

Advisory Opinion

OPINION NO. 1-2024 – ADVISORY OPINION – PERMANENT VOLUNTARY SURRENDER OF DEA LICENSE AND EFFECT ON ELIGIBILITY FOR LETTER OF QUALIFICATION?

BACKGROUND:

A question has been raised by the Maine Board of Licensure in Medicine regarding the authority of whether an applicant for a Letter of Qualification (“LOQ”) under the IMLC who has a permanent voluntary surrender of a registration, based upon or while under an investigation, from the Drug Enforcement Administration is eligible for an LOQ. A “voluntary surrender” is not included in Section 2, (k) 8) of the Interstate Medical Licensure Compact or in Section 5.4 (1) (h) of the IMLCC Rules. The issue relates to whether an LOQ may be issued under these circumstances.

AUTHORITY:

The Executive Committee issues this advisory opinion under authority of the Interstate Medical Licensure Compact Commission.

- IMLCC Statute, Section 12c – The commission shall. . . issue, upon the request of a member state or member board, advisory opinions concerning the meaning or interpretation of the compact, its bylaws, rules, and actions.
- IMLCC Statute, Section 11k -- ...The executive committee shall have the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session.

ISSUE:

Pursuant to the above referenced statutory authority the Maine Board of Medical Practice requested an Advisory Opinion as to the following question: Is an applicant for a Letter of Qualification (“LOQ”) under the IMLC who has a permanent voluntary surrender of a registration, based upon or while under an investigation, from the Drug Enforcement Administration eligible for an LOQ?

APPLICABLE IMLC Statutes and Rules:

- IMLCC Statute, Section 3 – states that “A physician must meet the eligibility requirements as defined in Section 2(k) to receive an expedited license...”
- IMLCC Statute, Section 2(k) 8 states that a “Physician means any person who: . . . (8) Has never had a controlled substance license or permit suspended or revoked by a state or the United States Drug Enforcement Administration . . .”
- IMLCC Statute, Section 2(k) – states that a “Physician means any person who...” meets the established criteria in paragraph 1 to 9.
- IMLCC Statute, Section 5(b) – states that “...the state of principal license shall evaluate whether the physician is eligible for expedited licensure and issue a letter of qualification...”
- IMLCC Statute Section 10(b) "If a license granted to a physician by the member board in the state of

principal license is revoked, surrendered or relinquished in lieu of discipline, or suspended, then all licenses issued to the physician by member boards shall automatically be placed, without further action necessary by any member board, on the same status. . ."

- IMLCC Rule, Chapter 5, Section 5.4 (1)(h) states that "An applicant must meet the following requirements to receive an expedited license under the terms and provisions of the Compact: . . . (h) Has never had a controlled substance license or permit suspended or revoked by a state or the United States Drug Enforcement Administration.

ANALYSIS:

Among the purposes of the IMLC is to ensure "the safety of patients." IMLC Statute, Section 1. In order to do so the IMLC requires, among other criteria, that an applicant for expedited license, under the Compact:

- "Possesses a full and unrestricted license to engage in the practice of medicine issued by a member board;
- "Has never been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;" "Has never had a license authorizing the practice of medicine subjected to discipline by a licensing agency in any state, federal, or foreign jurisdiction..."
- "Has never held a controlled substance license or permit suspended or revoked by a state or the United States Drug Enforcement Administration;" and
- "Is not under active investigation by a licensing agency or law enforcement authority in any state, federal or foreign jurisdiction."

See IMLC Statute, Sections 5-8.

Additionally, IMLCC Section 10 (b) requires that "If a license granted to a physician by a member board is surrendered or relinquished in lieu of discipline, or suspended, then all licenses issued to the physician by member boards shall automatically be placed, without further action by any member board, on the same status. . ."

The foregoing provisions of the IMLC statute make it clear that ensuring patient safety is an overarching purpose of the Compact. Moreover, pursuant to IMLC Statute. Sec. 10(b) the surrender of a license granted by the state of principal licensure, in lieu of discipline, constitutes disciplinary action to a license. As the U.S. Supreme Court has held with respect to statutory interpretation, "a fundamental canon of statutory construction is that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Utility Air Regulatory Group v. EPA*, 571 U.S. 951(2013); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000).

While neither the IMLC Statute nor IMLCC Rules include "voluntary surrender" of a controlled substance permit as grounds for disqualification under IMLC Section 2, k. 8. of the IMLCC Statute, the National Practitioner's Data Base ("NPDB") Guidebook, Chapter E. defines reportable disciplinary actions to include:

"Any dismissal or closure of a formal proceeding because the health care practitioner, entity, provider, or supplier surrendered the license, certification agreement, or contract for participation in a government health care program, or because the subject of the proceeding left the state or jurisdiction." (emphasis supplied).

Thus, even though a "voluntary surrender" of a controlled substance permit is not specifically mentioned in IMLC Section 2. k. 8. or Section 5.4 (1)(h), it is clear from the above referenced section of the NPDB Guidebook that the NPDB considers a "voluntary surrender" of a DEA permit to be the equivalent of a permanent suspension in terms of its effect and its status as reportable discipline to the NPDB. As such the applicant's voluntary surrender of a DEA registration is the legal equivalent of a revocation. Moreover, IMLC Statute 10 (b) clearly considers the surrender or relinquishment of a license granted by the state of principal

licensure, in lieu of discipline, to constitute disciplinary action to a license.

ADVISORY OPINION: Consistent with the applicable language of the compact statute and both the foregoing legal authority concerning statutory construction as well as the above referenced NPDB interpretation, that the permanent voluntary surrender of a DEA permit or registration as a result of or while under investigation is properly interpreted to be tantamount to a suspension or revocation and constitutes reportable discipline.

APPLICABILITY: This opinion applies to all member states acting as a state of principal license and to member boards issuing licenses under the authority of the Interstate Medical Licensure Compact.

EFFECTIVE DATE: This opinion is effective upon issuance by the Executive Committee of the Interstate Medical Licensure Compact Commission (08/13/2024).