






The Nurse Licensure Compact: Easing Regulatory Burdens and Enhancing Public Protection

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Disclaimers

- The views and opinions expressed here do not necessarily reflect those of the Alabama Board of Nursing and/or the Interstate Commission of Nurse Licensure Compact Administrators.
- Nothing in this presentation is intended to be, nor should it be relied upon as, legal advice. The participant should seek the advice of their own attorney.



Objectives

Following this presentation, participants should be able to:

- Describe the key provisions of the Nurse Licensure Compact.
- Discuss the investigative and disciplinary process for nurses who hold multistate licenses.
- Identify issues attorneys should consider when handling licensure and disciplinary matters involving holders of multistate licenses.



What is a Compact?

- A contract between two states entered into by passing a law in each state.
- “[A] compact is, after all, a legal document. . . . It requires no elaborate argument to reject the suggestion that an agreement solemnly entered into between States by those who alone have political authority to speak for a State can be unilaterally nullified, or given final meaning by an organ of one of the contracting States.”

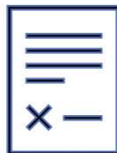
West Virginia ex rel. Dyer v. Sims, 351 U.S. 22, 28 (1951).



What is a Compact?

Elements of a Contract:

- Offer
- Consideration
- Acceptance
- Mutuality
- Capacity



What is a Compact?

- “The terms of the Compact determine [the] . . . Question.”
 - Giving ordinary meaning to undefined terms in the compact
 - Applying the Restatement (Second) of Contracts

Alabama v. North Carolina, 560 U.S. 330 (2010).



Compact Clause

“No State shall, without the Consent of Congress. . . enter into any Agreement or Compact with another State”

- Article I, Section 10, Clause 3



When is Congressional Consent Required?

- “[T]he prohibition is directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States.”

Virginia v. Tennessee, 148 U.S. 503, 519 (1893).



Two Models of Professional Licensure Compacts

- Mutual Recognition
 - License acquired in home state (state of established residence)
 - Practice is authorized in other compact states
 - Must change state of licensure if licensee moves
- Expedited Licensure
 - Licensee must acquire license in each state of practice
 - Simplified process (same application requirements, sharing of data, etc.)



Health Care Licensure Compacts by Model

Mutual Recognition Model Compacts

- Enhanced Nurse Licensure Compact
- Recognition of EMS Personnel Licensure Interstate Compact (REPLICA)
- Physical Therapy Licensure Compact
- Psychology Interjurisdictional Compact (PSYPACT)

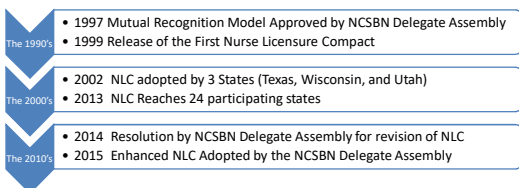
Expedited Licensure Model Compacts

- Interstate Medical Licensure Compact (IMLC)



Occupational Licensure: Interstate Compacts in Action, Council of State Governments, https://licensing.csg.org/wp-content/uploads/2019/07/OccupationalInterstateCompactsInAction_Web.pdf

History of the Nurse Licensure Compact



Evans, Sandra, The Nurse Licensure Compact: A Historical Perspective, Journal of Nursing Regulation 6:3 (October 2015).

History of the Nurse Licensure Compact

- The 2010's**
 - 2018 ENLC Implemented on January 19, 2018, with 29 States
 - 2019 2 states implemented
- The 2020's**
 - 2020 2 states implemented
 - 2021 1 state implemented
- Today**
 - 2022 1 state implemented, 39 Jurisdictions have passed the ENLC.
 - Implementation is pending in 3 jurisdictions. Ohio implements January 1, 2023.



<https://www.ncsbn.org/public-files/nlcmemberstates.pdf>

Purpose of the Nurse Licensure Compact

Facilitate	Facilitate the states' responsibility to protect the public's health and safety
Ensure and encourage	Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation
Facilitate	Facilitate the exchange of information between party states in the areas of nurse regulation, investigation and adverse actions
Promote	Promote compliance with the laws governing the practice of nursing in each jurisdiction
Invest	Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses
Decrease	Decrease redundancies in the consideration and issuance of nurse licenses
Provide	Provide opportunities for interstate practice by nurses who meet uniform licensure requirements



Key Terms

- Party State**
 - Any state that has adopted the Compact.
- Home State**
 - The party state which is the nurse's primary state of residence.
- Remote State**
 - A Party State other than the Home State.



