

# Florida's Participation in the Interstate Medical Licensure Compact Would Require Statutory Changes to Avoid Legal Conflicts

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# OPPAGA

Office of Program Policy Analysis and Government Accountability

# Florida's Participation in the Interstate Medical Licensure Compact Would Require Statutory Changes to Avoid Legal Conflicts

## EXECUTIVE SUMMARY

**The compact provides an expedited process for physicians to seek licenses in multiple states.** The Interstate Medical Licensure Compact is an agreement among member states whereby physicians can voluntarily seek medical licensure in an expedited manner. Twenty-nine states, the District of Columbia, and the Territory of Guam are members of the compact.

As a compact member, Florida would retain the right to regulate the practice of medicine, but some of the state's licensure provisions fall outside of compact requirements. Florida would have the option to participate in joint disciplinary investigations and would continue to resolve disciplinary actions pursuant to Florida's medical practice acts. License suspension and revocation actions by other compact states would require Florida to take action based on another state's determination. While Florida compact physicians would have due process rights in Florida, these rights would be more limited if a Florida physician chose to designate a state other than Florida as their state of principal license under the compact.

**Legal conflicts between compact provisions and Florida's general laws and constitution would need to be addressed statutorily if the state decided to join.**

If Florida joined the compact, it would enter into a formal agreement that binds the state to the compact's provisions through statute. However, since some of these provisions conflict with Florida's laws and require stand-alone bills, the Legislature would need to consider statutory changes if the state wished to join the compact. The Legislature could consider addressing general licensing requirements, due process procedures, sovereign immunity, closed meetings, and public records by enacting statutory exemptions or making other statutory changes.

### REPORT SCOPE

Chapter 2019-138, *Laws of Florida*, directs OPPAGA to analyze the Interstate Medical Licensure Compact and relevant statutory and constitutional requirements and develop recommendations addressing Florida's prospective entrance into the compact. The report answers six questions.

- What is the Interstate Medical Licensure Compact?
- How does medical licensure work under the compact?
- What do other states report about their experiences with the compact?
- How does medical licensure currently work in Florida?
- How would compact membership affect medical licensure and disciplinary processes in Florida?
- What compact provisions appear to conflict with the state's general laws and constitution and what actions could the Legislature take to resolve such conflicts?

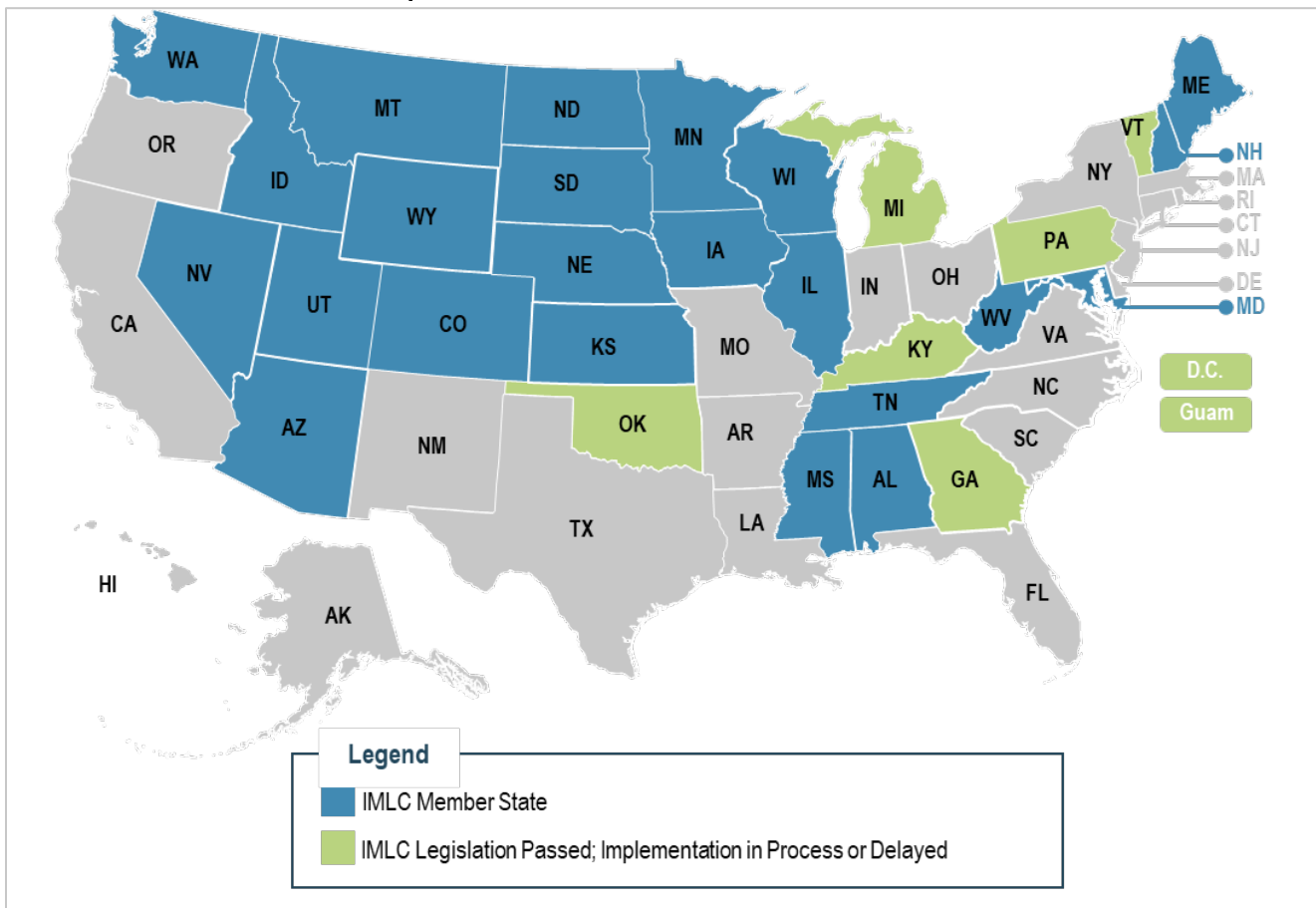
# QUESTIONS AND ANSWERS

## What Is the Interstate Medical Licensure Compact?

The Interstate Medical Licensure Compact (the compact) is an agreement among 29 states, the District of Columbia, and the Territory of Guam, where physicians are licensed by 43 different medical and osteopathic medical boards. To participate in the compact, a state's legislature must enact legislation to join and agree to the terms of the compact. Of the 29 states that have enacted legislation to join the compact, 23 are active member states as of September 2019.<sup>1</sup> (See Exhibit 1.)

### Exhibit 1

#### Twenty-Nine States, the District of Columbia, and the Territory of Guam Have Enacted Legislation to Join the Interstate Medical Licensure Compact



Source: Interstate Medical Licensure Compact.

The compact was created to provide an expedited pathway to licensure for physicians who wish to practice medicine in multiple states.<sup>2</sup> This voluntary process is intended to increase the supply of physicians available to states so that underserved communities have greater access to health care via telehealth or in-person treatment. The compact also aims to promote public health by sharing investigative and disciplinary information among member states.

<sup>1</sup> Six states, the District of Columbia, and the Territory of Guam are in the process of implementing or have delayed implementation of the compact.

<sup>2</sup> In 2018, 15.5% of physicians nationally had medical licenses in two states and 6.6% had medical licenses in three or more states.

In 2015, representatives from individual state medical boards in conjunction with the Federation of State Medical Boards created the compact to provide an avenue for licensure in multiple states without the nationalization of the practice of medicine. Under this process, state medical boards that are members of the compact issue licenses to out-of-state physicians seeking licensure in their state in an expedited fashion, as well as certify that physicians in their state are eligible to seek licensure elsewhere under the compact. States that initially joined the compact have been issuing licenses under this process since 2017.<sup>3</sup>

The compact is governed by the Interstate Medical Licensure Compact Commission (the commission), which is comprised of two voting representatives from member states' medical boards who serve as commissioners.<sup>4</sup> The commission serves as the administrative body for the compact. It holds regular meetings and promulgates rules that apply to the compact's expedited licensure process and to the physicians who seek licensure through the compact.

