

## **Physical Therapy Compact Commission Notice of Proposed Rulemaking**

The Physical Therapy Compact Commission is requesting public comment on the following draft Rules. Pursuant to Section 9 of the Physical Therapy Compact, the Commission is required to post this Notice at least thirty (30) days in advance of the meeting at which the Rules will be considered and voted upon by the Commission.

### **PUBLICATION DATE:**

10/3/2017

### **SUMMARY OF THE PROPOSED RULES OR AMENDMENT TO EXISTING RULES:**

The draft Rules facilitate the general operation of the Physical Therapy Compact Commission in order to fulfill the objectives of the Compact, through a means of joint cooperative action among the Member States.

### **DRAFT OF THE RULE LANGUAGE:**

A copy of the draft Rules is attached to this Notice.

### **MEETING DATE, TIME, AND LOCATION:**

The Physical Therapy Compact Commission will consider and vote on the adoption of the attached draft Rules at its public meeting on November 5, 2017. The meeting will take place at 8:00 AM, MT, at the Hyatt Regency Tamaya Resort and Spa, 1300 Tuyana Trail, Santa Ana Pueblo, New Mexico, 87004.

### **DEADLINE AND PROCESS TO SUBMIT WRITTEN COMMENTS:**

Written comments must be received by 5:00 PM, ET, on October 27, 2017. All comments or intentions to attend the Commission meeting should be submitted electronically by the deadline to [info@ptcompact.org](mailto:info@ptcompact.org). All comments must be provided in a single file and must include the name of the submitter, any organization the submitter represents, and the rule number(s) the comments address. If electronic submission of comments is not feasible, please contact the PT Compact Commission using the contact information below for special instructions.

### **REQUESTS FOR PUBLIC HEARING:**

Pursuant to Section 9 of the Physical Therapy Compact, the PT Compact Commission shall hold a public hearing on the proposed rules changes if a hearing is requested by:

1. At least twenty-five (25) persons;
2. A state or federal governmental subdivision or agency; or
3. An association having at least twenty-five (25) members.

If one of the three standards above is met, the Commission will hold a hearing on the proposed rules at its public meeting on November 5, 2017. The meeting will take place at 8:00 AM, MT, at the Hyatt Regency Tamaya Resort and Spa, 1300 Tuyana Trail, Santa Ana Pueblo, New Mexico, 87004.

All requests for a public hearing must be submitted electronically to [info@ptcompact.org](mailto:info@ptcompact.org) by 5:00 PM, ET, on October 27, 2017.

**FOR FURTHER INFORMATION CONTACT:**

T.J. Cantwell, Compact Administrator, by email at [administrator@ptcompact.org](mailto:administrator@ptcompact.org) or by telephone at 703-299-3100 ext. 261.



Physical Therapy Compact Commission

***Rules***

***(Draft Approved by PT Compact Executive Board For  
Public Comment)***

As of November 5, 2017

***DRAFT-9-27-17***

**Physical Therapy Compact Commission**  
Rules Effective November 5, 2017

**Table of Contents**

Table of Contents

<b>Chapter 1 – Definitions</b> .....	1
<i>Rule 1.1 – Definitions</i> .....	1
<b>Chapter 2 – Member State Participation</b> .....	1
<i>Rule 2.1 – Criminal Background Check</i> .....	1
<i>Rule 2.2 – Continuing Competence Requirements</i> .....	2
<i>Rule 2.3 – Compact Privilege Fee and Expiration Date</i> .....	2
<b>Chapter 3 – Compact Privilege Eligibility, Adverse Actions, and Encumbrances</b> .....	2
<i>Rule 3.1 – Home State License</i> .....	2
<i>Rule 3.2 – Self-Reporting of an Encumbrance or Adverse Action on a License</i> .....	2
<i>Rule 3.3 – Eligibility for Compact Privilege after an Adverse Action or Encumbrance</i> .....	3
<i>Rule 3.4 – Fee for Compact Privilege</i> .....	3
<i>Rule 3.5 – Expiration or Termination of a Compact Privilege</i> .....	3
<i>Rule 3.6 – Participation in an Alternative Program</i> .....	4
<i>Rule 3.7 – Joint Investigations</i> .....	4
<i>Rule 3.8 – Jurisprudence</i> .....	4
<i>Rule 3.9 – Impact of Non-Payment on Eligibility</i> .....	4
<b>Chapter 4 – Active Duty Military Personnel or Their Spouses</b> .....	4
<i>Rule 4.1 – Home State Designation</i> .....	4
<b>Chapter 5 – Physical Therapy Compact Commission</b> .....	5
<i>Rule 5.1 – Ex-Officio, Non-Voting Members</i> .....	5
<i>Rule 5.2 – Annual Assessment for Compact Members</i> .....	5
<b>Chapter 6 – Data System</b> .....	5
<i>Rule 6.1 – Required Elements of the Data System</i> .....	5
<i>Rule 6.2 – Frequency of Submission of Required Elements</i> .....	6
<i>Rule 6.3 – Required Use of FSBPT Online Processing System</i> .....	6
<i>Rule 6.4 – Frequency of Reporting Adverse Actions</i> .....	7
<i>Rule 6.5 – Discrepancy with Commission Data System Data Set</i> .....	7
<i>Rule 6.6 – Compact Termination and the Data System</i> .....	7

