



Board of Physicians

Wes Moore, Governor · Aruna Miller, Lt. Governor · Laura Herrera Scott, M.D., M.P.H., Secretary

April 26, 2024

Marschall Smith
Executive Director
Interstate Medical Licensure Compact Commission
7921 Southpark Plaza, Suite 109
Littleton, Colorado 80120

RE: Maryland Letter regarding Bylaw Article VII Changes

Marschall,

Thank you for the opportunity to comment on the proposed bylaw changes. The Maryland Board is in full support of the recommended bylaw changes and believe that it is essential to approve these bylaws as soon as possible.

Changes to Section 1, Paragraph 1 and 2

The first element of the bylaw changes requires policies to be approved by the full commission before becoming effective. The Rules Committee has been discussing whether many of the policies were more properly categorized as rules. If so, the Executive Committee violated IMLCC Statute Section 11(k), which requires that rules go before the full commission. Maryland Board Commissioners believe that by requiring policies to go through a similar process as rules, including full commission ratification, will create less incentive to skirt the rulemaking process by incorrectly labeling something as a policy.

Change to Section 1, Paragraph 3

There are five types of changes in this section. First, a requirement for notice posted on the website, second, a requirement for who may attend executive session, third, requirement to keep minutes, fourth, the requirement to allow those attending those meetings to receive the documents that are being discussed by the executive committee (EC), and fifth the posting of minutes.

Each of these changes increase transparency by allowing non-EC members to attend meetings, allowing other commissioners to attend executive session, requiring minutes, requiring posting minutes, and allowing all commissioners to have the documents being considered. Several of these requirements are required by statute (*see* Section 11(i) regarding minutes, Section 11(h) regarding public notice, Section 11(j) regarding the public nature of information and official records, Section 11(k) regarding the EC acting as the Commission, presumably with the same legal requirements).

April 26, 2024

Letter regarding Bylaw Article VII Changes

Page 2

In essence these bylaw changes codifies the plain meaning of the statute and specifically clarifies that the EC acting as the IMLCC is required to follow the same procedures regarding notice, minutes, public records as the full IMLCC. It expands the requirement to a small degree by requiring minutes to be posted and documents considered by the compact to be provided to others attending so that they can follow the meeting. Those are certainly within the spirit of the compact and allow further check on the EC because they subject the EC to additional public scrutiny. Specifically, when the EC is discussing a document, it can be difficult for an observer to follow without having the same documents that the EC has a copy of. To promote transparency, guests should be provided these documents prior to the meeting.

The most significant change and most important change explicitly allows rank-and-file commissioners to attend executive session meetings. For several years the full commission has gone into closed session to discuss legal matters with all commissioners present and able to attend. The EC is authorized to act on behalf of the full commission between meetings under Section 11(k) with the exception of rulemaking. Because they are acting in the shoes of the full commission, they should allow all commission members attend, and only close the meeting to members of the public. Instead the EC is using executive session liberally and inappropriately to discuss and make decisions and excluding non-EC commission members. For example, the EC created a policy giving itself full authority to solicit, review, analyze and accept a bid, with the review, analysis and accepting the bid done behind closed doors. The EC used this authority to choose a multi-million-dollar technology service without consulting with the budget or technology committees and by excluding those committee members from the decision-making.

More recently after a concern raised by the Treasurer regarding the financial impact of that contract issued by the EC, on February 26, 2024, the EC conducted a “Leadership Special Meeting” to address these financial implications. No roll call was held, no quorum was present, and no minutes of the executive session were kept. Other commissioners should be allowed to attend meetings that concern the financial impact of contracts entered into by the IMLCC that have the potential to impact participating states.

The Maryland Board, upon further reflection believes that the quorum requirement addition recommended for the committees should apply for the EC as well. While the EC has not had as much specific violations related to quorums like the committees, the requirement should still be laid out in bylaws. The section was added in the attached document and is copied below as well:

A majority of the executive committee commissioners shall constitute a quorum of the executive committee. The presence of a quorum must be established before a committee can take any authorized action on behalf of the Compact.

In order to take action, quorums must be present. According to Robert’s Rules of Order, “[t]he minimum number of members who must be present at the meetings of a deliberative assembly for business to be validly transacted is the quorum of the assembly. The requirement of a quorum is a protection against totally unrepresented action in the name of the body by an unduly

April 26, 2024

Letter regarding Bylaw Article VII Changes

Page 3

small number of persons. . . . In an ordinary society, therefore, a provision of the bylaws should specify the number of members that shall constitute a quorum, which should approximate the largest number that can be depended on to attend a meeting.” Roberts Rules 3:3. Roberts rules expressly forbids actions without a quorum under Rule 40:5, 40:6 and 40:9. While the bylaws describe a quorum for purposes of the full commission meetings, they are not established for executive or other committees. The Executive Director asserted in its published “special information” that quorum requirements don’t apply for committees. That is not addressed in the bylaws and is especially problematic when a small number of members are acting on behalf of the full commission either through the EC or in committees on issues such as rulemaking or approving the budget. Maryland Commissioners have observed business being conducted and votes occurring without a quorum in committees, such as the rules committee (including the most recent March meeting). The bylaw recommended here establishes a quorum requirement and addresses what the requirement should be.

In sum, so long as the EC is acting on behalf of the full commission, any commissioner should be allowed to observe its discussions, decisions, and votes.

Section 2 Paragraph 4

It appears that the changes for the bylaws did not include several provisions that were discussed and added for the executive committee. It is unclear whether that was a mistake in transcription or a mistake after the discussion. The Committee changes should include the same requirements for minutes, sharing documents, and posting minutes as was added to the Executive Committee bylaws. Please see the attached document with the three additional sentences as follows:

Committees shall keep minutes for both public and executive session meetings. Reports and other documents presented to the Committees shall be posted on the Compact website before the meeting. Regular meeting minutes shall be posted on the Compact website.

The second section changes regarding all other committees should contain the same notice, minutes and executive session recommendations as discussed above. The requirement for notice posted on the website, a requirement for who may attend executive session, requirement to keep minutes, the requirement to allow those attending those meetings to receive the documents that are being discussed by the executive committee (EC), and the posting of minutes. It should be adopted for the same reasons discussed above.

The bylaws changes also recommend adopting setting the authority of the committees. While committees have no authority under Robert’s rules 50:4 and 50:8 unless the full commission delegates specific tasks to committees. Committees of the Commission have been acting on behalf of the full commission without instructions. This change would codify and confirm that this is inappropriate unless the full commission has delegated an act to the Committee.

April 26, 2024
Letter regarding Bylaw Article VII Changes
Page 4

In sum, each of the bylaw changes are necessary to ensure transparency. We would ask the Rules committee to make the modifications suggested and move these forward towards a vote by the full Commission.

Sincerely,



Christine A. Farrelly
Executive Director



Ellen Douglas Smith
Deputy Director

c: David Finkler, Board Counsel
Maryland Board of Physicians