## How Does Medical Licensure Work Under the Compact?

Physicians who practice medicine or osteopathic medicine may choose to seek licensure in multiple states through the compact process if they meet certain eligibility requirements, which were developed to exceed physician requirements of state medical boards. (See Exhibit 2.) The compact estimates that 80% of physicians nationally meet the criteria for licensure through the compact. A Florida stakeholder group has expressed interest in joining the compact because these eligibility requirements would ensure that high-quality physicians have easier access to seek licensure in the state. In almost all instances, these compact eligibility requirements are substantively similar to or exceed Florida's licensing requirements. (See Appendix A for more information.)

**The compact provides a centralized eligibility verification process for multistate medical licensure that differs from the traditional path to multistate licensure.** Typically, a physician would be required to apply separately to each state in which he or she wished to practice medicine, and each state would verify the physician's qualifications in order to issue a license. Under the compact's processes, however, a physician's full eligibility verification is conducted one time by the physician's state of principal license (SPL). Each physician who wishes to use the compact licensure process must

### Exhibit 2 Compact Eligibility Criteria

1. Holds a full, unrestricted medical license in a compact member state
2. Graduated from an accredited medical school, or a school listed in the International Medical Education Directory
3. Successfully completed the Accreditation Council for Graduate Medical Education or American Osteopathic Association accredited graduate medical education
4. Passed each component of the U.S. Medical Licensing Examination®, Comprehensive Osteopathic Medical Licensing Examination of the U.S., or equivalent in no more than three attempts
5. Holds a current specialty certification or time-unlimited certification by the American Board of Medical Specialties or American Osteopathic Association Bureau of Osteopathic Specialists
6. Does not have any history of disciplinary actions towards their medical license
7. Does not have any criminal history
8. Does not have any history of controlled substance actions toward their license
9. Is not currently under investigation

Source: Compact law.

<sup>3</sup> The states that joined the compact in its first year of operation, 2015, were Alabama, Idaho, Illinois, Iowa, Minnesota, Montana, Nevada, South Dakota, Utah, West Virginia, and Wyoming.

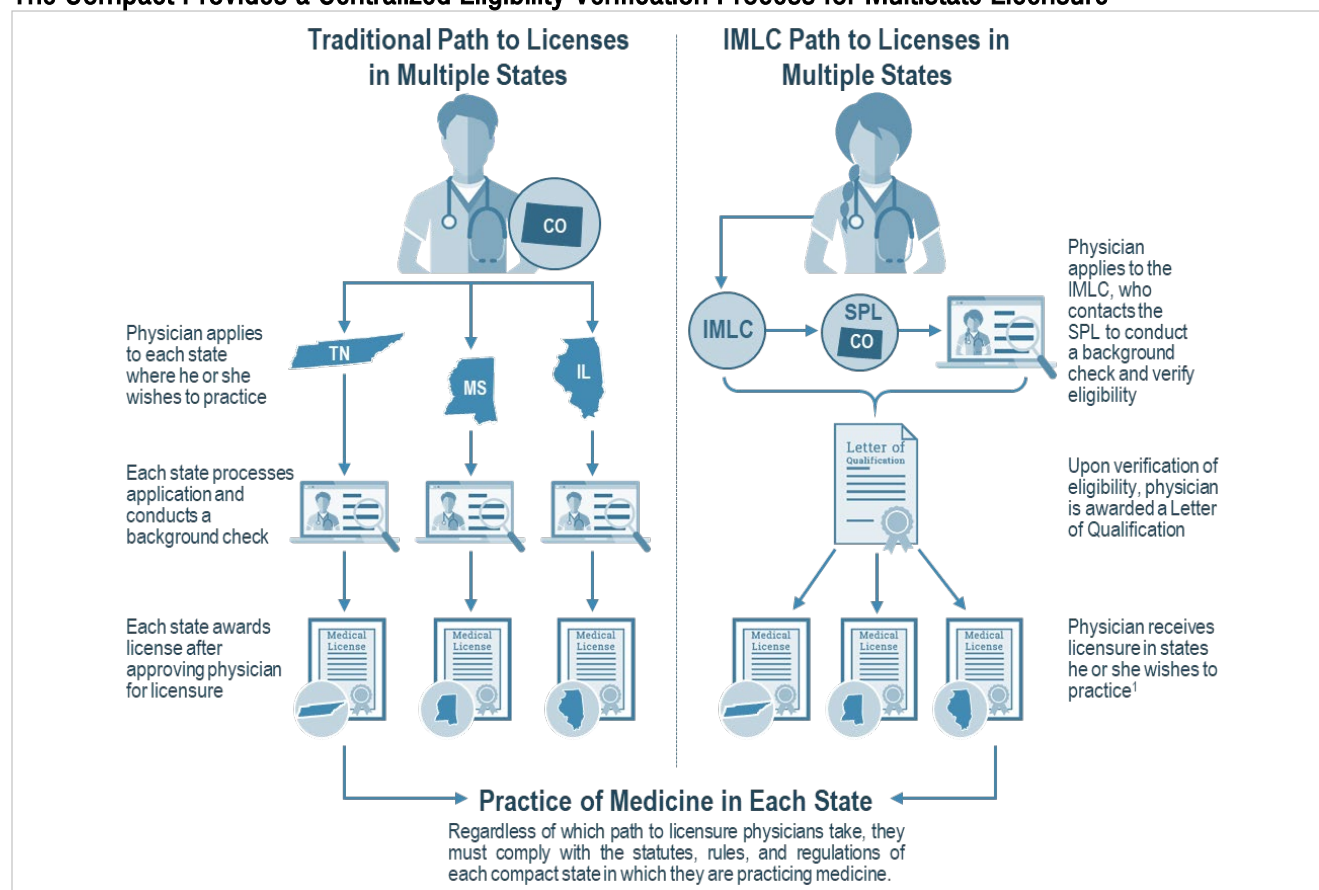
<sup>4</sup> In states where separate member boards regulate allopathic and osteopathic physicians, the member state appoints one representative from each member board.

designate an SPL, which is considered the physician's primary place of practice.<sup>5</sup> Subsequently, the physician may apply for licenses in other compact states without the need for those states to complete the entire verification process again.

The process begins when a physician submits an online application, a completed fingerprint packet or other biometric data check sample, and a sworn statement attesting to the truthfulness and accuracy of all information provided to their SPL. The physician must also pay a non-refundable \$700 fee to the commission, which then remits \$300 of that fee to the member board to determine a physician's eligibility to apply for licensure via the compact. The SPL collects and reviews all of the physician's source documents to ensure that he or she meets the compact's eligibility criteria and conducts an FBI background check.<sup>6</sup> Upon verification of the physician's eligibility, the SPL issues a letter of qualification (LOQ) to the physician, which is valid for 365 days. During this time, the physician may seek licensure in other member states by presenting their LOQ to each state in which they wish to practice and paying a \$100 service fee in addition to each state's individual licensing fees. (See Exhibit 3.)

### Exhibit 3

#### The Compact Provides a Centralized Eligibility Verification Process for Multistate Licensure



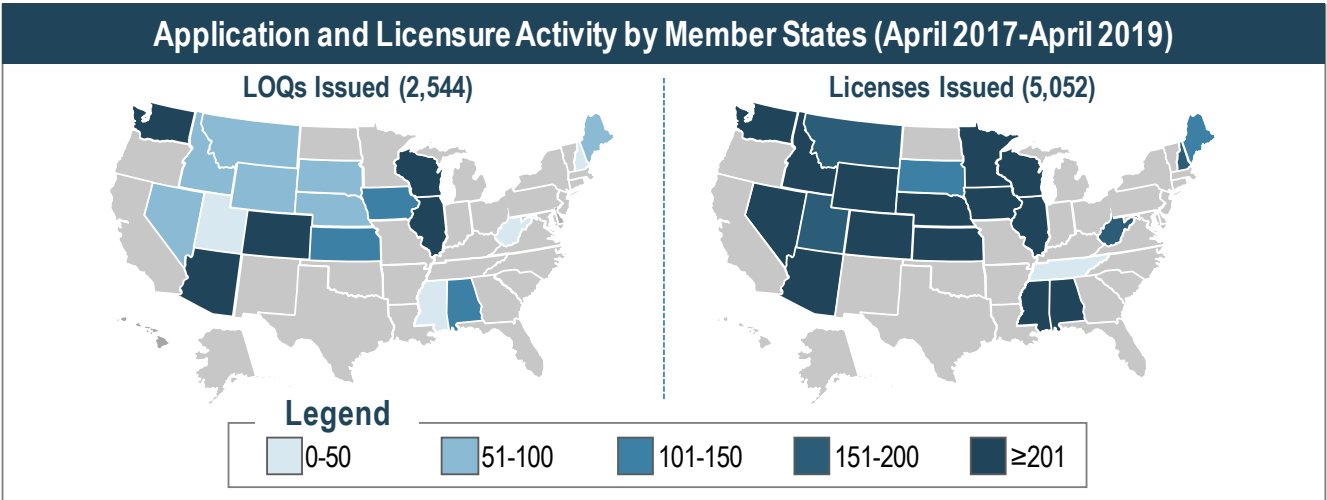
<sup>1</sup> The physician is responsible for paying the licensing fees of the states in which he or she is seeking a license.  
Source: OPPAGA analysis of the compact application process.

