive of this model, which is less expensive than single state licensure and provides increased mobility and access to care. This model is not the same as the Interstate Medical Licensure Compact.

Boards of Nursing in all contiguous jurisdictions and in 50 states employ the endorsement licensure process as an efficient method of licensing nurses and nurse practitioners moving between jurisdictions and requiring single state or multistate licensure. Endorsement is a licensure process where a board of nursing relies upon the verification of a license from another jurisdiction as a means of ensuring that basic licensure requirements are met in the new home state. Endorsement is an efficient process used for nurse licensure for many decades when a nurse is relocating or needs to obtain authorization to practice in a jurisdiction that may not yet be part of the NLC.

In August of 2020 the National Council State Boards of Nursing (NCSBN) passed the model act for the Advanced Practice Registered Nurse Compact. This compact is similar to the NLC for registered nurses providing for the authority for cross border practice for nurse practitioners without any regulatory barriers. NCSBN is a not-for-profit organization whose membership is comprised of the nurse regulatory bodies in 50 states, the District of Columbia and four US territories.

Now that this model has been adopted, states choosing to do so may seek legislative authority to join the APRN Compact. Three jurisdictions have begun this process in 2020.

Survey of Contiguous Boards of Nursing

To pursue the matter of reciprocal agreements the Executive Director of the Virginia Board of Nursing contacted the executive directors of contiguous jurisdictions boards via email and telephone. The jurisdictions included were; North Carolina, West Virginia, Kentucky, Tennessee, Maryland and the District of Columbia. Kentucky was non-responsive.

The communication with these jurisdictions revealed the majority of the boards of nursing indicated their interest in moving towards the joining the APRN compact. All jurisdictions indicated that the current method of endorsement to be an efficient and effective way for nurse practitioners to obtain licensure in states that they were seeking authorization to practice. The main reason expressed for not wanting to pursue reciprocity agreements at this time is due to the recent adoption of an Advanced Practice Registered Nurse (APRN) Compact for nurse practitioners. Jurisdictions are currently considering how they might move forward legislatively. The compact is considered the best licensure model to address licensure portability, cross border practice and telehealth.

All contiguous jurisdictions, as members of the NLC with the exception of DC which is a non-member, have experienced the benefits of participation in the NLC as expressed by their licensees and employers. Boards would like to see expansion of this licensure model to include nurse practitioners.

The second reason for not pursuing reciprocity agreements is the current use of the endorsement process by all jurisdictions. It is important to note that a board of nursing has authority to hold a practitioner accountable whether they are practicing on a multistate privilege or via a single state license. In doing so regulatory bodies uphold their mandate of public protection.

Based on the information gathered and responses from contiguous jurisdictions there appear to be two options with respect to nurse practitioners and the pursuit of reciprocity agreements.

Option 1 -Take no further action at this time
Nurse practitioners from neighboring jurisdictions are efficiently licensed through examination (new graduates) and endorsement pathways. Any delays typically are related to incomplete applications or issues with an applicant's license in another jurisdiction.

Option 2- Pursue the feasibility of adoption of the APRN Compact
Examination of current state laws for nurse practitioners and collective work with contiguous jurisdictions regarding any barriers to adoption of the Advanced Practice Registered Nurse Compact.

2020 SESSION

CHAPTER 236

An Act to require the Department of Health to determine the feasibility of the establishment of a Medical Excellence Zone Program and to require the Department of Health Professions to pursue reciprocal agreements with states contiguous with the Commonwealth for licensure for certain primary care practitioners under the Board of Medicine.

[S 757]

Approved March 10, 2020

Be it enacted by the General Assembly of Virginia:

1. *§ 1. That the Department of Health shall determine the feasibility of establishing a Medical Excellence Zone Program (the Program) to allow citizens of the Commonwealth living in rural underserved areas to receive medical treatment via telemedicine services as defined in § **38.2-3418.16** of the Code of Virginia. The Department shall set out the criteria that would be required for a locality or group of localities in the Commonwealth to be eligible for the designation as a medical excellence zone. Such criteria shall include that any locality or group of localities eligible for the Program must demonstrate economic disadvantage of residents in the proposed medical excellence zone. The Department of Health shall report its findings to the Senate Committee on Education and Health and the House Committee on Health, Welfare and Institutions by November 1, 2020.*

2. *§ 1. That the Department of Health Professions shall pursue the establishment of reciprocal agreements with states that are contiguous with the Commonwealth for the licensure of doctors of medicine, doctors of osteopathic medicine, physician assistants, and nurse practitioners. Reciprocal agreements shall only require that a person hold a current, unrestricted license in the other jurisdiction and that no grounds exist for denial based on § **54.1-2915** of the Code of Virginia. The Department of Health Professions shall report on its progress in establishing such agreements to the Senate Committee on Education and Health and the House Committee on Health, Welfare and Institutions by November 1, 2020.*

3. *§ 1. That the Board of Medicine shall prioritize applicants for licensure as a doctor of medicine or osteopathic medicine, a physician assistant, or a nurse practitioner from such states that are contiguous with the Commonwealth in processing their applications for licensure by endorsement through a streamlined process, with a final determination regarding qualification to be made within 20 days of the receipt of a completed application.*