*Rule 6.7 – Indicating Availability of Investigative Information* ..... 7

*Rule 6.8 – Public Verification of Compact Privilege* ..... 8

*Rule 6.9 – Terms of Use, Privacy Policy, and Intellectual Property Rights*..... 8

**Chapter 7 – Rulemaking** ..... 8

*Rule 7.1 – Adoption of Rules; Amendments*..... 8

*Rule 7.2 – Publication of Rules*..... 9

**Chapter 8 – Oversight, Dispute Resolution, And Enforcement**..... 9

*Rule 8.1 – Definition of Party State in Dispute Resolution Process*..... 9

*Rule 8.2 – Dispute Resolution Process – Informal, Mediation and Arbitration*..... 9

*Rule 8.3 – Compliance and Enforcement* ..... 11

*Rule 8.4 – Enforcement Remedies against a Defaulting State*..... 14

*Rule 8.5 – Judicial Enforcement*..... 14

## Chapter 1 – Definitions

### Rule 1.1 – Definitions

For the purpose of the rules adopted by the Physical Therapy Compact Commission, the following definitions shall apply:

- (A) “Adverse action” means a publicly available disciplinary action taken against a license or compact privilege by a Licensing Board. Adverse action does not include non-disciplinary remediation required by the Licensing Board.
- (B) “Alternative program” means any non-disciplinary monitoring program intended to remediate the licensee that is not a matter of public record and to which a Licensing Board refers a licensee, or of which the Licensing Board is aware of the licensee’s participation.
- (C) “Applying for a license” means the individual has submitted an application for licensure to the Licensing Board or requested that the Federation of State Boards of Physical Therapy transfer the individual’s National Physical Therapy Examination score to the Licensing Board.
- (D) “Commission” means the Physical Therapy Compact Commission.
- (E) “Compact” or “Physical Therapy Compact” means the Physical Therapy Licensure Compact.
- (F) “Compact Administrator” shall be synonymous with “executive director” referenced in Section 7.G. of the Compact.
- (G) “Encumbrance” means any action taken by the Licensing Board that limits the practice or work of the physical therapist or physical therapist assistant. An encumbrance may be disciplinary or non-disciplinary in nature.
- (H) “FSBPT ID” means the identification number assigned by the Federation of State Boards of Physical Therapy to all individuals in the Exam, Licensure, and Disciplinary Database.
- (I) “Home state” means a person’s true, fixed, and permanent home and is the place where the person intends to remain indefinitely, and to which the person expects to return if absent without intending to establish a new domicile elsewhere.
- (J) “License” means the authorization from the state to practice as a physical therapist or to work as a physical therapist assistant. For purposes of the Compact, a certification for a physical therapist assistant is synonymous with “license.”
- (K) “Licensing Board” means the agency of a state that is responsible for the licensing and regulation of physical therapists and physical therapist assistants.
- (L) “Member state” means a state that has enacted the Compact.
- (M) “Non-member state” means a state that has not enacted the Compact.
- (N) “Party state” means any member state where the individual currently holds, or has ever held a physical therapist or physical therapist assistant license or compact privilege.
- (O) “State” means any state, commonwealth, district, or territory of the United States of America that regulates the practice of physical therapy.

**Effective: 11/5/17**

**Rule Amplifies: Section 2 of the Compact**

**Prior Effective Dates: None**

## Chapter 2 – Member State Participation

### Rule 2.1 – Criminal Background Check

- (A) Member states must have completed all required processes, requirements, and applications necessary to receive an Originating Agency Identification (ORI) Number, as required by the Compact.
  - (1) States that were members of the Compact as of November 5, 2017, shall complete the requirements specified in paragraph (A) of this rule within six (6) months of the adoption of this rule.
  - (2) States that join the Compact after November 5, 2017, shall complete the requirements specified in

- paragraph (A) of this rule within six (6) months of the effective date of the legislation to implement the Compact in that state.
- (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.

**Effective: 11/5/17**  
**Rule Amplifies: Section 3 of the Compact**  
**Prior Effective Dates: None**

**Rule 2.2 – Continuing Competence Requirements**

- (A) Member states must require continuing competence for renewal of a license for both the physical therapist and the physical therapist assistant.
- (B) Continuing education meets the requirement for continuing competence for renewal of a license.

**Effective: 11/5/17**  
**Rule Amplifies: Section 3 of the Compact**  
**Prior Effective Dates: None**

**Rule 2.3 – Compact Privilege Fee and Expiration Date**

Any compact privilege held by the individual shall expire on the same date as the individual's home state license. The fee paid to the member state for a compact privilege shall cover the period of time the individual has remaining on the home state license.

**Effective: 11/5/17**  
**Rule Amplifies: Section 3 of the Compact**  
**Prior Effective Dates: None**

**Chapter 3 – Compact Privilege Eligibility, Adverse Actions, and Encumbrances**

**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 complying 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 address within thirty (30) business days of the change.

