gnyha issue brief

THE INTERSTATE MEDICAL LICENSURE COMPACT AND NEW YORK STATE SHIELD LAWS

OCTOBER 2024

GNYHA has long supported New York joining the Interstate Medical Licensure Compact (IMLC). By streamlining the process for New York State licensure, the IMLC would help mitigate the State's chronic physician staffing shortages, thereby increasing access to care. It would also improve the ability of New York-licensed providers to deliver care to patients located in IMLC-participating states.

During the 2024 legislative session, concerns were raised about the potential for certain IMLC provisions to diminish the protections under New York State "shield" laws, enacted in the wake of *Dobbs v. Jackson Women's Health Care*, that protect reproductive health care providers.

We do not believe that New York joining the IMLC would diminish the effectiveness of those laws but recognize there are still many unknowns in reproductive health law across the nation. We share the goal of protecting New York providers in the provision of services that are lawful in New York.[1]

We do believe these concerns have given rise to certain misconceptions about New York joining the IMLC. Below we address these misconceptions and explain our understanding of the facts. We also propose minor changes to certain New York laws and the IMLC legislation to address the concerns that have been expressed.[2]

Misconception 1: The IMLC Would Require New York to Take Reciprocal Action Against New York Physicians Based on Licensure Actions in Other States

Given the number of states that have criminalized reproductive health services traditionally considered the standard of care in certain circumstances, it is possible that physicians in those states may be subject to licensure actions in connection with providing such care. This raises the question of how a physician licensed in New York who participates in the IMLC—and who has their license revoked, surrendered, suspended or relinquished in lieu of discipline by another member state—must be treated in New York as a result of participating in the IMLC.

Under the IMLC legislation, such actions result in an automatic 90-day suspension of the physician's other licenses obtained through the IMLC.[3] The purpose of this automatic suspension is to give the other member states the time to inquire into the circumstances of the licensure action and determine if the physician's conduct violates their own laws. But—importantly—the IMLC rules allow for the automatic suspension to be terminated within 90 days. Indeed, the rules allow for *immediate* termination, reversal, or rescission of the automatic suspension.[4] The Commission has advised that this rule was added to address scope of practice concerns which could arise if a state finds that such adverse action was taken as a result of actions that would have been lawful in the state where the patient was located when the treatment was provided.

It bears noting that under current law, the State Education Department (SED) would be required to conduct an inquiry into licensure actions and criminal convictions in other states. Education Law § 6530(9) provides that it is professional misconduct for a licensee to have been subject to such actions if the underlying facts would,

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1 In the immediate aftermath of the *Dobbs* decision, GNYHA collaborated extensively with the Office of Attorney General's task force on reproductive health to educate our members and their providers on the decision's potential implications, amplifying the OAG's messaging on resources for providers and patients and establishing member resources of our own.

2 GNYHA acknowledges the law firm, Manatt, for its assistance with developing the legislative proposals discussed in this paper.

3 Proposed Education Law § 8870. All statutory references to the Interstate Medical Licensure Compact (IMLC) authorizing legislation or IMLC Act are in reference to 2024 NY Assembly Bill A9301.

4 Interstate Medical Licensure Compact Commission (IMLCC) Rule, Chapter 6, Section 6.6 (added November 8, 2022).

Misconception 1 (continued)

if committed in New York, constitute professional misconduct or a violation under New York State law.[5] SED does not, nor should it, take information about other states' licensure actions at face value but instead should determine whether the underlying grounds for those actions require a similar or other action in New York.

With the repeal of *Roe v. Wade*, however, New York State modified its existing standards by enacting several shield laws to protect New York providers of reproductive health care services. Education Law § 6531-b (2) provides that a practitioner may not have their New York license suspended or revoked on the basis that the practitioner performed, recommended, or provided any such reproductive health services or gender-affirming care for a patient who resides in a state wherein the performance, recommendation, or provision of such reproductive health services or gender-affirming care is illegal.

Even given this provision's protective intent, the clear implication is that SED must determine that the basis of the licensure action in another state was, in fact, the provision of certain services that are legal in New York. That is necessary for SED to both appropriately apply the shield law and fulfill its obligations to the public as New York's medical licensing body.

The difference, of course, is that if New York joins the IMLC, SED would be required to automatically suspend the provider's license while conducting its due diligence. But since the IMLC rules allow for such automatic suspensions to be discontinued *immediately*, SED would be free to dispense with the automatic suspension while confirming that the provider's New York State licensure should not be affected, using whatever methods it currently employs. Thus, the IMLC would not materially prolong or complicate what would normally have to happen.

While we think this process sufficiently protects both the subject providers and the people of New York, we propose to make it more protective of reproductive health providers targeted under other states' restrictive laws by adding language to § 6531-b (2) making clear how that provision's protections apply in the case of an IMLC automatic suspension based on a licensure action taken in another IMLC member state. ●

Proposal: Include New Ed. Law § 6531-b (2)(a):

2(a). Any license, certification or authorization that is automatically suspended or revoked pursuant to subdivision four of section 8870 of the education law shall be retroactively reinstated to the date it was revoked or suspended, and such practitioner shall be recognized as being authorized to practice in New York for any period in which such license or certification was suspended or revoked pursuant to subdivision four of section 8870 of the education law, if such suspension or revocation is solely on the basis that such health care practitioner performed, recommended, or provided any such reproductive health services or gender-affirming care for a patient who resides in a state wherein the performance, recommendation, or provision of such reproductive health services or gender-affirming care is illegal.