<sup>5</sup> A physician can designate a member state as their SPL if the physician possesses a full and unrestricted license in that state, and if the state fits within one of the following criteria: (1) the SPL is the physician's primary residence; (2) at least 25% of the physician's practice occurs in the SPL; (3) the physician's employer is located in the SPL; or (4) the physician uses the SPL as their state of residence for U.S. federal income tax purposes.

<sup>6</sup> If the physician is deemed ineligible to apply for licensure through the compact's expedited process, they may still seek licensure in every state in which they desire to practice through the traditional paths to licensure established in other states.

Compact member states began issuing LOQs and medical licenses through the compact in April 2017. Commission staff reported there were 2,544 LOQs and 5,052 licenses issued from April 2017 through April 2019. During this time, the highest volumes of LOQs were issued in Colorado, Illinois, and Wisconsin, and the highest volumes of licenses were issued in Arizona, Minnesota, and Wisconsin.<sup>7</sup> Most member states during this period issued more licenses to incoming physicians than LOQs to their own states' physicians, suggesting that participation in the compact may be helping some member states address physician shortages. (See Exhibit 4.)

**Exhibit 4**  
**From April 2017 Through April 2019, Most Member States Issued More Licenses for Incoming Physicians Than Letters of Qualification to Their Own Physicians**



Source: Compact review of completed applications received from April 2017 through April 2019.

**The average time it takes to receive a license under the compact is higher than Florida's average time to receive a license.** Although the compact does not impose a minimum timeframe for member boards to issue an LOQ or grant a license to a physician, the commission estimates that it takes an average of 19 days from the time an SPL verifies eligibility to the date licenses are granted, with 51% of the licenses being issued in 7 days or less.<sup>8</sup> This average is slightly longer than the processing time for a physician to receive a Florida license, and it does not take into account the time it takes to receive an LOQ. However, the compact licensing time could potentially result in the issuance of multiple licenses for a physician, while the Florida process only allows for a Florida license. (See Exhibit 5.)

**Exhibit 5**  
**While The Average Time to Receive a License Via the Compact Is Higher Than the Average Time to Receive a Florida License, Physicians May Receive Multiple Licenses Under the Compact Process**

Licensure Process	Average Number of Days to Receive an LOQ	Average Number of Days to Receive a License	Total Time (in Average Number of Days) to Receive a License	Type of License Received
Florida Licensure	N/A	10-15 days <sup>1,2</sup>	10-15 days <sup>1,2</sup>	Florida License
Compact Licensure	36 days	19 days	55 days	One or more licenses in compact state(s) of physician's choice

<sup>1</sup> The average number of days for licensure was 10 days for osteopathic physicians and 15 days for medical doctors.

<sup>2</sup> This is the average time to receive a license under circumstances where there are no complications or missing information from the applications.  
Source: OPPAGA analysis of Florida Department of Health data and commission data.

<sup>7</sup> As of June 2019, the commission had received 3,402 applications and member states had issued 6,281 licenses.

<sup>8</sup> This data is based on the compact's review of 2,845 applications from April 2018 through April of 2019.

# What Do Other States Report About Their Experiences With the Compact?

As of September 2019, 29 states, the District of Columbia, and Guam have enacted legislation to join the compact. Of these, 23 states are active members of the compact, while the rest have delayed implementation or are in the process of implementing their membership. OPPAGA contacted the member boards that have enacted legislation to join the compact to learn about their experiences with the compact.<sup>9</sup> Of the states that have delayed implementation or are in the process of implementation, three states' statutory dates for implementation have not occurred as of September 2019, and three states, the District of Columbia, and the Territory of Guam have left the decision of when to implement the compact to their individual member boards.<sup>10,11</sup>

**Member states reported that they joined the compact to benefit from its expedited licensure process and to increase the supply of physicians in their state.** Some member boards that enacted statutes to join the compact reported that they were primarily motivated by the prospect of an expedited licensure process for physicians. States that have implemented the compact and are actively processing licenses reported that the compact application process is easier and faster than their states' traditional licensure processes. Some states also reported an increase in the supply of medical specialists, such as radiologists. Commission staff stated that another benefit realized by member states is an increased ability of physicians to practice at regional medical centers, which can serve patients across state lines.

**Member states reported needing time to develop their infrastructure to process applications received through the compact.** Member states' preparation to implement the compact involved adjusting their existing processes to accommodate applicants who sought licensure via the compact. For example, states needed to adjust their internal databases to enable them to track which licenses were issued through the compact versus those that were granted through their traditional processes. Personnel also needed training to process these applications, and some states reported that they assigned a dedicated staff member to handle compact licenses, although no state reported needing to hire additional staff for this purpose. In addition, other states reported that they needed to adjust their fiscal processes in order to manage the collection of fees associated with the compact. The Florida Department of Health estimates that they would need three additional staff and an effective date of October 2021 to allow them enough time to make required changes to rules, forms, and technological infrastructure necessary to process licenses through the compact.

**Member states reported that the primary legal issue they encountered was not having the statutory framework for FBI background checks.** Some states' statutory frameworks did not allow for FBI background checks, and therefore they added statutory language to accommodate this provision of the compact. This is not a concern for Florida, as it currently has the statutory framework for FBI background checks and these checks already constitute a part of Florida's licensure process.

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<sup>9</sup> OPPAGA contacted 28 compact states and the District of Columbia and received information from 15 compact states.

<sup>10</sup> Michigan, Oklahoma, and Vermont have statutorily established dates for implementation. Georgia, Kentucky, the District of Columbia, and the Territory of Guam have left the decision of when to implement the compact to their individual member boards.

<sup>11</sup> Michigan's date of implementation falls within the month of September 2019, but the state had not implemented the compact at the time of publication of this report.



# How Does Medical Licensure Currently Work in Florida?

The Florida Department of Health regulates physicians to preserve the health, safety, and welfare of the public. The department houses two boards of medicine that govern Florida's physicians. The Florida Board of Medicine licenses, monitors, disciplines, and educates medical doctors, while the Florida Board of Osteopathic Medicine licenses, monitors, disciplines, and educates osteopathic physicians.

**Initial medical licensure in Florida requires applicants to demonstrate proof of medical training and a successful background check; license renewal requires physicians to update the Department of Health on their recent medical practice.** Physicians pursuing initial licensure in Florida can apply to the department if they are at least 21 years of age and are of good moral character. Applicants must show proof of specific pre-professional postsecondary education, be a graduate of medical school, complete an approved residency for allopathic or osteopathic medicine, and demonstrate successful passage of applicable medical examinations.<sup>12</sup> Prospective physicians must also submit a set of fingerprints to the department to allow them to conduct a criminal background check. The licensing process involves the collection of credentials from the applicant and from other sources. Once all materials are submitted to the department, an application specialist reviews them and requests additional materials if necessary. The licensure application and application fee are valid for one year. According to the department, 5,797 physicians applied for a medical doctor or osteopathic physician license in Fiscal Year 2018-19, with 62% of the applications coming from outside of Florida. (See Exhibit 6.)

## Exhibit 6

### The Majority of Physicians Who Applied to Practice Medicine in Florida During Fiscal Year 2018-19 Were Out-of-State Physicians

Profession	In-State	Out-of-State	Total	Percent Out-of-State
Medical Doctors	1,807	3,175	4,982	64%
Osteopathic Physicians	416	399	815	49%
<b>Total Physicians</b>	<b>2,223</b>	<b>3,574</b>	<b>5,797</b>	<b>62%</b>

Source: OPPAGA analysis of Florida Department of Health data.