**Effective: 11/5/17**  
**Rule Amplifies: Section 4 of the Compact**  
**Prior Effective Dates: None**

**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 days of the effective date.

**Effective: 11/5/17**  
**Rule Amplifies: Section 4 of the Compact**  
**Prior Effective Dates: None**

**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 Board order of the adverse action.
    - 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.
- (C) The two (2) year waiting period is from the effective date of the most recent adverse action and restarts if subsequent adverse action is taken by a Licensing Board.
- (D) If a remote state removes an individual’s compact privilege in the remote state for a period of more than two years, the individual remains subject to the removal even if the individual does not renew the compact privilege.
- (E) As used in Section 4.D. of the Compact, the word “removed” does not mean lapsed or voluntarily not renewed.

**Effective: 11/5/17**

**Rule Amplifies: Section 4 of the Compact**

**Prior Effective Dates: None**

**Rule 3.4 – Fee for Compact Privilege**

- (A) The Commission shall charge a fee for the purchase of each compact privilege. This fee shall be in addition to any state fee that the member board may charge.
- (B) The Commission’s compact privilege fee shall be posted on the Commission’s website (<http://www.ptcompact.org>).
- (C) The Commission shall give thirty (30) days’ notice before modifying its compact privilege fee by posting notice of the new fee on the Commission’s website.

**Effective: 11/5/17**

**Rule Amplifies: Section 4 of the Compact**

**Prior Effective Dates: None**

**Rule 3.5 – Expiration or Termination of a Compact Privilege**

- (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 terminated.
    - 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.



**Effective: 11/5/17**

**Rule Amplifies: Section 4 of the Compact**

**Prior Effective Dates: None**

**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.

**Effective: 11/5/17**

**Rule Amplifies: Section 4 and 6 of the Compact**

**Prior Effective Dates: None**

**Rule 3.7 – Joint Investigations**

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

**Effective: 11/5/17**

**Rule Amplifies: Section 6 of the Compact**

**Prior Effective Dates: None**

**Rule 3.8 – Jurisprudence**

If a member state has a jurisprudence requirement 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.

**Effective: 11/5/17**

**Rule Amplifies: Section 4 of the Compact**

**Prior Effective Dates: None**

**Rule 3.9 – Impact of Non-Payment on Eligibility**

If an individual fails to pay any applicable fees, including any state fee, the Commission may:

- (A) Terminate the existing Compact Privilege associated with the non-payment; and
- (B) Prevent the individual from purchasing any additional Compact Privileges until the non-payment is remedied.

**Effective: 11/5/17**

**Rule Amplifies: Section 4 of the Compact**

**Prior Effective Dates: None**

**Chapter 4 – Active Duty Military Personnel or Their Spouses**

**Rule 4.1 – Home State Designation**

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 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.

**Effective: 11/5/17**

**Rule Amplifies: Section 5 of the Compact**

**Prior Effective Dates: None**

## **Chapter 5 – Physical Therapy Compact Commission**

### **Rule 5.1 – Ex-Officio, Non-Voting Members**

- (A) For the purposes of the Compact, the American Physical Therapy Association (APTA) is the recognized physical therapy professional association.
- (B) For the purposes of the Compact, the Federation of State Boards of Physical Therapy (FSBPT) is the recognized membership organization of the physical therapy licensing boards.
- (C) A member of the board of directors of any of the following organizations shall be ineligible to serve as the delegate for a member state:
  - (1) The American Physical Therapy Association;
  - (2) The Federation of State Boards of Physical Therapy;
  - (3) Any state chapter of the American Physical Therapy Association;
  - (4) Any section of the American Physical Therapy Association; or
  - (5) Any council of the American Physical Therapy Association.

**Effective: 11/5/17**

**Rule Amplifies: Section 7 of the Compact**

**Prior Effective Dates: None**

### **Rule 5.2 – Annual Assessment for Compact Members**

- (A) The annual assessment on each member state for participation in the Compact will be determined by vote annually at the annual meeting of the Commission, and communicated to the member states. The fee will become effective on the first day of the fiscal year that starts immediately following the Commission meeting.
- (B) The Commission may choose to have a zero (\$0) dollar assessment.
- (C) The annual assessment must be paid by the member state within ninety (90) days from the start of the fiscal year.
- (D) Moneys derived from a line of credit may be considered revenue when determining an annual assessment required from member states.

**Effective: 11/5/17**

**Rule Amplifies: Section 7 of the Compact**

**Prior Effective Dates: None**

## **Chapter 6 – Data System**

### **Rule 6.1 – Required Elements of the Data System**

- (A) The uniform data set shall be submitted on all individuals applying for, or currently holding, a physical therapist or physical therapist assistant license of any status, including expired status, in the member state. The required elements for all licenses shall be submitted in each data file submitted to the Commission's data system.
- (B) Each member state shall submit the following data elements to the Commission's data system:
  - (1) First name;
  - (2) Middle name;
  - (3) Last name;

