

REPORT OF THE FSMB WORKGROUP ON INNOVATIONS IN STATE BASED LICENSURE

*Adopted as policy by the House of Delegates of the Federation of State Medical Boards
April 2014*

INTRODUCTION AND CHARGE

State medical and osteopathic boards of the United States are charged by state legislatures to regulate the practice of medicine. At a minimum, regulating the practice of medicine includes a licensing and a disciplinary function, the statutory scope of which is set forth in each state's respective medical practice act.

Ensuring that only qualified health professionals are lawfully authorized to provide medical services to health care consumers necessitates, rather than justifies, a thorough and vigilant licensing process. Over time, a robust regulatory framework has developed that reflects the due diligence patients and physicians both deserve. Before issuing a permanent license to practice medicine, a state medical board will act pursuant to statutorily established parameters and evaluate an applicant's competence and character. Uniformly, the state boards will assess an applicant's education, training, examination history, and character, though variations within each of these categories exist. For instance, in some jurisdictions an applicant may be required to complete graduate medical education (GME) before full licensure while other jurisdictions may be authorized to license physicians after only one year of GME.

Additionally, many state statutes require that applications for licensure must be approved by the medical board during a board meeting, or alternatively, that applications which have been preliminarily approved by medical board executive staff be ratified by the board. It is not uncommon to have medical boards meet monthly or even on a less frequent basis. Most medical boards have addressed the delays caused by this system by seeking legislative authority or engaging in rulemaking to permit the issuance of a limited license to applicants who seek to practice in the period of time between preliminary approval of their application and the next regular meeting of the board.

A limited license for interim practice is just one of several instances in which a state board may wish to issue a limited or special license to allow a physician to provide services to patients within its jurisdiction. Physicians may also seek to provide limited or temporary services in a case of institutional employment, in order to provide voluntary medical services to under-insured/uninsured patients, to assess/treat a traveling sports team, at a youth camp, or as an administrator.

The Federation of State Medical Boards (FSMB) Workgroup on Innovations in State Based Licensure prepared this report to identify and highlight instances of temporary, limited or special practice, and to guide the state boards toward best regulatory practices and encourage aligned standards, policies and procedures.

METHODOLOGY

The Workgroup reviewed state rules and policies and determined the full range and scope of the special and limited licenses currently being issued by the state medical boards. As a result of that exercise, it was determined that the state boards, in addition to affirmatively issuing limited and special purpose licenses, have also articulated a number of licensure exceptions to govern instances in which a physician may seek to provide medical services within the state for a special purpose or a limited period of time. The Workgroup determined that the following circumstances fell within the scope of its charge:

Temporary Practice by a Team Physician

At all levels – amateur, collegiate and professional – sports teams regularly have an affiliated physician who travels with the team to provide ongoing or emergency medical care. Yet relatively few states have a mechanism by which they may issue a limited license or otherwise exempt these physicians from the licensure process. Of the sixty-nine (69) state medical boards that license physicians, no medical board issues a limited sports team license¹ and only twenty states² have promulgated an applicable licensure exception by statute or regulation. The approaches espoused by those states generally fall into one of three categories: 1) the medicine practiced by out-of-state³ physicians providing care to a traveling sports team is not encompassed in the state’s definition of the practice of medicine; 2) a physician providing medical services to a traveling sports team by which he or she is employed is exempt from the licensure requirements of the destination state; or 3) an exception, not specific to the practice of sports medicine, would exempt a sports team physician from a state’s licensure requirements.

A Kentucky statute serves as a characteristic illustration of the first approach.⁴ The statute specifies that physicians who are employed by a sports team visiting Kentucky for a specific sporting event may engage in the practice of medicine in Kentucky without a Kentucky license so long as the physician holds an active medical license in another state and limits the practice of medicine in Kentucky to treatment of the members, coaches and staff of the employing sports entity.⁵ By slight contrast, South Carolina has provided that out-of-state sports team physicians are exempt from the licensure requirement so long as the physician holds an active license in the other jurisdiction where he or she is regularly engaged in the practice of medicine and is employed or designated as the team physician by an athletic team visiting the state for a specific sporting event.⁶ Like Kentucky, South Carolina limits the scope of the exception to medical services provided to team members, coaches and staff. This approach is largely consistent across the states; however, in 2012, Ohio passed SB 141 which expands authorization, allowing licensed out-of-state physicians to provide services to out-of-state athletic teams; coaching, communications, equipment and sports medicine staff; members of the band and cheerleading squad; and the team’s mascot.