Key Terms



Multistate License

- a license to practice as a registered or a licensed practical/vocational nurse (LPN/VN) issued by a home state licensing board that authorizes the licensed nurse to practice in all party states under a multistate licensure privilege.

Single State License

- a nurse license issued by a party state that authorizes practice only within the issuing state and does not include a multistate licensure privilege to practice in any other party state



Uniform Licensure Requirements

* These are paraphrased
– see Model NLC for exact language.

Requirements:

An applicant for licensure in a state that is part of the eNLC will need to meet the following uniform licensure requirements:

1. Meets the requirements for licensure in the home state (state of residency);
2. a. Has graduated from a board-approved education program; or
b. Has graduated from an international education program (approved by the authorized accrediting body in the applicable country and verified by an independent credentials review agency);
3. Has passed an English proficiency examination (applies to graduates of an international education program not taught in English or if English is not the individual's native language);
4. Has passed an NCLEX-RN® or NCLEX-PN® Examination or predecessor exam;
5. Is eligible for or holds an active, unencumbered license (i.e., without active discipline);
6. Has submitted to state and federal fingerprint-based criminal background checks;
7. Has not been convicted or found guilty, or has entered into an agreed disposition, of a felony offense under applicable state or federal criminal law;
8. Has no misdemeanor convictions related to the practice of nursing (determined on a case-by-case basis);
9. Is not currently a participant in an alternative program;
10. Is required to self-disclose current participation in an alternative program; and
11. Has a valid United States Social Security number.



Meet Home State Qualifications

- ULR: Meets the home state's qualifications for licensure or renewal of licensure, as well as, all other applicable state laws.
 - Rule 404. TEMPORARY PERMITS AND LICENSES A temporary permit, license, or similar temporary authorization to practice issued by a party state to an applicant for licensure shall not grant multistate licensure privileges.



Educational Requirements

- ULR: Has graduated or is eligible to graduate from a licensing board-approved RN or LPN/VN prelicensure education program;
- or
- ULR: ii. Has graduated from a foreign RN or LPN/VN prelicensure education program that (a) has been approved by the authorized accrediting body in the applicable country and (b) has been verified by an independent credentials review agency to be comparable to a licensing board-approved prelicensure education program;
 - Rule 406. CREDENTIALING AND ENGLISH PROFICIENCY FOR FOREIGN NURSE GRADUATES (1) A party state shall verify that an independent credentials review agency evaluated the credentials of graduates as set forth in Article III (c)(2)ii.



English Proficiency Requirements

- ULR: Has, if a graduate of a foreign prelicensure education program not taught in English or if English is not the individual's native language, successfully passed an English proficiency examination that includes the components of reading, speaking, writing and listening;
 - RULE 406. CREDENTIALING AND ENGLISH PROFICIENCY FOR FOREIGN NURSE GRADUATES (2) The party state shall verify successful completion of an English proficiency examination for graduates as set forth in Article III (c)(3).



NCLEX

- ULR: Has successfully passed an NCLEX-RN® or NCLEX-PN® Examination or recognized predecessor, as applicable.



Unencumbered License

- ULR: Is eligible for or holds an active, unencumbered license
 - No encumbrances in any state – whether party state or non-party state.



Fingerprint Background Check

- ULR: Has submitted, in connection with an application for initial licensure or licensure by endorsement, fingerprints or other biometric data for the purpose of obtaining criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records;
 - Rule 408, FEDERAL CRIMINAL RECORDS Communication between a party state and the Commission and communication between party states regarding verification of the nurse's eligibility for licensure pursuant to the Compact shall not include any Criminal History Record Information (CHRI) received from the Federal Bureau of Investigation relating to a federal criminal records check performed by a member board under Public Law 92-544.



State and Federal Felonies

- ULR: Has not been convicted or found guilty, or has entered into an agreed disposition, of a felony offense under applicable state or federal criminal law.



Misdemeanors Related to the Practice of Nursing

- ULR: Has not been convicted or found guilty, or has entered into an agreed disposition, of a misdemeanor offense related to the practice of nursing as determined on a case-by-case basis.



Pardons/Expungement

- Pardons:
 - Governed by state law.
- Expungement:
 - Governed by state law.



Alternative Program Participation

- ULR: Is not currently enrolled in an alternative program;
 - Rule 201. UNIFORM DATA SET AND LEVELS OF ACCESS (1) The Compact Administrator of each party state shall furnish uniform data to the Coordinated Licensure Information System, which shall consist of the following: . . . (h) current participation by the nurse in an alternative program.