- (4) Suffix, if applicable;
  - (5) Birth date, including month, day, and year;
  - (6) Unique identifier;
  - (7) License number;
  - (8) License type (PT or PTA);
  - (9) Initial issue date;
  - (10) Most recent renewal date;
  - (11) Expiration date; and
  - (12) License status, including expired statuses.
- (C) The unique identifier required by Section 3.A.1. of the Compact is the individual's social security number.
- (1) The member state must submit the data file identified in this Chapter within one (1) month of the effective date of the legislation to implement the Compact. The initial licensure data file(s) must include the social security number for every licensee in each file.
  - (2) Within twenty-four (24) months of the effective date of the legislation to implement the Compact, the FSBPT ID number must be present for every licensee in each file, and may replace the social security number as the unique identifier.
  - (3) Until the initial data file is submitted to the Commission, the following shall apply:
    - a. Individuals whose home state is the member state shall be ineligible to apply for any compact privilege; and
    - b. Individuals in other member states will be unable to purchase a compact privilege in the member state.
  - (4) Notwithstanding paragraph (C)(1) of this rule, Commission staff may approve an alternate mechanism to comply with the initial licensure data file(s) requirement if the member state does not maintain the full, unmasked, social security number for licensees within the member state's database.

**Effective: 11/5/17**

**Rule Amplifies: Sections 3 and 8 of the Compact**

**Prior Effective Dates: None**

**Rule 6.2 – Frequency of Submission of Required Elements**

- (A) Member states shall submit the data elements outlined in rule 6.1 to the Commission at least one (1) time per week.
- (B) The full extract of the data must be provided in a file format and in a manner agreed to by the Commission and the member state.

**Effective: 11/5/17**

**Rule Amplifies: Sections 3 and 8 of the Compact**

**Prior Effective Dates: None**

**Rule 6.3 – Required Use of FSBPT Online Processing System**

Member states shall use the FSBPT Online Processing System to report the following information:

- (A) License number, initial issue date, and expiration date to New Score Reports and Transfer Score Reports.  
In lieu of reporting this information via the FSBPT Online Processing System, a member state can meet the requirement of this paragraph if the data submitted in accordance with rules 6.1 and 6.2 contains the social security number and date of birth for all records.
- (B) Completion of all required fields when reporting adverse actions.
- (C) Any encumbrance not associated with an adverse action.

**Effective: 11/5/17**

**Rule Amplifies: Sections 3 and 8 of the Compact**

**Prior Effective Dates: None**

**Rule 6.4 – Frequency of Reporting Adverse Actions**

- (A) Within two (2) business days of the effective date of the adverse action against a licensee or compact privilege holder, the Licensing Board shall, through the interface described in rule 6.3, at a minimum, report the following information and complete the following action:
  - (1) Home Address.
  - (2) Date Action Became Effective.
  - (3) Select a Save Status of Temporary.
- (B) Within ten business days of the effective date of the adverse action against a licensee or compact privilege holder, the Licensing Board shall, through the interface described in rule 6.3, complete all required information and select the Save Status.
- (C) Within two (2) business days of the effective date to void, update, revise, or correct an adverse action against a licensee or compact privilege holder, the Licensing Board shall report such decision to the Commission through the interface described in rule 6.3.
- (D) Within two (2) business days of the effective date to impose a non-disciplinary encumbrance on a license or licensee, the Licensing Board shall report such decision to the Commission through the interface described in rule 6.3.

**Effective: 11/5/17**

**Rule Amplifies: Sections 3 and 8 of the Compact**

**Prior Effective Dates: None**

**Rule 6.5 – Discrepancy with Commission Data System Data Set**

The licensee or compact privilege holder may request from the home state Licensing Board in writing a review of the data relating to the licensee in the Commission's data system.

- (A) In the event a licensee or compact privilege holder asserts that any data relating to the licensee or compact privilege holder is inaccurate, the burden of proof shall be upon the licensee or compact privilege holder to provide evidence that substantiates such claim.
- (B) The Licensing Board shall verify and within ten (10) business days correct inaccurate data in the Commission's data system.

**Effective: 11/5/17**

**Rule Amplifies: Section 8 of the Compact**

**Prior Effective Dates: None**

**Rule 6.6 – Compact Termination and the Data System**

- (A) Upon the effective date of the termination of a state's membership in the Compact, the state will no longer receive information available only to member states.
- (B) Any and all data provided prior to the effective date of the termination of the state's membership in the Compact will remain in the data system.

**Effective: 11/5/17**

**Rule Amplifies: Section 10 of the Compact**

**Prior Effective Dates: None**

**Rule 6.7 – Indicating Availability of Investigative 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 that member's state statute or regulations.

**Effective: 11/5/17**

**Rule Amplifies: Sections 3, 8, and 10 of the Compact**

**Prior Effective Dates: None**

Rule 6.8 – Public Verification of Compact Privilege

The public shall have access, via the Commission’s website, to information limited to the verification of compact privilege(s) held by individuals.