¹ To clarify, no medical boards have developed a limited sports team license for issuance to only those physicians who provide medical services to a sports team and its staff. Most medical boards have the authority to issue limited licenses for a variety of purposes. It is probable that many states could issue a limited license to a physician for the purpose of providing temporary medical services to a sports team or its staff under the state’s current regulatory framework.

² Anderson, J., Carlson, Chad., Trojan, T. H., Viola, Tracey (October 4, 2012). A survey of state medical licensing boards: can the traveling team physician practice in your state? *British Journal of Sports Medicine*, 46. Retrieved from <http://bjsm.bmj.com/content/early/2012/10/03/bjsports-2012-091460.full?sid=935de7c9-dcc8-4346-bbec-9532f12d2dc3>; HB. 2409, 51st Leg., 1st.Sess. (Ariz. 2013); SB 46, 147th G.A. (Delaware 2013).

³ For the purposes of this report, the term “out-of-state physician” means physicians who are licensed in a state other than the state in which he or she is providing services.

⁴ *Kentucky Revised Statutes* 311.560.

⁵ *Id.*

⁶ *South Carolina Code* 1976 § 40-47-30(B).

The practical consequence of specifying that medical services provided by a sports team physician do not fall within a state's definition of the practice of medicine versus providing that a sports team physician is exempt from the licensure requirements of a state is not significant. Both approaches suggest that medical services provided by a sports team physician fall slightly outside the scope of a medical board's traditional purpose of protecting patients located within the state. This may explain why the state boards have not felt compelled to implement limited licenses specific to sports team physicians. Licensure, even limited licensure, is a mechanism by which state boards seek to bring practitioners under their jurisdiction so that they may properly discipline or otherwise restrict from practice those physicians who pose a risk to patients located within their states. However, in the case of a physician providing care to a traveling sports team and its staff, any medical care rendered is not delivered to patients who reside in the state in which the sporting event is occurring and the medical board sits, thus the Workgroup posited that jurisdiction is not necessary in order to protect in-state patients if a special purpose license is issued for this purpose.

Temporary or Special Practice to Provide Voluntary Services to Underserved or Under-insured/uninsured Patients

State medical boards have recognized the need to oversee physicians who provide voluntary care to under-insured/uninsured patients located within their states, irrespective of whether those physicians are licensed in-state or out-of-state. Accordingly, a number of innovations have occurred which encourage the provision of voluntary medical services while seeking to ensure that patients are adequately protected.

Much of the regulation governing the volunteer practice of medicine is directed toward physicians who are no longer in active practice, most often due to retirement or their intent to cease actively practicing medicine. Most regulation of this demographic is uniform, specifying that an individual who is retired from the active practice of medicine who wishes to donate his or her expertise for the medical treatment of under-insured/uninsured individuals in medically underserved areas is eligible for a volunteer license or status pursuant to certain conditions. In addition to applying for the volunteer license or status, the physician must provide documentation indicating that the physician was licensed and in good standing prior to the expiration of his or her license. The physician must also acknowledge and document that he or she will not receive any payment or compensation for medical services provided. The regulations also limit the scope of the physician's practice care of needy and under-insured/uninsured persons located within the issuing state.

A volunteer license or status brings the licensee under the purview of the board, subjecting him or her to the medical practice act and applicable regulations. Certain privileges and obligations correspond to the license or status in representative fashion. For instance, a volunteer physician will be subject to annual or biennial renewal as well as the continuing education requirements of the board. A board may also require that a physician pass a clinical skills assessment or other professional evaluation before issuing a volunteer license or status.

In 2010 the California Legislature passed AB 2699 which effectively directed the healing boards in California to adopt regulations to allow for health care practitioners who are licensed and in good standing in another state, district or territory, to provide health care services in California without obtaining a California license. In 2012, rules promulgated by the California Medical Board became effective. Pursuant to these rules, a sponsoring entity

that wishes to provide or arrange for the provision of health care services to under-insured/uninsured patients within California must register with the Medical Board, and provide information regarding the event date, location and the types and a general description of the services to be volunteered. Out-of-state practitioners may provide medical services at the free health care event after authorization from the board. Authorization from the board is conditioned upon completion of an application, submission to a criminal background check and is limited to a term of practice not to exceed ten days.