Physicians who wish to renew their Florida license must complete a renewal application and pay associated fees, show evidence that they have practiced medicine or have been on the active teaching faculty of an accredited medical school for specified periods of time, and confirm their continuing education requirements.<sup>13</sup> Medical doctor applicants must also verify status relating to prescribing controlled substances for the treatment of chronic nonmalignant pain. Physicians must update this publicly available information with the department.<sup>14</sup>

**The compact would provide another option for out-of-state physicians who wish to provide health care services in Florida.** Florida provides two options for physicians from other states who wish to practice medicine or provide health care services to Floridians. Physicians who practice in

<sup>12</sup> The pre-professional postsecondary education requirements are two years for medical doctors and three years for doctors of osteopathic medicine.

<sup>13</sup> Medical doctors must have remained active for at least two of the immediately preceding four years; osteopathic physicians must have remained active for at least two consecutive biennial licensure cycles.

<sup>14</sup> Physician information required at the time of renewal includes their current primary place of practice address (for medical doctors only), updates to their practitioner profile, a completed Physician Workforce Survey, and a financial responsibility form.



other states may pursue a license in Florida in lieu of taking the state's required exams.<sup>15</sup> These requirements for licensure in lieu of examination are substantially the same as licensure by examination.<sup>16</sup> The licensing process involves the collection and verification of credentials from the applicant and from other sources, and the licensure application and application fee are valid for one year. Out-of-state physicians also currently have the option to register with the Department of Health to use telehealth to deliver health care services to Florida patients.<sup>17,18</sup> The provider is prohibited from opening an office in Florida and from providing in-person health care services to patients located in Florida.<sup>19,20</sup> The compact would provide a third option for physicians from other states who wish to practice medicine in Florida. (See Exhibit 7.)

## Exhibit 7

### Florida Offers Two Options for Out-of-State Physicians to Provide Health Care Services in Florida; the Compact Would Provide a Third Option

Licensure Component	Licensure in Lieu of Examination	Telehealth Registration	Compact License
Physician Eligibility	Any out-of-state physician	Any out-of-state physician	Compact member state physicians
License Type Granted	Full and unrestricted	None	Full and unrestricted
State of Licensure	Florida	Out-of-state	Compact member state(s) of physician's choice
State of Practice	Florida	Florida	Compact member state(s) of physician's choice
Type of Practice	In-person or telehealth	Telehealth	In-person or telehealth
Fee	\$755 for osteopathic physicians \$955 for medical doctors	No fee	\$700 application fee plus compact member state(s) licensure fee(s)

Source: OPPAGA analysis of Florida's licensure in lieu of examination, Florida's telehealth registration, and compact medical licensure processes.

<sup>15</sup> To be considered, a physician must pay the application fee and must have done the following: 1) passed all parts of the national medical examinations and 2) been licensed and actively practicing medicine in another U.S. jurisdiction for two of the last four years, have passed a board-approved clinical competency exam one year prior to application, or have successfully completed a board-approved post-graduate training program within two years prior to application.

<sup>16</sup> Section [458.313, F.S.](#), governs licensure by endorsement for medical doctors. Section [459.0055\(2\), F.S.](#), governs a similar process for osteopathic physicians.

<sup>17</sup> Chapter [2019-137, Laws of Florida](#), established a telehealth registration for out-of-state physicians to practice in Florida.

<sup>18</sup> Section [456.47, F.S.](#), defines telehealth as the use of synchronous or asynchronous telecommunication technology to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of a medical data; patient and professional health-related education; public health services; and health administration. The definition does not include audio-only telephone calls, email messages, or facsimile transmissions.

<sup>19</sup> The department is required to publish specific information about all out-of-state telehealth registrants via a public website, including specialty board certification, five-year disciplinary history (including sanctions and board actions), and medical malpractice insurance provider and policy limits.

<sup>20</sup> Chapter [2019-137, Laws of Florida](#), allows the department to initiate rulemaking to establish a telehealth provider registration process.

# How Would Compact Membership Affect Medical Licensure and Disciplinary Processes in Florida?

Compact member states retain control over several licensure and discipline-related activities, such as the regulation of the practice of medicine in their state and licensure renewal processes and standards. (See Exhibit 8.) Physicians who wish to obtain licenses in member states can still choose to obtain a license in those states through states' existing licensure paths. Physicians who decide to use the compact and its expedited licensure process also opt in to the compact's rules governing eligibility determinations, discipline, and due process. The compact allows certain determinations to be challenged only in the state of principal license and other determinations to be challenged in each member state making the determination. Choosing the expedited licensure path appears to limit physician due process in some instances. If Florida decided to join the compact, physicians would challenge Florida's determinations through the Administrative Procedures Act (Ch. 120, *Florida Statutes*). For disciplinary actions that may occur in other states, Florida physicians would avail themselves of those states' due process procedures.

## Exhibit 8

### Compact Member States Retain Control Over Several Licensure-Related Activities

- States of principal license determine eligibility of compact applicants
- Issue licenses to out-of-state physicians with letter of qualification
- Regulate the practice of medicine
- Discipline physicians
- Control renewal standards and processes for physicians licensed through the compact

Source: Commission staff and OPPAGA analysis of compact law and rules.

## Physician Information Sharing

**Florida would be exempt from disclosing confidential records to the commission.** The commission maintains a coordinated information system, which is a database that includes all compact physicians' application information, as well as any available disciplinary and investigative information, if applicable. All state medical boards participating in the compact are required to report to the commission any complaints or public action against a compact-issued physician. Public actions include disciplinary actions, fines, reprimands, probations, conditions or restrictions on a license, suspensions, cease and desist orders, and revocations or denials of licensure. These must be reported no later than 10 business days after a public complaint or public action against an applicant or compact physician has been entered. Each member board will also submit an updated report to the commission when the status of the reported action changes. When the commission receives notice of a final public action by a member board, it will notify the member boards in all other member states where the physician is licensed. On request of another member board, each board must share the requested information from an investigative file as soon as reasonably possible, and that information is confidential.

All information provided to the commission about physician complaints and actions are confidential and may only be used by member boards for investigations and during disciplinary processes. The compact deems closed records from member states exempt from disclosure to the commission. In Florida, the complaint investigation process is confidential until probable cause is established, therefore, the records associated with the investigation would be deemed closed records and exempt from disclosure to the commission.<sup>21</sup>

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<sup>21</sup> Section [456.073\(10\)](#), F.S.

**Florida could voluntarily participate in joint investigations of compact physicians.** A member board may voluntarily participate with other member boards in joint investigations of physicians through sharing investigative, litigation, or compliance materials. The lead investigative board would inform the commission, direct the investigation, update participating member boards of any developments, and request that member boards participating in the joint investigation conduct investigations in their own states. When a member board issues a subpoena, it is enforceable in other member states, regardless of whether the subpoena concerns a compact physician or applicant.<sup>22</sup> The local member board is required to issue a subpoena on behalf of the investigating member board if the individual or entity refuses to comply with the subpoena. All member boards participating in a joint investigation are required to share investigative information, litigation, or compliance materials, upon request of any member board where the compact physician under investigation is licensed. Closed information may be shared, but disclosure is not mandatory.

Any member board may investigate actual or alleged violations of a statute authorizing the practice of medicine in any other member state in which a physician holds a license to practice medicine. Prior to initiating an investigation in another state, the investigating member board must contact the other member board and inform them about the investigation. Upon conclusion of the investigation, the investigating member board shall inform the other member boards regarding investigation results. The lead investigative board will report the final outcome of any joint investigation to the commission.

## License Renewal

**Florida would be able to retain oversight and enforcement of its existing license renewal processes and would be responsible for providing renewal notices to compact physicians.** Each license obtained through the compact is valid for the time set by each member state for any physician holding a full and unrestricted license in that state. When the license needs to be renewed, each member state board provides a notice to the physician via email no fewer than 90 days prior to the expiration date of the license that contains the expiration date, a link to the commission webpage, and the renewal fee amount due. The physician is responsible for renewing the license prior to its expiration. A physician seeking to renew an expedited license granted in a member state can complete a renewal process with the commission if the physician

- 1) maintains a full and unrestricted license in a state of principal license;
- 2) has not been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;
- 3) has not been subject to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to a non-payment of fees related to a license; and
- 4) has not had a controlled substance license or permit suspended or revoked by a state or the U.S. Drug Enforcement Administration.