**Effective: 11/5/17**

**Rule Amplifies: Section 8 of the Compact**

**Prior Effective Dates: None**

Rule 6.9 – Terms of Use, Privacy Policy, and Intellectual Property Rights

- (A) Subject to the Terms of Use and to the Privacy Policy posted at the time on the website of the Federation of State Boards of Physical Therapy (FSBPT), the following shall be binding upon the Commission, the member states, and individuals purchasing or holding a Compact Privilege.
- (B) Submission and access to, and the use of, and other matters relating to:
  - (1) The data elements outlined in rule 6.1;
  - (2) Other information reported through the interface described in rule 6.3; and
  - (3) The FSBPT’s Exam, Licensure, and Disciplinary Database (ELDD) and Online Processing System (OPS).
- (C) The Federation of State Boards of Physical Therapy owns all tangible and intangible property, intellectual and other proprietary rights, titles, and interests in and to the FSBPT OPS or ELDD. Neither the Commission nor any member state shall have any rights, titles, or interests in or to the FSBPT OPS or ELDD

**Effective: 11/5/17**

**Rule Amplifies: Sections 3 and 8 of the Compact**

**Prior Effective Dates: None**

## **Chapter 7 – Rulemaking**

Rule 7.1 – Adoption of Rules; Amendments

- (A) Proposed new rules and amendments to existing rules shall be referred to the Rules and Bylaws Committee as follows:
  - (1) Any Delegate may propose rules or rule amendments during the annual Commission meeting. This proposal must be made in the form of a motion and approved by a majority vote.
  - (2) Standing Committees of the Commission or of the Executive Board may propose rules or rule amendments by majority vote of that Committee.
  - (3) The Executive Board may propose rules or rule amendments by majority vote.
- (B) The Rules and Bylaws Committee shall prepare a draft of all proposed rules and provide the draft to the Executive Board for review and comments. The Rules and Bylaws Committee shall revise the draft based on feedback from the Executive Board.
  - (1) The Executive Board shall ensure that all proposed rules comply with the statutory provisions of the Compact and do not conflict with any other existing Commission rule.
  - (2) If the Executive Board determines that the proposed rules should be recommended to the full Commission, the proposed rules shall be posted on the Commission’s website. Any written comments shall be reviewed by the Executive Board. Based on the written comments, and at the direction of the Executive Board, the Rules and Bylaws Committee shall prepare a final draft of the proposed rule(s) or amendments for consideration by the Commission.
- (C) Prior to promulgation and adoption of a final rule by the Commission, but not later than thirty (30) days prior to the meeting at which the vote is scheduled, the Commission shall publish a Notice of Proposed Rule Making on its website and send the Notice to all member states for publishing on the Licensing Board in the member state’s website.
- (D) The Notice of Proposed Rule Making shall include:

- (1) The place, time, and date of the meeting in which the rule will be considered;
  - (2) The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments; and
  - (3) The name, position, physical and electronic mail address, and telephone number of the person to whom interested persons may respond with notice of their attendance and written comments.
- (E) Every public hearing shall be conducted in a manner guaranteeing each person who wishes to comment a fair and reasonable opportunity to comment. No transcript of the public hearing is required, unless a written request for a transcript is made within thirty (30) days of the hearing, in which case the person or entity making the request shall pay for the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the Commission from making a transcript or recording of the public hearing if it chooses to do so.
- (F) Nothing in this rule shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this rule.
- (G) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.
- (H) The Commission shall, by majority vote, take final action on the proposed rule and determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.
- (I) Upon determination by the Executive Board or Commission that an emergency exists, the Commission may promulgate an emergency rule that shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided in the compact and in this section shall be retroactively applied to the rule, no later than ninety (90) days after the effective date of the rule. An emergency rule is one that must be made effective immediately in order to:
- (1) Meet an imminent threat to public health, safety, or welfare;
  - (2) Prevent a loss of federal or state funds;
  - (3) Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule.

**Effective: 11/5/17**

**Rule Amplifies: Section 9 of the Compact**

**Prior Effective Dates: None**

**Rule 7.2 – Publication of Rules**

A copy of the Commission’s current rules shall be published on its website.

**Effective: 11/5/17**

**Rule Amplifies: Section 9 of the Compact**

**Prior Effective Dates: None**

**Chapter 8 – Oversight, Dispute Resolution, And Enforcement**

**Rule 8.1 – Definition of Party State in Dispute Resolution Process**

As used in Chapter 8 of the rules, “party state” means a state that is a party to a dispute.

**Effective: 11/5/17**

**Rule Amplifies: Section 10 of the Compact**

**Prior Effective Dates: None**

**Rule 8.2 – Dispute Resolution Process – Informal, Mediation and Arbitration**

- (A) The Delegate in each member state shall enforce the Compact and take all actions necessary and appropriate to effectuate the Compact’s purposes and intent. The Commission supports collaborative

efforts to resolve disputes or controversies between and among all member states. All affected parties are encouraged to communicate with each other directly and make every effort to resolve issues informally prior to application of paragraphs (B) and (C) of this rule.