Though California is not the first state to implement a registration program it does seem to have the most expansive regulatory scheme. Kentucky also allows nonresidents to provide medical services through a nonprofit, all-volunteer sponsoring organization without seeking or obtaining a Kentucky medical license. Rather than require registration, the Kentucky Medical Board may issue a waiver to an out-of-state physicians after confirmation that the license is in good standing in their home state. Once a waiver has been issued, an out-of-state physician is permitted to provide volunteer medical services for the period specified in the written waiver. The physician's scope of practice is limited to the sponsoring organization's event or clinic. Like California, the sponsoring organization must register with the Kentucky Cabinet for Health and Family Services. Similar schemes exist elsewhere with subtle variations which may or may not permit out-of-state physicians to provide services.

Examining the full range of existing statutory and administrative provisions governing the charitable practice of medicine reveals varied approaches to address licensure. Some states have elected to issue special purpose licenses or statuses to physicians who do not have a full and unrestricted license to practice in the state but who seek to provide charitable medical services therein. Other states have implemented a registration or waiver program which seems to target out-of-state physicians and presumably does not bring physicians under the purview of the medical board of the state in which services are provided.⁷ The Workgroup concurred that physicians rendering health care services to residents of the state (regardless of whether or not there is remuneration) should be subject to the authority of the board in the state where care is being delivered.

Temporary or Special Practice by a Youth Camp Physician

A minority of state medical boards⁸ issue a temporary license to allow out-of-state physicians to practice medicine at a camp, school, or resort for a limited term, typically not in excess of three months. A representative provision will specify that the temporary license may only be issued to physicians who hold an unrestricted license to practice medicine in another state, and who limit their practice to the provision of medical services to youth camp or school enrollees, leaders and employees. Some slight variations include the condition that the applicant for the temporary license be of good repute⁹ and may be subject to an interview.¹⁰ The Workgroup recognized that this issue is more relevant in certain jurisdictions than others due to a state's geographic location and suitability for youth camps. The Workgroup agreed that boards should have the legal authority to require a special licensure in if deemed appropriate for protecting the public.

⁷ It should be noted that a majority of states with charitable medical care statutes or regulations also waive the application or licensure fees associated with such practice, seemingly as an incentive to encourage more physicians to volunteer their services.

⁸ A fifty (50) state survey suggests that only eight state boards currently issue a temporary license to allow for the temporary practice of medicine at a youth camp; however, it is possible that additional states have the authority to issue temporary or special purpose licenses to these physicians despite the fact that the applicable statutory or administrative code does not articulate the youth camp purpose specifically.

⁹ 32 Maine Rev. Stat. Ann. § 2575.

¹⁰ Wisconsin Statutes Annotated 448.04.

Special Practice by an Institutional Physician

Hospitals and academic and other institutions often seek to recruit out-of-state and foreign-trained physicians to practice or provide clinical or other type of instruction. To facilitate the ease of licensure for these physicians, a number of state boards issue temporary licenses or permits specific to the scope of the physician's institutional practice and the physician's relationship with the institution. Statutes and regulations may refer to this authority as an educational license or permit, visiting faculty permit, institutional license, or other similar phraseology.

The conditions precedent to the issuance of a temporary institutional license may include current and unrestricted licensure in another state or country with equivalent licensure requirements; absence of any disciplinary action in any state in which he or she is licensed; passage of a jurisdictional or other examination; interview by the board; and submission to a criminal background check. Additional conditions and restrictions exist on a state-by-state basis. For instance, a Wisconsin statute specifies that a temporary license is properly issued to applicant graduates of foreign medical schools who, "because of noteworthy professional attainment," are invited to serve on the academic staff of a Wisconsin medical school as a visiting professor.¹¹ A Texas statute provides that a temporarily licensed physician must sign an oath and file affidavits with the board affirming acceptance of the terms and limitations of the license.¹²

A survey of FSMB member boards was conducted on behalf of the Workgroup to determine state boards' utilization of special and limited licenses. Fifty-five (55) boards responded to the survey, representing a 79% response rate. The survey revealed that approximately 50% of state medical boards utilize special and/or limited licenses, while two thirds (66%) of respondents reported infrequently discipline physicians who hold a special purpose licenses (compared to other physicians) and 63% of responding boards indicated that it would recommend the use of a special purpose license to other medical boards. Thus the Workgroup recognizes that while special and limited licenses are not necessarily a priority of the state medical boards, it is the intent of this report to guide the use of special purpose licenses in the event the board deems it in the best interest of the public they are charged to protect.

