WEST VIRGINIA CODE: §30-34A-7

§30-34A-7. Respiratory care interstate compact commission.

(a) The compact member states hereby create and establish a joint government agency whose membership consists of all member states that have enacted the compact known as the respiratory care interstate compact commission. The commission is an instrumentality of the compact member states acting jointly and not an instrumentality of any one state. The commission shall come into existence on or after the effective date of the compact, as set forth in §30-34A- 11 of this code.

(b) Membership, voting, and meetings. –

(1) Each member state shall have and be limited to one commissioner selected by that member state's respiratory therapy licensing authority.

(2) The commissioner shall be an administrator or their designated staff member of the member state's respiratory therapy licensing authority.

(3) The commission shall by rule or bylaw establish a term of office for commissioners and may by rule or bylaw establish term limits.

(4) The commission may recommend to a member state the removal or suspension any commissioner from office.

(5) A member state's respiratory therapy licensing authority shall fill any vacancy of its commissioner occurring on the commission within 60 days of the vacancy.

(6) Each commissioner shall be entitled to one vote on all matters before the commission requiring a vote by commissioners.

(7) A commissioner shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for commissioners to meet by telecommunication, videoconference, or other means of communication.

(8) The commission shall meet at least once during each calendar year. Additional meetings may be held as set forth in the bylaws.

(c) The commission shall have the following powers:

(1) Establish and amend the fiscal year of the commission;

(2) Establish and amend bylaws and policies, including but not limited to, a code of conduct and conflict of interest;

WV Legislature

(3) Establish and amend rules, which shall be binding in all member states;

(4) Maintain its financial records in accordance with the bylaws;

(5) Meet and take such actions as are consistent with the provisions of this compact, the commission's rules, and the bylaws;

(6) Initiate and conduct legal proceedings or actions in the name of the commission, provided that the standing of any respiratory therapy licensing authority to sue or be sued under applicable law shall not be affected;

(7) Maintain and certify records and information provided to a member state as the authenticated business records of the commission, and designate an agent to do so on the commission's behalf;

(8) Purchase and maintain insurance and bonds;

(9) Accept or contract for services of personnel, including, but not limited to, employees of a member state;

(10) Conduct an annual financial review;

(11) Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the compact, and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

(12) Assess and collect fees;

(13) Accept any and all appropriate gifts, donations, grants of money, other sources of revenue, equipment, supplies, materials, and services, and receive, utilize, and dispose of the same, provided that at all times:

(A) The commission shall avoid any appearance of impropriety; and

(B) The commission shall avoid any appearance of conflict of interest.

(14) Lease, purchase, retain, own, hold, improve, or use any property, real, personal, or mixed, or any undivided interest therein;

(15) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

(16) Establish a budget and make expenditures;

(17) Borrow money in a fiscally responsible manner;

WV Legislature

(18) Appoint committees, including standing committees, composed of commissioners state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;

(19) Provide and receive information from, and cooperate with, law enforcement agencies;

(20) Establish and elect an executive committee, including a chair, vice-chair, secretary, treasurer, and such other offices as the commission shall establish by rule or bylaw;

(21) Enter into contracts or arrangements for the management of the affairs of the commission;

(22) Determine whether a state's adopted language is materially different from the model compact language such that the state would not qualify for participation in the compact; and

(23) Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact.

(d) The executive committee. –

(1) The executive committee shall have the power to act on behalf of the commission according to the terms of this compact. The powers, duties, and responsibilities of the executive committee shall include:

(A) Overseeing the day-to-day activities of the administration of the compact, including enforcement and compliance with the provisions of the compact, its rules and bylaws, and other such duties as deemed necessary;

(B) Recommending to the commission changes to the rules or bylaws, changes to this compact legislation, fees charged to compact member states, fees charged to licensees, and other fees;

(C) Ensuring compact administration services are appropriately provided, including by contract;

(D) Preparing and recommending the budget;

(E) Maintaining financial records on behalf of the commission;

(F) Monitoring compact compliance of member states and providing compliance reports to the commission;

(G) Establishing additional committees as necessary;

(H) Exercising the powers and duties of the commission during the interim between commission meetings, except for adopting or amending rules, adopting or amending bylaws,

WV Legislature

and exercising any other powers and duties expressly reserved to the commission by rule or bylaw; and

(I) Performing other duties as provided in the rules or bylaws of the commission.

(2) The executive committee shall be composed of up to nine members, as further set forth in the bylaws of the commission:

(A) Seven voting members who are elected by the commission from the current membership of the commission; and

(B) Two ex-officio, non -voting members.