After the physician completes the renewal process for the commission, including submitting the state board fee and \$25 to the commission for the renewal processing and completing the attestation form in DocuSign, the renewal board state renews the license and updates DocuSign with the new license information. The physician is then notified via email that the license has been renewed.

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<sup>22</sup> Florida adopted the Uniform Foreign Depositions and Discovery Act, which would govern this process.

Any member states' boards that have requirements for physicians to renew their medical licenses, such as continuing medical education or completion of a physician's workforce survey, would inform the physician who has been relicensed under the compact of these requirements. The boards could discipline the physician according to their standard practice if they did not comply.

## Disciplinary Actions and Due Process

**Compact disciplinary provisions are not applicable to Florida physicians licensed through the traditional pathways.** If a Florida physician who is licensed in the state through the traditional path and has chosen not to designate Florida as their SPL also holds licenses through the compact in other states, the commission would not notify Florida of a license revocation or suspension in those states. Under the terms of the compact, Florida would not be required to revoke or suspend the physician's license. In accordance with existing Florida law, the physician would be required to report the revocation or suspension to the licensing board.

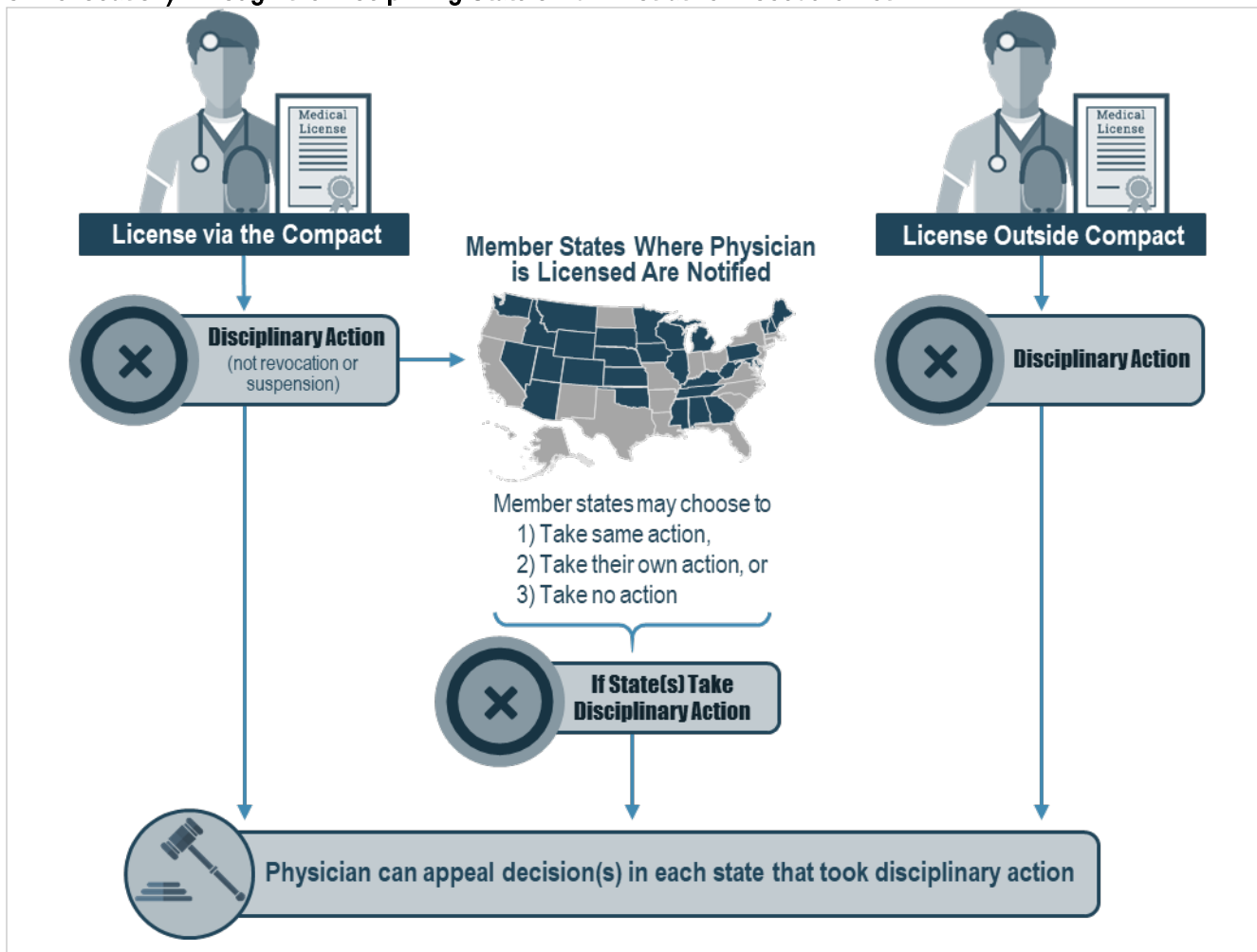
**Other than license suspension or revocation, Florida would retain control over disciplinary actions.** Florida oversees the practice of medicine in the state and allows physicians substantially affected by a state determination to challenge that decision through Florida's Administrative Procedure Act. This process remains intact through the compact. If any participating board receives a complaint or takes public action against a physician who received a license via the compact, they must notify the commission, which will then notify all member states where the physician obtained a license through the compact. If the member board takes disciplinary action against the physician, other than suspension or revocation of license, other member boards where the physician is licensed may decide to take the same action, take their own action, or take no action.

As each member state maintains authority over physicians' practice of medicine in their state, the member state also retains control over physician discipline. Physicians subject to discipline by a member state may challenge the member state's determination through that state's existing due process procedures. (See Exhibit 9 and Appendix B.)

Under the terms of the compact, being disciplined in another state is considered "unprofessional conduct" and may be subject to discipline by other member boards regardless of whether the underlying violation has a corresponding violation in the member state's medical practice act. For example, if a Florida physician who designates Florida or another state as their SPL receives a letter of concern from the Florida Board of Medicine as discipline for false, deceptive, or misleading advertising under s. 458.331, *Florida Statutes*, Florida would send a copy of this discipline to the commission, which would notify other member states where that physician holds a license. If false, deceptive, or misleading advertising is not a violation of another member state's medical practice act, the member state may still discipline the physician for unprofessional conduct. In this instance, the physician may challenge Florida's determination of false, deceptive, or misleading advertising under Florida's Administrative Procedure Act and may also challenge the other state's determination of unprofessional conduct under that member state's administrative procedure act. Physicians licensed in Florida through the traditional path would maintain their right to challenge such determinations through Florida's Administrative Procedure Act.

## Exhibit 9

### Physicians Licensed Through the Compact Can Appeal Disciplinary Actions (Other Than License Suspension or Revocation) Through the Disciplining State's Administrative Procedure Act



Source: Commission staff and OPPAGA analysis of compact laws and rules.

**When an SPL revokes or suspends a compact physician's license, the physician may only appeal the underlying action through the SPL's due process procedures.** If a license granted to a physician by their SPL is revoked, surrendered, relinquished in lieu of discipline, or suspended, then all licenses issued to the physician by member boards would automatically be placed on the same status. Under the terms of the compact, the physician may appeal the ruling in the SPL through that state's established administrative procedure act. The physician may also appeal the member state revocation or suspension under the member state's due process procedure but may not challenge the underlying determination in the member state (i.e., they may appeal the disciplinary action but not the reason for the disciplinary action).

If the SPL member board subsequently reinstates the physician's license, then all of the member states in which the physician holds a compact license may reinstate the physician's license in the manner consistent with each state's medical practice act. Although the physician would be ineligible to renew their license through the compact if the revocation or suspension is upheld (because any disciplinary action disqualifies a physician from applying via the compact), they could still apply to be licensed in the traditional way in any state.