Alternative Program Participation

- ULR: Is subject to self-disclosure requirements regarding current participation in an alternative program;
 - 401. PARTY STATE RESPONSIBILITIES (1) On all application forms for multistate licensure, a party state shall require, at a minimum: (b) Whether the applicant is a current participant in an alternative program.



Social Security Number

- ULR: Has a valid United States Social Security number
 - 201. UNIFORM DATA SET AND LEVELS OF ACCESS (1) The Compact Administrator of each party state shall furnish uniform data to the Coordinated Licensure Information System, which shall consist of the following: . . . (j) the applicant or nurse's United States social security number.



Investigative and Disciplinary Process

- Nursys reporting requirements
- Sharing of investigative information
- Authority to investigate
- Authority to discipline



Key Terms

- Encumbrance: a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board.
- Deactivate: to change the status of a multistate license or privilege to practice.
- Adverse action: any administrative, civil, equitable or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against a nurse, including actions against an individual's license or multistate licensure privilege such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on licensure affecting a nurse's authorization to practice, including issuance of a cease and desist action.



Key Term: Disqualifying Event

NLC does not define "disqualifying event," but references it once.

Any nurse holding a home state multistate license, on the effective date of this Compact, may retain and renew the multistate license issued by the nurse's then-current home state, provided that:

1. A nurse, who changes primary state of residence after this Compact's effective date, must meet all applicable Article III.c. requirements to obtain a multistate license from a new home state.
2. A nurse who fails to satisfy the multistate licensure requirements in Article III.c. due to a disqualifying event occurring after this Compact's effective date shall be ineligible to retain or renew a multistate license, and the nurse's multistate license shall be revoked or deactivated in accordance with applicable rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators ("Commission").

Article III.g. Model NLC



Rules Define Disqualifying Event

Rule 100(6): "Disqualifying Event" means an incident, which results in a person becoming disqualified or ineligible to retain or renew a multistate license. These include but are not limited to the following: any adverse action resulting in an encumbrance, current participation in an alternative program, a misdemeanor offense related to the practice of nursing (which includes, but is not limited to, an agreed disposition), or a felony offense (which includes, but is not limited to, an agreed disposition).



Definition of Adverse Action

"Adverse action" means any administrative, civil, equitable or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against a nurse, including actions against an individual's license or multistate licensure privilege such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on licensure affecting a nurse's authorization to practice, including issuance of a cease and desist action.

Article II.a.



Party States Must Determine Disqualifying Events

Rule 407: A party state shall determine whether a disqualifying event will result in adverse action or deactivation of a multistate license or privilege. Upon deactivation due to a disqualifying event, the home state may issue a single state license.



Party State Nursys Requirements

- Party states are required to enter uniform data into Nursys – which includes (among other things):
 - Public emergency and final disciplinary actions
 - A change in the status of a disciplinary action or licensure encumbrance
 - Status of multistate licensure privileges
 - Current participation by the nurse in an alternative program
 - Current significant investigative information
- ENLC Articles III, IV, V and VI, Rule 201(1)
- Information in Nursys regarding current significant investigative information and participation in nonpublic or confidential alternative programs only available to other party states.
- Party states are required to query Nursys when a nurse applies for a license, and "upon discovery that an applicant is under investigation in another party state, the party state in receipt of the nurse licensure application shall contact the investigating party state and may request investigative documents and information."
- ENLC Articles IV and VI, Rule 202



Party State Nursys Requirements

- If a party state takes action against a multistate licensure privilege, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.
- All licensing boards shall promptly report to the coordinated licensure information system any adverse action, any current significant investigative information, denials of applications (with the reasons for such denials) and nurse participation in alternative programs known to the licensing board regardless of whether such participation is deemed nonpublic or confidential under state law. ENLC Articles III and VI.



Requirements for Investigative Coordination Among Party States

- The Compact administrator of a party state shall provide all investigative documents and information requested by another party state. ENLC Article VI.
- Party States have the authority to:
 - Complete any pending investigations of a nurse who changes primary state of residence during the course of such investigations. The licensing board shall also have the authority to take appropriate action(s) and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.
 - Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, as well as, the production of evidence. Subpoenas issued by a licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state in which the witnesses or evidence are located. ENLC Article V.