- (1) Any member state may submit a written request to the Executive Board for assistance in interpreting the law, rules, and policies of the Compact. The Executive Board may seek the assistance of the Commission's legal counsel in interpreting the Compact. The Executive Board shall issue the Commission interpretation of the Compact to all parties to the dispute.
  - (2) A member state that is party to a dispute may request the submission of a matter in controversy to mediation. Mediation shall be conducted by a mediator appointed by the Executive Board from a list of mediators approved by the National Association of Certified Mediators, unless a mediator is otherwise agreed to by all parties to the dispute and pursuant to procedures customarily used in mediation proceedings.
- (B) When disputes among party states are unresolved through informal attempts, the Commission shall request assistance from the Executive Board.
- (1) It is the duty of the Executive Board to address disputes between or among the member states concerning the Compact when informal attempts between the member states to resolve disputes have been unsuccessful.
  - (2) The Executive Board, on behalf of the Commission, in the reasonable exercise of its discretion, has the authority to assist in the resolution of disputes between and among member states concerning the Compact. This rule defines the course of action the Executive Board may take when such disputes cannot be informally resolved and the matter is received by or referred to the Executive Board.
- (C) Disputes between two (2) or more member states which cannot be resolved through informal resolution or through the Executive Board, may be referred to an arbitration panel.
- (D) Informal Resolution
- (1) The Delegate of the state disputing another member state's interpretation or application of the Compact shall contact the Delegate of the member state with which the dispute has arisen. A written statement describing the situation should be provided and sufficient time allowed for response and opportunity for the other Delegate to review and investigate the issues raised in the dispute.
  - (2) If interpretation of the Compact is necessary, the Delegate shall contact the Executive Board and request assistance in interpreting relevant provisions. This communication to the Executive Board should be made through the Compact Administrator.
  - (3) The Delegate raising the concern shall document attempts to resolve the issues.
  - (4) If all issues are resolved to the satisfaction of all party states involved, no further action is required.
- (E) Mediation
- (1) A state that is a party to a dispute may request, or the Executive Board may require, the submission of a matter in controversy to mediation.
  - (2) If a member of the Executive Board is a party to the dispute, that individual must recuse him or herself from participation in the matter.
  - (3) Mediation shall be conducted by a mediator appointed by the Executive Board from a list of mediators approved by the National Association of Certified Mediators, or a mediator is otherwise agreed to by all parties to the dispute and pursuant to procedures customarily used in mediation proceedings.
  - (4) If all issues are resolved through mediation to the satisfaction of all party states involved, no further action is required.
- (F) Executive Board Resolution
- (1) Member states shall report to the Executive Board, through the Compact Administrator, issues pertaining to disputes concerning the interpretation or application of the Compact in a timely fashion.
  - (2) If the Executive Board determines that the dispute arises from non-compliance with the Compact, the Committee may, in its discretion, reclassify the dispute as a non-compliance case and will provide a written notice to all parties of the dispute citing the allegation(s) of non-compliance and follow the procedures in the Bylaws and as provided in Section 10 of the Compact.

- (3) In the event there are factual and/or legal issues to be resolved, the states involved in the dispute shall provide written responses regarding the factual and/or legal issues in dispute and the position of each party to the dispute on those issues to the Executive Board within thirty (30) days after receipt of the report referenced in paragraph (D) of this rule for distribution to the Executive Board.
  - (4) Upon receipt of the party states' responses, the Executive Board shall develop a dispute resolution proposal or plan within sixty (60) days and submit the proposal or plan to the party states unless all parties agree that a longer period of time is needed to address the issues in dispute.
  - (5) Any controversy or dispute not resolved in accordance with paragraphs (D) through (F) of this rule may result in dispute arbitration, as recommended by the Executive Board pursuant to paragraph (G) of this rule 15.4.
- (G) Arbitration
- (1) In the event of a dispute between states that cannot be resolved through informal means, and upon the recommendation by the Executive Board, the Delegate of the initiating state(s) shall submit an Arbitration Request form to the Compact Administrator with a copy to be sent by the initiating state to the other party state(s) involved.
  - (2) Each state party to the dispute and the Executive Board shall submit a signed Arbitration Agreement form which shall include:
    - a. Consent that the decision of the majority of the arbitrators is final and binding;
    - b. The name of an appointee representing each state, unless more than two (2) states are parties, on an arbitration panel. In the event there are more than two (2) states that are parties to the dispute, the parties must agree on an arbitrator selected by the state or states arguing either the affirmative or the negative of the issue in dispute so that only one (1) arbitrator is selected by the state or states on either side of the controversy. In the event an agreement cannot be reached, such selection shall be made by the Executive Board;
    - c. The name of a third arbitration panel appointee mutually agreed upon and independent of all the states involved in the dispute.
  - (3) The Compact Administrator shall coordinate the arbitration process.
  - (4) Pursuant to paragraph (G)(2)(b) of this rule, appointment of the arbitration panel shall be completed by the party states involved within thirty (30) days of the decision to appoint a panel.
  - (5) All involved states shall agree on arbitration procedures, including a date and location for the arbitration to take place which shall be within forty-five (45) days of the appointment of the arbitration panel. In the event the parties cannot agree, the arbitration panel shall make these and other procedural decisions.
  - (6) The panel shall render a decision within forty-five (45) days of the completion of the arbitration.
  - (7) The panel shall forward its decision to the Compact Administrator and Chair of the Commission and to each involved party state within seven (7) days of its decision.
  - (8) The decision of the arbitration panel shall be final and binding.
  - (9) In the event arbitration is necessary, and unless otherwise agreed by the parties, at the discretion of the arbitration panel, the prevailing party or parties may be entitled to recover the costs of such arbitration, including reasonable attorneys' fees, to the extent permitted by state law of the prevailing party state.
  - (10) Arbitration award decisions may be enforced in a court of competent jurisdiction.