Recommendations

By exploring and identifying best practices in medical regulation, the FSMB seeks to promote the development and use of consistent standards, language, definitions and tools across the United States and its territories. Concurrently, the FSMB endeavors to properly empower the state boards to address the unique and sometimes novel issues that arise in their states and affect their citizenry punctually and with precision. The Workgroup is reverential towards this approach, believing that practices which are truly the "best" will be absorbed by the statutory and administrative codes of the states with little effort on the part of the FSMB.

¹¹ W.S.A. 448.04(2) (2012).

¹² TX OCC. § 155.104(d) (2009).

Representative of this ideology are two FSMB policy documents: the *Essentials of a State Medical and Osteopathic Practice Act*¹³ and the *Elements of a State Medical and Osteopathic Board*.¹⁴ Where the *Essentials* identifies the requisite content of a medical practice act and seeks to serve as a stimulus to medical boards and state legislatures for periodic review and revision of their statutes, the *Elements* is an explanation of the chapters of the *Essentials* which are specific to the medical board processes and functions rather than the medical practice act itself. The *Essentials* and the *Elements* are companion documents created with the intent to provide state boards with a blueprint of a functional and modern state medical board.

The *Essentials* has long encouraged the state boards to seek the authority necessary to issue special licenses as it deems necessary. Though the special purpose license was originally proposed to allow the boards to absorb the “Report of the Ad Hoc Committee on Telemedicine: A Model to Regulate the Practice of Medicine Across State Lines,” which called for a special purpose license to allow physicians to practice medicine across state lines, the special purpose license has a number of current and potential uses. Existing FSMB policy recommends that the state boards be authorized to issue conditional, restricted, probationary, limited or otherwise circumscribed licenses as it deems necessary.¹⁵

After careful deliberation, the Workgroup makes the recommendations detailed below. The Workgroup makes special note that the recommendations are intended to address instances where a practitioner coming from another jurisdiction- whether international or in the United States- is required to hold a special license valid until the duties for which the license was applied for are terminated. The recommendations represent most expedient and efficient processes identified by the Workgroup for state medical boards to facilitate licensure for special purposes.

The recommendations are as follows:

A recommendation that sports team physicians are held exempt from the state licensure requirement, as follows:

A physician licensed in another state, territory or jurisdiction of the United States is exempt from the licensure requirements in (state) if the physician is employed or formally designated as the team physician by an athletic team visiting (state) for a specific sporting event and the physician limits the practice of medicine in (state) to medical treatment of the members, coaches and staff of the sports entity that employs (or has designated) the physician.

FSMB Essentials of a State Medical and Osteopathic Practice Act be amended to expand the circumstances in which a board may consider a special purpose licenses, as follows:

¹³ The *Essentials* may be accessed electronically at http://www.fsmb.org/pdf/GRPOL_essentials.pdf.

¹⁴ The *Elements* may be accessed electronically at http://www.fsmb.org/pdf/GRPOL_Elements_Modern_Medical_Board.pdf.

¹⁵ Section VII: D, *Essentials of a State Medical and Osteopathic Practice Act*.

D. Special Licensure: The Board should be authorized to issue conditional, restricted, probationary, limited or otherwise circumscribed licenses as it determines necessary. It is to the discretion of the state medical board to set the criteria for issuing special purpose licenses. This provision should include, but not be limited to, the ability to issue a special license for the following purposes:

- to practice medicine across state lines;
- to provide medical services to a traveling sports team, coaches and staff for the duration of the sports event;
- to provide volunteer medical services to under-insured/uninsured patients;
- to provide medical services to youth camp enrollees, counselors and staff for the duration of the youth camp;
- to engage in the limited practice of medicine in an institutional setting by a physician who is licensed in another jurisdiction in the United States.

WORKGROUP ON INNOVATIONS IN STATE-BASED LICENSURE

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