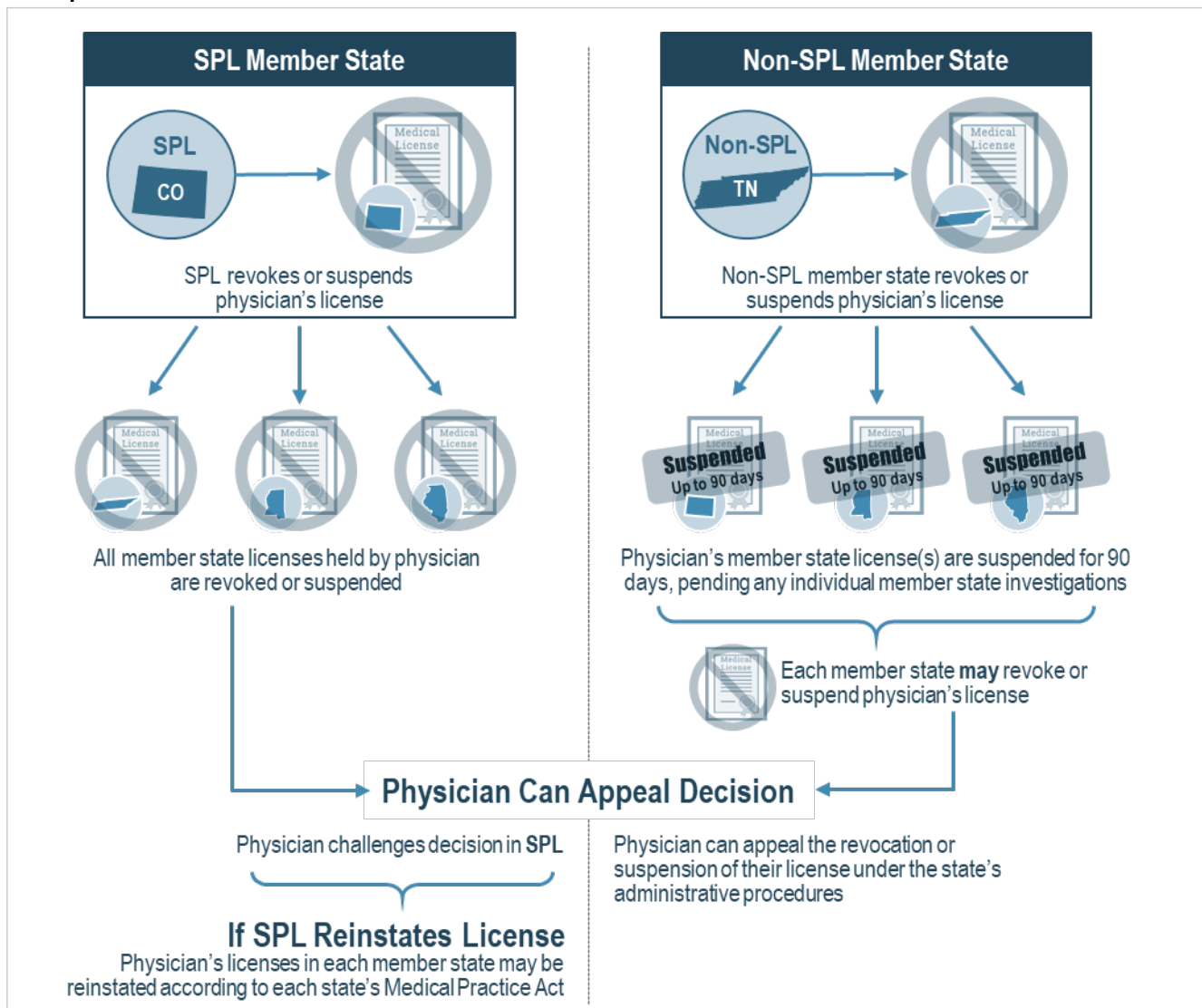
For example, if Florida as a member state received notice from the commission that an SPL revoked or suspended the license of a Florida physician licensed through the compact for a violation of the SPL's medical practice act, Florida would be required to revoke or suspend that physician's license. Under the terms of the compact, which the physician accepted by applying for licensure through the compact, that physician could appeal the SPL's decision as it relates to the violation of the SPL's medical practice act under that state's administrative procedure act. In Florida, the physician would only be able to appeal Florida's revocation of the Florida license or other determination pending investigation, not the violation of the SPL's medical practice act, which is the underlying reason for revocation or suspension. The physician would still be able to apply for a Florida license through the traditional path.

**Revocation or suspension of a physician's license in a non-SPL state allows each member board in the states where that physician holds a license through the compact to investigate and choose to reinstate or terminate the license.** If a license granted to a physician by a non-SPL member board is revoked, surrendered, relinquished in lieu of discipline, or suspended, then any license issued to the physician by any other member board would be automatically suspended for 90 days upon entry of the order by the disciplining board. This permits the member boards time to investigate the basis for the action under the medical practice act of that state. A member board may terminate the automatic suspension of the license it issued prior to the completion of the 90-day suspension period in a manner consistent with the medical practice act of that state. (See Exhibit 10 and Appendix B.)



## Exhibit 10

### Physicians Licensed Through the Compact Can Appeal License Revocation or Suspension in Their State of Principal License and in Member States



Source: Commission staff and OPPAGA analysis of compact laws and rules.

## What Compact Provisions Appear to Conflict With the State's General Laws and Constitution and What Actions Could the Legislature Take to Resolve Such Conflicts?

If Florida joined the compact, it would enter into a formal contract that binds the state to the compact's provisions. Compact states are bound to observe the terms of their agreements, which are adopted by statute and take precedence over any conflicting state laws. The whole of the compact language must be adopted by prospective member states' statutes, and any changes to compact provisions must also be adopted by each member state.

If Florida were to seek entrance into the compact, the state would need to address several conflicts that currently exist between Florida law and compact language. Because the compact language states that conflicts between compact language and state statutes must be resolved in favor of the compact, some of these conflicts may be addressed by virtue of adopting the compact language in state statute, while others may need to be addressed more directly. If the Legislature wished to explicitly provide statutory limitations and exemptions in accordance with existing practices, it may also consider adopting additional statutory changes, several of which are similar to statutory changes made when Florida joined the Nurse Licensure Compact.<sup>23</sup> If Florida does not wish to make statutory changes or otherwise accept the existing compact language, the Governor or the Legislature would need to work with the compact and its member states to make changes to the compact language to be adopted by all member states.

## Licensure Qualifications

**As a compact member, Florida would retain the right to regulate the practice of medicine but would need to waive additional initial licensure requirements; Maryland uses the disciplinary process to address licensure discrepancies that are administrative in nature.** While the process of obtaining a license through the compact differs from the traditional method, the license itself will be issued by a state medical board. The compact affirms that the practice of medicine occurs where the patient is located at the time of the physician-patient encounter. A member state must issue a license authorizing a “physician to practice medicine in the issuing state consistent with the medical practice act and all applicable laws and regulations of the issuing member board and member state” based upon verification that a physician meets the eligibility requirements of the compact and has paid their fees. If a member state has additional initial licensure requirements in its medical practice act, it must waive these requirements for the compact physician and issue the physician an unencumbered license to practice in the state. The member state cannot issue a license that deems the physician ineligible pending completion of the additional requirements, nor can it statutorily require additional criteria, as the compact provides that conflicts between state law and the compact be resolved in favor of the compact.

Florida has a general licensure provision that requires license holders to comply with any statutory or legal obligation placed on a licensee. The Department of Health uses the U.S. Department of Health and Human Services’ List of Excluded Individuals/Entities, which includes several criminal offenses and other noncriminal and non-license related provisions, such as nonpayment of student loans, to make this determination.<sup>24</sup> This provision does not appear to have a comparable requirement in the compact. Under the terms of the compact, in those instances where a physician who seeks Florida licensure through the compact appears on the List of Excluded Individuals/Entities for nonpayment of student loans, Florida would be required to waive this eligibility criterion and issue a license to the applicant. The Legislature could consider repealing one or more of Florida’s licensure provisions that fall outside of the compact’s licensure requirements.

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<sup>23</sup> Florida joined the Nurse Licensure Compact in 2016. This compact is administered by the National Council of State Boards of Nursing and grants a multistate license to nurses based on licensure in their state of primary residency; the multistate license also allows them to practice nursing in other compact member states without having to obtain a second license.

<sup>24</sup> See Ch. 456, F.S., and 42USC s. 1320.