**Effective: 11/5/17**

**Rule Amplifies: Section 10 of the Compact**

**Prior Effective Dates: None**

**Rule 8.3 – Compliance and Enforcement**

- (A) The Delegate in each party state shall enforce the Compact and shall take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The Commission supports voluntary, collaborative efforts to resolve compliance and enforcement issues in lieu of formal dispute resolution procedures or other legal enforcement action between and among all Compact party states. All affected



parties are encouraged to communicate with each other directly and make every effort to resolve issues informally prior to application of paragraphs (E) through (G) of rule 8.2 and paragraphs (E) and (F) of this rule.

- (1) Any party state may submit a written request to the Executive Board for assistance in interpreting the Compact. The Executive Board may seek the assistance of legal counsel in interpreting the Compact, particularly concerning compliance and enforcement. The Executive Board's interpretation of the Compact will be issued in writing to all parties to the dispute.
- (2) At the discretion of the Executive Board, appropriate technical assistance and training may be provided to any party state seeking to voluntarily address a compliance issue.
- (B) When compliance or enforcement is unresolved through informal attempts, the Delegate shall request assistance from the Executive Board.
  - (1) It is the duty of the Executive Board to address alleged substantive or recurrent violations of the Compact when informal attempts to attain compliance have been unsuccessful.
  - (2) The Commission, in the reasonable exercise of its discretion, shall enforce the Compact.
- (C) Compliance and enforcement issues that cannot be resolved through informal resolution or through the Executive Board shall be referred to an arbitration panel or other appropriate legal action as provided in Section 10. of the Compact at the discretion of the Executive Board.
- (D) Informal Resolution
  - (1) When an alleged violation of the Compact comes to the attention of the Compact Administrator or Executive Board, a written statement describing the situation should be provided, and sufficient time allowed for response and opportunity for other Delegate(s) to review and investigate the issues raised in the dispute. The Compact Administrator, on behalf of the Executive Board, shall contact the Delegate of the state(s) alleged to be in non-compliance with the Compact and, when applicable, the Delegate of the state alleging non-compliance with the provisions of the Compact.
  - (2) If the party state alleged to be in non-compliance with the Compact requires assistance with interpretation of the Compact, the Delegate of that state, or the state's legal representative may contact the Executive Board to request assistance in interpreting relevant Compact provisions and identifying steps to achieve compliance.
  - (3) The Executive Board may consult with legal counsel and shall document efforts to resolve the issues.
  - (4) If all issues are resolved to the satisfaction of the Executive Board and the state(s) involved, the Compact Administrator shall prepare a written report to document the resolution, and no further action is required.
- (E) Executive Board Resolution
  - (1) In the event that informal resolution of alleged non-compliance is not possible, the Compact Administrator shall notify the Executive Board and furnish a report of all issues pertaining to non-compliance allegations, including details of informal resolution efforts, in a timely fashion.
  - (2) If the Executive Board determines that a state is not in compliance with the Compact, the Executive Board shall provide a written notice to the state(s) citing the specific allegation(s) of non-compliance or default.
  - (3) The state(s) shall provide a written response regarding the alleged default or noncompliance to the Executive Board within forty-five (45) days.
  - (4) The Executive Board, Compact Administrator, and legal counsel shall develop and propose a plan for voluntary resolution of the allegation(s) of default or non-compliance within sixty (60) days, which may include technical assistance and training, and submit such plan to the involved state(s) for approval unless all parties agree that a longer period of time is needed to address the default/non-compliance or related issues.
  - (5) If the state alleged to be in non-compliance or default does not agree with the Executive Board's proposed plan for resolution, or if the state fails to cure the default or non-compliance after initially agreeing with the Executive Board to follow a remediation plan, the Executive Board may conduct an investigation to examine any evidence relevant to the allegation(s). Such evidence may include, but is not limited to, statements and/or testimony of witnesses, documents, and other information. An investigator may be appointed by the Executive Board to conduct the investigation.

