

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 836
98TH GENERAL ASSEMBLY

5273H.05C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 336.020, RSMo, and to enact in lieu thereof fourteen new sections relating to health care.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 336.020, RSMo, is repealed and fourteen new sections enacted in lieu thereof, to be known as sections 191.1150, 334.1200, 334.1203, 334.1206, 334.1209, 334.1212, 334.1215, 334.1218, 334.1221, 334.1224, 334.1227, 334.1230, 334.1233, and 336.020, to read as follows:

191.1150. 1. This section shall be known as the "Caregiver, Advise, Record, and Enable (CARE) Act".

2. As used in this section, the following terms shall mean:

(1) "After-care", assistance that is provided by a caregiver to a patient after the patient's discharge from a hospital that is related to the condition of the patient at the time of discharge, including assisting with activities of daily living, as defined in section 198.006; instrumental activities of daily living, as defined in section 198.006; or carrying out medical or nursing tasks as permitted by law;

(2) "Admission", a patient's admission into a hospital as an in-patient;

(3) "Ambulatory surgical center", as defined in section 197.200;

(4) "Caregiver", an individual who is eighteen years of age or older, is duly designated as a caregiver by a patient under this section, and who provides after-care assistance to such patient in the patient's residence;

(5) "Discharge", a patient's release from a hospital or an ambulatory surgical center to the patient's residence following an admission;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 16 **(6) "Hospital", as defined in section 197.020;**
17 **(7) "Residence", a dwelling that the patient considers to be his or her home.**
18 **"Residence" shall not include:**
19 **(a) A facility, as defined in section 198.006;**
20 **(b) A hospital, as defined in section 197.020;**
21 **(c) A prison, jail, or other detention or correctional facility operated by the state**
22 **or a political subdivision;**
23 **(d) A residential facility, as defined in section 630.005;**
24 **(e) A group home or developmental disability facility, as defined in section 633.005;**
25 **or**
26 **(f) Any other place of habitation provided by a public or private entity which bears**
27 **legal or contractual responsibility for the care, control, or custody of the patient and which**
28 **is compensated for doing so.**
- 29 **3. A hospital or ambulatory surgical center shall provide each patient or, if**
30 **applicable, the patient's legal guardian with an opportunity to designate a caregiver**
31 **following the patient's admission into a hospital or entry into an ambulatory surgical**
32 **center and prior to the patient's discharge. Such designation shall include a written**
33 **consent of the patient or the patient's legal guardian to release otherwise confidential**
34 **medical information to the designated caregiver if such medical record would be needed**
35 **to enable the completion of after-care tasks.**
36 **The written consent shall be in compliance with federal and state laws concerning the**
37 **release of personal health information.**
38 **Prior to discharge, a patient may elect to change his or her caregiver in the event that the**
39 **original designated caregiver becomes unavailable, unwilling, or unable to care for the**
40 **patient. Designation of a caregiver by a patient or a patient's legal guardian does not**
41 **obligate any person to arrange or perform any after-care tasks for the patient.**
- 42 **4. The hospital or ambulatory surgical center shall document the patient's or the**
43 **patient's legal guardian's designation of caregiver, the relationship of the caregiver to the**
44 **patient, and the caregiver's available contact information.**
- 45 **5. If the patient or the patient's legal guardian declines to designate a caregiver, the**
46 **hospital or ambulatory surgical center shall document such information.**
- 47 **6. The hospital or ambulatory surgical center shall notify a patient's caregiver of**
48 **the patient's discharge or transfer to another facility as soon as practicable, which may be**
49 **after the patient's physician issues a discharge order. In the event that the hospital or**
50 **ambulatory surgical center is unable to contact the designated caregiver, the lack of contact**
51 **shall not interfere with, delay, or otherwise affect the medical care provided to the patient**

52 or an appropriate discharge of the patient. The hospital or ambulatory surgical center
53 shall document the attempt to contact the caregiver.

54 7. Prior to being discharged, if the hospital or ambulatory surgical center is able
55 to contact the caregiver and caregiver is willing to assist, the hospital or ambulatory
56 surgical center shall provide the caregiver with the patient's discharge plan, if such plan
57 exists, or instructions for the after-care needs of the patient and give the caregiver the
58 opportunity to ask questions about the after-care needs of the patient.

59 8. A hospital or ambulatory surgical center is not required nor obligated to
60 determine the ability of a caregiver to understand or perform any of the after-care tasks
61 outlined in this section.

62 9. Nothing in this section shall authorize or require compensation of a caregiver by
63 a state agency or a health carrier, as defined in section 376.1350.

64 10. Nothing in this section shall require a hospital or ambulatory surgical center
65 to take actions that are inconsistent with the standards of the federal Medicare program
66 under Title XVIII of the Social Security Act and its conditions of participation in the Code
67 of Federal Regulations or the standards of a national accrediting organization with
68 deeming authority under Section 1865(a)(1) of the Social Security Act.

69 11. Nothing in this section shall create a private right of action against a hospital,
70 ambulatory surgical center, a hospital or ambulatory surgical center employee, or an
71 individual with whom a hospital or ambulatory surgical center has a contractual
72 relationship.

73 12. A hospital, ambulatory surgical center, hospital or ambulatory surgical center
74 employee, or an individual with whom a hospital or ambulatory surgical center has a
75 contractual relationship shall not be liable in any way for an act or omission of the
76 caregiver.