Other states have used the disciplinary process to address discrepancies in licensure requirements that are administrative in nature. For example, Maryland requires physicians to enter demographic information into a database as a condition of licensure. To address this discrepancy between Maryland law and the compact, Maryland's statutes create a definition of "compact physician" and require that compact physicians provide verification that the physician satisfies the requirements for licensure and that refusal to provide the requested verification may not be considered a basis for denying licensure under the compact. Instead, physicians licensed through the compact in Maryland who refuse to provide the verification form may be disciplined under Maryland's Medical Practice Act. The disciplinary action would then make the physician ineligible for expedited licensure under the terms of the compact.

## Due Process

**Through statute, Florida could expand due process rights for physicians who might face license revocation or suspension through the compact.** While Florida physicians whose SPL is designated in Florida would have full due process rights in Florida, those who designate an SPL other than Florida would have more limited due process rights. The compact language would limit physicians' ability to challenge the underlying reasons for SPL license revocation and suspension to the SPL only, despite requiring other member states to revoke or suspend the physician's license at the same time. Under current Florida laws and compact provisions, Florida, as a compact member state, would be required to adopt an SPL revocation or suspension determination without providing the physician with due process in Florida for the underlying reasons for suspension or revocation.<sup>25</sup> The physician would only be able to challenge whether Florida followed the compact process for revocation or suspension subsequent to SPL-initiated revocation or suspension. Although physicians would voluntarily submit themselves to the terms of the compact and thereby also submit to this limited due process channel, the Legislature could consider statutory changes to Ch. 456, *Florida Statutes*, to provide physicians in these circumstances with the opportunity to challenge the underlying reason for revocation or suspension as well as Florida's revocation or suspension of the license.<sup>26</sup>

## Sovereign Immunity

**To address concerns over sovereign immunity, Florida could enact statutory changes comparable to those made in response to similar concerns raised with the Nurse Licensure Compact.** The Florida Constitution, under s. 13, Art. X, allows the state to create statutory limitations to sovereign immunity. Under s. 768.28, *Florida Statutes*, Florida allows suits to be brought against the state regarding personal injury suffered by individuals as the result of negligent actions of the state committed within the course and scope of carrying out official government acts. Compact bylaws provide the commission with immunity from suit and liability; thus, by adoption of the compact, Florida would afford the commission immunity and the same limited protections from criminal prosecution and civil suits as the state of Florida affords itself and its employees. Compact bylaws offer indemnification if the act is not negligent. While the constitution explicitly allows waiver of sovereign immunity by law, it is s. 768.28, *Florida Statutes*, that provides the framework for these waivers. As

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<sup>25</sup> Compact provisions state that determinations of eligibility by the SPL must be challenged within 30 days. Under Ch. 120, *F.S.*, such determinations must be challenged within 21 days. The Legislature may want to consider providing statutory language that requires determinations of eligibility for compact licenses to be challenged within 30 days.

<sup>26</sup> In considering such changes to statutory language, the Legislature may also wish to consider allowing for a path to traditional Florida licensure for physicians whose appeals are successful, since the physician's original letter of qualification would be invalid.

Florida may need to clarify tort liability and indemnification on behalf of the compact, the Legislature may consider language similar to that used to accommodate the terms of the Nurse Licensure Compact. When joining the Nurse Licensure Compact, tort limitation language was included in s. 768.28, *Florida Statutes*, clarifying that the compact will pay any claims or judgments arising from commission employees' employment-related actions in the state.

## Commission Meetings

**Florida could provide statutory exemptions to address the concern that closed meetings allowed under the compact appear to violate the state's constitution and Sunshine Law.** Under the Florida Constitution and the Sunshine Law, the public is entitled to notice of and access to government meetings as well as to copy and inspect meeting records. Adoption of the compact language would include a provision allowing the compact to hold closed meetings under certain circumstances, which would conflict with Florida's Constitution and Sunshine Law.<sup>27</sup> The Florida Constitution allows for exemptions to these provisions to be created, but also requires that these exemptions be presented to the Legislature as a single subject bill with a statement of public necessity. Because of this requirement, simple adoption of the compact language would not appear to address the constitutional issue. However, Florida has provided statutory exemptions for these types of meetings in other instances. For example, Florida faced a similar challenge when considering adopting the Nurse Licensure Compact, and the Legislature addressed the issue by providing an exemption allowing this closed meeting practice in s. 464.0096, *Florida Statutes*. The Legislature may consider exemption language similar to that provided to the Nurse Licensure Compact to address conflicts with existing public meetings requirements.

## Commission Rulemaking Authority

**While Florida delegates rulemaking authority to the compact, compact rules provide a mechanism for challenging proposed rules.** Some stakeholders voiced concerns that the compact authorizes the commission to develop rules that member states must adopt, which is potentially an unlawful delegation of legislative authority. The Legislature grants rulemaking authority to various agencies through statutory delegations. While these agencies have authority to make rules, the Legislature still oversees rulemaking and reviews proposed and adopted rules. Adoption of the compact would provide a delegation of rulemaking authority to the commission without the Legislature's additional oversight, thus binding Florida to rules that the Legislature has not approved.

Of interest is the fact that the Legislature delegated similar rulemaking powers to the Nurse Licensure Compact when it adopted its language into statute. The rules adopted by the Nurse Licensure Compact are now applicable to Florida without the Legislature's subsequent approval, similar to what the state would encounter with the Interstate Medical Licensure Compact adoption and included rulemaking provision. In the case of the Interstate Medical Licensure Compact, should Florida find that rules adopted by the commission are not acceptable, commission rules provide a mechanism for challenging proposed rules in U.S. District Court. Furthermore, the state always maintains the ability to withdraw from the compact.

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<sup>27</sup> Under Section 11(h) of the Interstate Medical Licensure Compact, meetings may be closed in full or in portion by a two-thirds vote if an open meeting discussion would include personnel issues, matters exempt from federal disclosure, confidential information, criminal accusations or censure, personal privacy, or legal proceedings.

## Public Records

**Concerns that documents gathered during the compact application process are considered confidential may be addressed by adding a statutory exemption.** In Florida, records associated with government business are public records and must be provided to the public unless a specific exemption prohibits such disclosure, which allows access to much of a physician's file. Under the compact, only the SPL and the commission, not other licensing member states, receive the underlying documents associated with a letter of qualification. Thus, unless Florida is the physician's SPL, the compact and the SPL would be the records custodians for the physician's underlying LOQ documents. Under Section 8 of the compact, all records received by the commission regarding the physician's application are considered confidential.

If Florida adopts the compact language, it would be creating a de facto records exemption for those records in the hands of the compact, whereas the records would typically be subject to Florida's public record laws.<sup>28</sup> To address this conflict, the Legislature would need to adopt a statutory exemption protecting these records from public records disclosure.<sup>29</sup> In addition, concerns regarding access to these underlying documents could be addressed by requiring that physicians licensed through the compact provide Florida with copies of all documents provided to the SPL and compact as one of the criteria for practicing medicine in Florida via Ch. 456, *Florida Statutes*.

The Legislature could consider several statutory and policy-related changes to address the various challenges associated with Florida joining the Interstate Medical Licensure Compact. Some of these options were used to address similar challenges related to the Nurse Licensure Compact, which Florida joined in 2016. (See Exhibit 11.)

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<sup>28</sup> As an SPL, Florida would have these records through the initial licensing process, and they would be subject to existing public records law.

<sup>29</sup> The Florida Constitution allows for exemptions to be created but also requires that these exemptions be presented to the Legislature as a single subject bill with a statement of public necessity. Because of this requirement, simple adoption of the compact language would not appear to address the constitutional issue.