- (6) The Commission shall bear the expense of any investigation.
  - (7) The state alleged to be in non-compliance or default will be informed by the Executive Board in writing if additional incidents of apparent non-compliance are discovered during the course of the investigation.
  - (8) All information obtained during the investigation, and reports prepared by the Commission, shall be confidential and not subject to public disclosure unless otherwise required by the laws of any state involved in the dispute.
  - (9) The state alleged to be in non-compliance will be provided an opportunity to submit a written response to the preliminary findings within twenty (20) days, including documentary evidence, and to meet with the investigator, if any, at the expense of the Commission.
  - (10) Within forty-five (45) days after the conclusion of the investigation, the Executive Board or its investigator shall prepare a written report including a summary of factual findings. The report is provided to the state who is the subject of the investigation for review and comment, including the opportunity to provide corrections to the report, as appropriate. Any comments and/or corrections are returned to the Executive Board, through the Compact Administrator, within fourteen (14) days of issuance of the initial report.
  - (11) After review of the response of the state alleged to be in non-compliance, the Executive Board shall determine, based on a preponderance of the evidence standard, violation(s), if any, of the Compact. If the Executive Board substantiates the allegations based on the evidence and legal authorities cited, the Executive Board shall schedule a conference, either in person or by telephonic or electronic means, with the non-compliant state's Delegate, Assistant Attorney General (or other legal representative), and Presiding Officer of the State's Licensing Board (or designee) to determine if the violations may be remedied through training, technical assistance, or other voluntary means within forty-five (45) days, unless all parties agree that a longer period of time is needed to address the default/non-compliance.
  - (12) Any compliance or enforcement issue pursuant to this section not resolved may result in formal dispute arbitration, or other appropriate enforcement action pursuant to Section 10. of the Compact, as determined by the Executive Board.
  - (13) Any member(s) of the Executive Board whose state is involved in any compliance or enforcement issue shall be recused from consideration, discussion, or voting on any such case.
- (F) Dispute Arbitration
- (1) In the event that a member state's Compact default/non-compliance cannot be resolved through the procedures described in Chapter 8 of the rules, the Executive Board may order arbitration before a three (3) member arbitration panel for determination of the default/non-compliance and enforcement of the Compact.
  - (2) Each involved state shall submit a signed Arbitration Agreement form which shall include:
    - a. Consent that the decision of the majority of the arbitrators is final and binding;
    - b. The name of an appointee to the arbitration panel selected by the state(s) alleged to be in default/non-compliance;
    - c. The name of an appointee to the arbitration panel selected by the Commission, or
    - d. A suggested arbitration panel appointee mutually agreed upon by all parties and independent of the involved state(s).
  - (3) The Compact Administrator shall coordinate the arbitration process.
  - (4) Selection of the panel of arbitrators shall be completed, at the direction of the Compact Administrator, within forty (40) days of the decision to appoint a panel.
  - (5) All parties shall agree on a date for the arbitration to take place, as well as applicable deadlines and procedures for any necessary discovery. In the event no agreement can be reached, these and other procedural decisions shall be made by the arbitration panel.
  - (6) The location of arbitration shall be the principal offices of the Commission.
  - (7) The panel shall render a decision within forty-five (45) days of the completion of the arbitration based upon the facts as stipulated, or proven by preponderance of the evidence at any hearing, and as

required under the provisions of the Compact and any other applicable statutes, regulations and/or case law.

- (8) The panel shall forward its decision to the Chair of the Commission, via the Compact Administrator, and to each involved party state within twenty-one (21) days of its decision.
- (9) The decision of the arbitration panel is final and binding.
- (10) Unless otherwise agreed by the parties, and at the discretion of the arbitration panel, the prevailing party or parties may be entitled to recover the costs of the arbitration, including reasonable attorneys' fees, if permitted by the laws of the prevailing state.

**Effective: 11/5/17**

**Rule Amplifies: Section 10 of the Compact**

**Prior Effective Dates: None**

**Rule 8.4 – Enforcement Remedies against a Defaulting State**

- (A) Notwithstanding the provisions of paragraphs (D) through (G) of rule 8.2 and paragraphs (D) and (E) of rule 8.3, if the Commission determines that any state has at any time defaulted (“defaulting state”) in the performance of any of its obligations or responsibilities under this Compact, or the provisions of the Bylaws or any duly promulgated rules, the Commission may impose any or all of the following penalties:
  - (1) Remedial training and technical assistance as directed by the Commission;
  - (2) Damages or costs in such amounts as are deemed to be reasonable as fixed by the Commission;
  - (3) Suspension of membership in the Compact; and
  - (4) Termination of membership in the Compact.
    - a. Suspension and termination shall be imposed only after all other reasonable means of securing compliance under the Bylaws and rules have been exhausted.
    - b. Notice of suspension or notice of termination shall be sent by the Commission in accordance with the Bylaws.
- (B) 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 this Compact, Commission Bylaws, or duly promulgated rules. The Commission shall notify the defaulting state in writing of the penalty imposed by the Commission on the defaulting state pending a cure of the default within a reasonable timeframe. The Commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the Commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the member states and all rights, privileges, and benefits conferred by this Compact shall be terminated from the effective date of termination.
- (C) The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.
- (D) The Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the Commission and the defaulting state.
- (E) Reinstatement following termination of any party state requires both a reenactment of the Compact by the defaulting state and the approval of the Commission pursuant to the rules.

**Effective: 11/5/17**

**Rule Amplifies: Section 10 of the Compact**

**Prior Effective Dates: None**

**Rule 8.5 – Judicial Enforcement**

The Commission may also, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Commission, in the United States District Court for the Eastern District of Virginia, to enforce compliance with the provisions of the Compact, its duly promulgated rules,

and Bylaws, against any member state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorneys' fees.

**Effective: 11/5/17**

**Rule Amplifies: Section 10 of the Compact**

**Prior Effective Dates: None**