(3) The commission may remove any member of the executive committee as provided in the commission's bylaws.

(4) The executive committee shall meet at least annually.

(A) Executive committee meetings shall be open to the public, except that the executive committee may meet in a closed, non-public meeting as provided in subsection (e) of this section;

(B) The executive committee shall give advance notice of its meetings, posted on its website and as determined to provide notice to persons with an interest in the business of the commission; and

(C) The executive committee may hold a special meeting in accordance with subsection (e) below.

(D) The commission shall adopt and provide to the member states an annual report.

(e) Meetings of the commission. –

(1) All meetings of the commission that are not closed pursuant to § 30-34a-7(e)(4) of this code shall be open to the public. Notice of public meetings shall be posted on the commission's website at least 30 days prior to the public meeting.

(2) Notwithstanding §30-34A-7(e)(1) of this code, the commission may convene an emergency public meeting by providing at least 24 hours prior notice on the commission's website, and any other means as provided in the commission's rules, for any of the reasons it may dispense with notice of proposed rulemaking under §30-34A-9(g) of this code, the commission's legal counsel shall certify that one of the reasons justifying an emergency public meeting has been met.

(3) Notice of all commission meetings shall provide the time, date, and location of the meeting, and if the meeting is to be held or accessible via telecommunication, video

WV Legislature

conference, or other electronic means, the notice shall include the mechanism for access to the meeting.

(4) The commission or the executive committee may convene in a closed, non-public meeting for the commission or executive committee to receive or solicit legal advice or to discuss:

(A) Non-compliance of a member state with its obligations under the compact;

(B) The employment, compensation, discipline or other matters, practices or procedures related to specific employees;

(C) Current or threatened discipline of a licensee or compact privilege holder by the commission or by a member state's respiratory therapy licensing authority;

(D) Current, threatened, or reasonably anticipated litigation;

(E) Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

(F) Accusing any person of a crime or formally censuring any person;

(G) Trade secrets or commercial or financial information that is privileged or confidential;

(H) Information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(I) Investigative records compiled for law enforcement purposes;

(J) Information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact;

(K) Legal advice;

(L) Matters specifically exempted from disclosure by federal or member state law; or

(M) Other matters as promulgated by the commission by rule.

(5) If a meeting, or portion of a meeting, is closed, the presiding officer shall state that the meeting will be closed and reference each relevant exempting provision, and such reference shall be recorded in the minutes.

(6) The commission shall keep minutes in accordance with commission rules and bylaws. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release only by a majority vote of the commission or order of a court of competent jurisdiction.

(f) Financing of the commission. –

WV Legislature

(1) The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

(2) The commission may accept any and all appropriate revenue sources as provided herein.

(3) The commission may levy on and collect an annual assessment from each member state and impose fees on licensees of member states to whom it grants a compact privilege to cover the cost of the operations and activities of the commission and its staff. The aggregate annual assessment amount for member states, if any, shall be allocated based upon a formula that the commission shall promulgate by rule.

(4) The commission shall not incur obligations of any kind prior to securing the funds or a loan adequate to meet the same; nor shall the commission pledge the credit of any of the member states, except by and with the authority of the member state.

(5) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the financial review and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be subject to an annual financial review by a certified or licensed public accountant, and the report of the financial review shall be included in and become part of the annual report of the commission.

(g) Qualified immunity, defense, and indemnification. –

(1) Nothing herein shall be construed as a limitation on the liability of any licensee for professional malpractice or misconduct, which shall be governed solely by any other applicable state laws.

(2) The member states, commissioners, officers, executive directors, employees, and agents of the commission shall be immune from suit and liability, both personally and in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities; that nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person. The procurement of insurance of any type by the commission shall not in any way compromise or limit the immunity granted hereunder.

(3) The commission shall defend any commissioner, officer, executive director, employee, and agent of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or as determined by the commission that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities: *Provided*, That nothing herein

WV Legislature

shall be construed to prohibit that person from retaining their own counsel at their own expense: *Provided, however*, That the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

(4) The commission shall indemnify and hold harmless any commissioner, member, officer, executive director, employee, and agent of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

(5) Nothing in this compact shall be interpreted to waive or otherwise abrogate a member state's state action immunity or state action affirmative defense with respect to antitrust claims under the Sherman Act, Clayton Act, or any other state or federal antitrust or anticompetitive law or regulation.

(6) Nothing in this compact shall be construed to be a waiver of sovereign immunity by the member states or by the commission.

WV Legislature