Requirements for Investigative Coordination Among Party States

Exception to Sharing Information

RULE 408. FEDERAL CRIMINAL RECORDS

- Communication between a party state and the Commission and communication between party states regarding verification of the nurse's eligibility for licensure pursuant to the Compact shall not include any Criminal History Record Information (CHRI) received from the Federal Bureau of Investigation relating to a federal criminal records check performed by a member board under Public Law 92-544.



Party State Requirements for Disciplinary Actions

- All party states shall be authorized, in accordance with existing state due process law, to take adverse action against a nurse's multistate licensure privilege such as revocation, suspension, probation or any other action that affects a nurse's authorization to practice under a multistate licensure privilege, including cease and desist actions.
- Home state may take adverse action against multistate license, and may base that adverse action on the factual findings of the remote state, provided that the home state follows its own procedures for taking such adverse action.
- Adverse actions that involve an encumbrance of the license require the multistate license to be deactivated until removal of the encumbrances.
- Party states may still permit participation in an alternative program in lieu of adverse action but must report that to Nursys.



ENLC Articles III and V.

Effect of Adverse Action on Multistate License: Try a Scenario

- Sally is practicing nursing in Remote State and has a Home State MSL. Sally gets arrested for fraudulently obtaining disaster benefits.
- Sally pleads guilty to a felony, receives a suspended sentence, and is ordered to pay \$15,000 in restitution.
- Home State staff dutifully issue charges against Sally, but Sally presents a very compelling case at the hearing, and the Home State BON decides that Sally should only get a reprimand.
- Will Home State have to deactivate Sally's MSL?



Is There Adverse Action?

- any administrative, civil, equitable or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against a nurse, including actions against an individual's license or multistate licensure privilege such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on licensure affecting a nurse's authorization to practice, including issuance of a cease and desist action.



Is There Adverse Action?

- administrative, civil, equitable or criminal action permitted by a state's laws

- (1) Reprimand – yes
- (2) Felony conviction – yes



Is There Adverse Action?

- imposed by a licensing board or other authority against a nurse, including actions against the individual's license or multistate licensure privilege

- Reprimand imposed by licensing board.
- Felony conviction imposed by circuit court (that's an authority).



Two Adverse Actions

Reprimand
Felony Conviction



The Reprimand

The reprimand is an Adverse Action, but does it constitute a Disqualifying Event?

"Disqualifying Event" means an incident, which results in a person becoming disqualified or ineligible to retain or renew a multistate license. These include but are not limited to the following: any adverse action resulting in an encumbrance, current participation in an alternative program, a misdemeanor offense related to the practice of nursing (which includes, but is not limited to, an agreed disposition), or a felony offense (which includes, but is not limited to, an agreed disposition).

Is the reprimand an encumbrance?

"Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board." There is no encumbrance here.



Reprimand

- Not a disqualifying event, therefore does not necessitate deactivation of the MSL.

BUT



What about that felony?

- Lack of a felony conviction is a uniform licensure requirement for a Multistate License.
- A felony conviction makes the nurse ineligible to retain or renew of the MSL.
- The felony conviction is a disqualifying event.
- The Home State MUST DEACTIVATE the nurse's multistate license, but the nurse could still have a single state license.



NLC Considerations in Representation of Nurses

- Licensure Issues
 - Uniform licensure requirements of the compact are mandatory.
 - If your client does not meet the uniform licensure requirements for a multistate license, focus on whether the client can meet the criteria for a single-state license, or whether something can be done to make the client meet the requirements.



NLC Considerations in Representation of Nurses

- Resolution of criminal matters
 - If you are representing a client in a criminal matter, realize that the disposition will affect eligibility to obtain or retain a multistate license.
 - Any felony conviction or agreed disposition is a disqualifying event.
 - Any conviction or agreed disposition of a misdemeanor related to the practice of nursing is a disqualifying event.
 - Consider ahead of time whether your client's charge will be considered a misdemeanor related to the practice of nursing.



NLC Considerations in Representation of Nurses

- Discipline Considerations
 - Know whether the disciplinary action the Board is proposing will constitute an encumbrance, and thus require deactivation of the multistate license.
 - Remember that some things are disqualifying events, even if the Board does not discipline the license or the discipline does not rise to the level of an encumbrance.



NLC Considerations in Representation of Nurses

- Alternative Programs
 - Remember that participation in an alternative program is a disqualifying event, no matter the state in which the nurse participates.
 - Keep in mind that nurse could still try to get a single state license in other states while participating in the alternative program. Would be at the discretion of the other state.



Questions?

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