Misconception 2: The IMLC Would Require New York to Comply with Out-of-State Subpoenas

The IMLC legislation contains an unfortunate drafting ambiguity in the section entitled, "Joint Investigations." A provision in that section states, "A subpoena issued by a member state shall be enforceable in other member states."[6] While the IMLC has confirmed that the intent of this provision is to apply only to *joint investigations* as the title of the section indicates, the provision itself is not limited in scope.

Taken out of context, the provision causes understandable concern in a post-*Dobbs* world. The concern is if New York joins the IMLC, it will be required to comply with any and all subpoenas issued by other member states, including those that might pertain to the provision of reproductive health care services. If true (which it is not), this authority would conflict with New York's shield law protections.[7]

Recognizing the concern, the IMLC recently amended its rules to clarify that, "*During a joint investigation,* a subpoena issued by a member board shall be enforceable in other member states *participating in that joint investigation* for a Compact applicant or physician that holds a license issued pursuant to the Compact process in the state to which the subpoe-

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5 Among the definitions of professional misconduct listed in Ed. Law § 6530(9) are being convicted of a crime in another jurisdiction, which, if committed within New York, would have constituted a crime under New York State law; being found guilty of improper professional practice or professional misconduct in another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state; having had a license to practice medicine revoked, suspended or subject to other disciplinary action or to surrender surrendered a license after a disciplinary action was instituted in another state, where the conduct resulting in the action would, if committed in New York, constitute professional misconduct under the laws of New York State.

6 Proposed Education Law § 8869 (3), 2024 NY Assembly Bill A9301.

7 See CPLR §§ 3102(e) and 3119(g), and Executive Law § 837-x.

8 IMLCC Rule, Chapter 6, Section 6.4(f).

Misconception 2 (continued)

na is directed [emphasis added]."[8] The IMLC Executive Director has confirmed that this provision is intended to apply only within the context of when a member state agrees to participate in a joint investigation of a physician licensed in their state. And it is important to note that IMLC member states are not required to participate in joint investigations.[9]

Putting aside concerns about reproductive health care, we believe this provision benefits IMLC members because it provides a structure for states to cooperate in joint investigations where they *choose* to do so. In appropriate circumstances, having a structured approach to joint investigations would address the enforcement challenge presented by a provider traveling from state to state committing negligence or other bad acts while benefitting from a disjointed and siloed licensure and enforcement regime.

We believe the clear intent of the legislative language, combined with the IMLC rules, is sufficient to establish that New York would not have to comply with other member states' subpoenas if New York were to join the Compact. Nevertheless, a technical change to the IMLC legislation would clarify the matter further.

Proposal: Amend proposed Education Law § 8869 (3) in the IMLC Act as follows:

> (3) A subpoena issued by a member state shall be enforceable in other member states, **but only to the extent that both states agree to and are participating in a joint investigation, as outlined in the IMLC.**

The IMLC has confirmed this change would be acceptable. ●

Misconception 3: The IMLC Conflicts with New York State Laws

Another concern raised is that the IMLC authorizing legislation expressly provides that "all laws in a member state in conflict with the compact are superseded to the extent of the conflict." We believe that adopting the language outlined in sections 1 and 2 would address any perceived conflicts with New York State law. There are, however, other technical changes that could be made to various provisions of New York State law to make it abundantly clear that New York shield laws prevail in relation to the IMLC. ●

Proposal: Make technical changes to various provisions of the law as follows:

- New CPLR § 3102 (e) (1): This subdivision shall be deemed to supersede any law under Article 169 of the Education Law in conflict with this subdivision.
- New CPLR § 3119 (g) (3): This subdivision shall be deemed to supersede any law under Article 169 of the Education Law in conflict with this subdivision.[10]
- New Executive Law § 837-x (e): This section shall be deemed to supersede any law under Article 169 of the Education Law in conflict with this section.

Provider Education

As our comments suggest, we believe there are certain misconceptions about the IMLC and its potential effect on the shield laws. One way to combat that problem is to require SED to provide education to IMLC participants, including about providing reproductive health services in multiple states. The Washington Medical Commission published a notice to IMLC physicians that could be instructive.[11]

Proposal: Amend § 2 of the IMLC Act as follows and renumber § 2 of the bill as § 3:

> § 2. The State Education Department shall issue and regularly update frequently asked questions to all prospective compact licensees summarizing the law and explaining how New York law interacts with the compact in the area of joint investigations with other compact member states and disciplinary actions issued by other compact member states. The frequently asked questions shall detail the potential risks in holding a compact license if the physician provides reproductive health services that may be legal in one state but not in another.

GNYHA stands ready to assist with provider education efforts. This would include providing information to our own membership as well as collaborating with SED, the New York State Office of Attorney General, and the New York State Department of Health in further outreach efforts. ●

9 Proposed Education Law § 8869 (2), 2024 NY Assembly Bill A9301: "… a member board may participate with other member boards in joint investigations of physicians licensed by the member boards [emphasis added]."

10 We note that protections afforded under CPLR § 3119(g) already contain language that the protections shall apply notwithstanding any other provisions of law.

11 "Out-of-State Risk and your Compact License" available at https://wmc.wa.gov/news/out-state-risk-and-your-compact-license.