## Exhibit 11

### The Legislature Could Consider Several Options Regarding Florida's Prospective Entrance Into the Compact

Consideration	Option	Change Also Made for Nurse Licensure Compact
<b>Licensure Qualifications:</b> Compact eligibility requirements do not include all of Florida's eligibility requirements.	Repeal one or more of Florida's initial licensure provisions that fall outside of the compact's licensure requirements by amending Ch. <a href="#">456</a> , <i>F.S.</i>	
<b>Due Process:</b> Florida must revoke or suspend a compact physician's license if their state of principal license revokes or suspends their license; due process regarding the underlying reasons for revocation occurs only in the state of principal license.	Enact statutory language providing physicians who practice in Florida and had their license revoked in their state of principal license an opportunity to challenge the reason for revocation or suspension in Florida.	
<b>Sovereign Immunity:</b> Florida would afford the commission the same indemnification and limitations provided by Florida Constitution and statute.	Enact statutory language clarifying that the compact pays any claims or judgments arising from the commission's employment-related actions in the state by amending s. <a href="#">768.28</a> , <i>F.S.</i>	X
<b>Meetings:</b> The compact includes provisions for closed meetings under some circumstances, while Florida requires open meetings.	Enact statutory language providing an exemption allowing closed meetings.	X
<b>Public Records:</b> Application records received by the commission are deemed confidential under compact; Florida requires all records to be public.	Enact statutory language providing an exemption allowing records received by the commission as exempt from disclosure. Provide a statutory exemption for application records by amending Ch. <a href="#">456</a> , <i>F.S.</i>	
<b>Infrastructure:</b> Compact member boards report that they needed time to develop infrastructure (e.g., collection of fees, adjustments to databases, training of personnel) to process compact licenses.	Work with the Department of Health to set a compact implementation date to ensure that the department would have adequate time to make required changes to rule, forms, and technological infrastructure in order to process licenses through the compact.	

Source: OPPAGA analysis of compact laws and rules, Florida's Constitution and laws, and information from compact member states.



# APPENDIX A

## Comparison of Florida's Medical Licensure Requirements With Compact Licensure Requirements

### Exhibit A-1

Generally, Florida's Licensure Requirements Are Substantively Similar to or Less Stringent Than Those of the Compact

Interstate Medical Licensure Compact Requirements	Florida Licensure in Lieu of Examination	Florida Medical Doctor (MD) or Osteopathic Physician (DO) Full Licensure	Florida Telehealth Registration <sup>1</sup>
Must hold a full unrestricted medical license in a compact member state	MD and DO: <b>More stringent</b> Has this requirement and an additional one about length of practice in another state or length of time since completing clinical competency examination or length of time since completing a board approved postgraduate training program <sup>2</sup>	Does not have this requirement	Substantively the same
Graduated from an accredited medical school or a school listed in the International Medical Education Directory	MD and DO: <b>Substantively the same</b>	MD and DO: <b>Substantively the same</b>	Does not have this requirement
Successful completion of ACGME or AOA accredited graduate medical education (residency training)	MD and DO: <b>Substantively the same</b>	MD and DO: <b>Substantively the same</b>	Does not have this requirement
Passed each component of the USMLE, COMLEX-USA, or equivalent in no more than three attempts	Does not have this requirement	MD and DO: <b>Less stringent</b> For MD, may require additional remedial education after five attempts For DO, no limitation on attempts	Does not have this requirement
Hold a current specialty certification or time-unlimited certification by American Board of Medical Specialties or American Osteopathic Association Bureau of Osteopathic Specialists	MD and DO: <b>Does not have this requirement</b>	MD and DO: <b>Does not have this requirement</b>	Does not have this requirement
Must not have any history of disciplinary actions toward medical license	MD and DO: <b>Substantively the same</b>	MD and DO: <b>Substantively the same</b>	<b>Less stringent</b> Must not have been subject to licensure disciplinary action during the five years prior to submission of application; must not have had license revoked in any state or jurisdiction

Interstate Medical Licensure Compact Requirements	Florida Licensure in Lieu of Examination	Florida Medical Doctor (MD) or Osteopathic Physician (DO ) Full Licensure	Florida Telehealth Registration <sup>1</sup>
Must not have any criminal history	MD and DO: <b>Less stringent</b> Cannot have specified classes of felonies after specified time periods <sup>3</sup>	MD and DO: <b>Less stringent</b> Cannot have specified classes of felonies after specified time periods <sup>3</sup>	<b>Does not have this requirement</b>
Must not have any history of controlled substance actions toward license	MD and DO: <b>Substantively the same</b>	MD and DO: <b>Substantively the same</b>	<b>Does not have this requirement</b>
Must not currently be under investigation	MD and DO: <b>Substantively the same</b>	MD and DO: <b>Substantively the same</b>	<b>Substantively the same</b>
<b>No comparable requirement</b>	MD and DO: Disqualifies applicants who are currently listed on the U.S. Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities <sup>4</sup>	MD and DO: Disqualifies applicants who are currently listed on the U.S. Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities <sup>4</sup>	<b>No comparable requirement</b>

<sup>1</sup> Telehealth registration allows a physician in another state to use synchronous or asynchronous telecommunications technology to provide some specific health care services. The provider may not open an office in Florida and may not provide in-person health care services to patients located in Florida.

<sup>2</sup> The medical doctor needs to have actively practiced medicine for at least two of the immediately preceding four years and the osteopathic physician needs to have practiced for at least two consecutive biennial licensure cycles, or the applicable board may impose further requirements or restrictions.

<sup>3</sup> See Ch. [456.0635](#), F.S.

<sup>4</sup> General licensure provisions in Florida law require that license holders must comply with any statutory or legal obligation placed on a licensee. In practice, the Department of Health uses the List of Excluded Individuals/Entities. This list includes several criminal offenses and other noncriminal and non-license related provisions, such as nonpayment of student loans, which do not appear to have a comparable provision in the compact. See Ch. [456](#), F.S.; 42USC s. 1320.

Source: OPPAGA analysis of ss. [458.313](#), [459.0055\(2\)](#), [458.311](#), [456.47](#), [458.331](#), and [456.0635](#), F.S.; and [Interstate Medical Licensure Compact Law](#).

# APPENDIX B

## Due Process Scenarios for Florida Physicians Who May Obtain Licenses Via the Compact

### Exhibit B-1

Due Process Rights for Florida Physicians Who Also Receive Licenses Via the Compact Would Vary Depending on How the Physician Obtained Their Florida License, Whether They Designate Florida as Their SPL, and the Type of Disciplinary Action

How Florida License Obtained	State of Principal License (SPL)	Type of Disciplinary Action		
		License Revocation or Suspension by Physician's Designated SPL	License Revocation or Suspension by a Physician's Non-SPL	Any Action Other Than License Revocation or Suspension Taken by Any State (SPL or Non-SPL)
Traditional path	Other state	<ul style="list-style-type: none"> <li>All member states revoke or suspend license</li> <li>Full due process through SPL</li> <li>Florida license not affected by compact states' actions<sup>1</sup></li> </ul>	<ul style="list-style-type: none"> <li>All compact states suspend for 90 days and investigate</li> <li>Due process in compact state(s) that decide to revoke or suspend</li> <li>Florida license not affected by compact states' actions<sup>1</sup></li> </ul>	<ul style="list-style-type: none"> <li>Due process in each compact state that takes disciplinary action</li> <li>Florida license not affected by compact states' actions<sup>1</sup></li> </ul>
Compact	Other state	<ul style="list-style-type: none"> <li>All member states revoke or suspend license</li> <li>Full due process through SPL</li> <li>Due process in Florida for appeal of Florida's suspension or revocation, not for appeal of underlying reason for disciplinary action</li> </ul>	<ul style="list-style-type: none"> <li>All compact states suspend for 90 days and investigate</li> <li>Due process in compact state(s) that decide to revoke or suspend</li> <li>Full due process in Florida if Florida decides to revoke or suspend</li> </ul>	<ul style="list-style-type: none"> <li>Due process in each compact state that takes disciplinary action</li> <li>Full due process in Florida if Florida takes disciplinary action</li> </ul>
Traditional path or compact	Florida	<ul style="list-style-type: none"> <li>All member states revoke or suspend license</li> <li>Full due process in Florida</li> </ul>	<ul style="list-style-type: none"> <li>All compact states suspend for 90 days and investigate</li> <li>Due process in compact state(s) that decide to revoke or suspend</li> <li>Full due process in Florida if Florida decides to revoke or suspend</li> </ul>	<ul style="list-style-type: none"> <li>Due process in each compact state that takes disciplinary action</li> <li>Full due process in Florida if Florida takes disciplinary action</li> </ul>

<sup>1</sup> Florida license may be affected by the already existing state requirement for physicians to notify boards of any disciplinary actions taken against them.

Source: OPPAGA analysis of Chs. [456](#), [458](#), and [459](#) F.S., compact law and rules, and Florida Department of Health and commission staff.

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