77 13. No act or omission under this section by a hospital, ambulatory surgical center,
78 hospital or ambulatory surgical center employee, or an individual with whom a hospital
79 or ambulatory surgical center has a contractual relationship shall give rise to a citation,
80 sanction, or any other adverse action by any licensing authority to whom such individual
81 or entity is subject.

82 14. Nothing in this section shall be construed to interfere with the rights of an
83 attorney in fact under a durable power of health care under sections 404.800 to 404.872.

334.1200. PURPOSE

2 The purpose of this compact is to facilitate interstate practice of physical therapy
3 with the goal of improving public access to physical therapy services. The practice of
4 physical therapy occurs in the state where the patient/client is located at the time of the

5 patient/client encounter. The compact preserves the regulatory authority of states to
6 protect public health and safety through the current system of state licensure.

7 This compact is designed to achieve the following objectives:

- 8 1. Increase public access to physical therapy services by providing for the mutual
9 recognition of other member state licenses;
- 10 2. Enhance the states' ability to protect the public's health and safety;
- 11 3. Encourage the cooperation of member states in regulating multistate physical
12 therapy practice;
- 13 4. Support spouses of relocating military members;
- 14 5. Enhance the exchange of licensure, investigative, and disciplinary information
15 between member states; and
- 16 6. Allow a remote state to hold a provider of services with a compact privilege in
17 that state accountable to that state's practice standards.

334.1203. DEFINITIONS

2 As used in this compact, and except as otherwise provided, the following definitions
3 shall apply:

- 4 1. "Active Duty Military" means full-time duty status in the active uniformed
5 service of the United States, including members of the National Guard and Reserve on
6 active duty orders pursuant to 10 U.S.C. Section 1209 and 1211.
- 7 2. "Adverse Action" means disciplinary action taken by a physical therapy
8 licensing board based upon misconduct, unacceptable performance, or a combination of
9 both.
- 10 3. "Alternative Program" means a nondisciplinary monitoring or practice
11 remediation process approved by a physical therapy licensing board. This includes, but
12 is not limited to, substance abuse issues.
- 13 4. "Compact privilege" means the authorization granted by a remote state to allow
14 a licensee from another member state to practice as a physical therapist or work as a
15 physical therapist assistant in the remote state under its laws and rules. The practice of
16 physical therapy occurs in the member state where the patient/client is located at the time
17 of the patient/client encounter.
- 18 5. "Continuing competence" means a requirement, as a condition of license
19 renewal, to provide evidence of participation in, and/or completion of, educational and
20 professional activities relevant to practice or area of work.
- 21 6. "Data system" means a repository of information about licensees, including
22 examination, licensure, investigative, compact privilege, and adverse action.

23 7. "Encumbered license" means a license that a physical therapy licensing board
24 has limited in any way.

25 8. "Executive Board" means a group of directors elected or appointed to act on
26 behalf of, and within the powers granted to them by, the commission.

27 9. "Home state" means the member state that is the licensee's primary state of
28 residence.

29 10. "Investigative information" means information, records, and documents
30 received or generated by a physical therapy licensing board pursuant to an investigation.

31 11. "Jurisprudence requirement" means the assessment of an individual's
32 knowledge of the laws and rules governing the practice of physical therapy in a state.

33 12. "Licensee" means an individual who currently holds an authorization from the
34 state to practice as a physical therapist or to work as a physical therapist assistant.

35 13. "Member state" means a state that has enacted the compact.

36 14. "Party state" means any member state in which a licensee holds a current
37 license or compact privilege or is applying for a license or compact privilege.

38 15. "Physical therapist" means an individual who is licensed by a state to practice
39 physical therapy.

40 16. "Physical therapist assistant" means an individual who is licensed/certified by
41 a state and who assists the physical therapist in selected components of physical therapy.

42 17. "Physical therapy", "physical therapy practice", and "the practice of physical
43 therapy" mean the care and services provided by or under the direction and supervision
44 of a licensed physical therapist.

45 18. "Physical therapy compact commission" or "commission" means the national
46 administrative body whose membership consists of all states that have enacted the
47 compact.

48 19. "Physical therapy licensing board" or "licensing board" means the agency of
49 a state that is responsible for the licensing and regulation of physical therapists and
50 physical therapist assistants.

51 20. "Remote state" means a member state other than the home state, where a
52 licensee is exercising or seeking to exercise the compact privilege.

53 21. "Rule" means a regulation, principle, or directive promulgated by the
54 commission that has the force of law.

55 22. "State" means any state, commonwealth, district, or territory of the United
56 States of America that regulates the practice of physical therapy.

334.1206. STATE PARTICIPATION IN THE COMPACT

2 A. To participate in the compact, a state must:

- 3 **1. Participate fully in the commission’s data system, including using the**
- 4 **commission’s unique identifier as defined in rules;**
- 5 **2. Have a mechanism in place for receiving and investigating complaints about**
- 6 **licensees;**
- 7 **3. Notify the commission, in compliance with the terms of the compact and rules,**
- 8 **of any adverse action or the availability of investigative information regarding a licensee;**
- 9 **4. Fully implement a criminal background check requirement, within a time frame**
- 10 **established by rule, by receiving the results of the Federal Bureau of Investigation record**
- 11 **search on criminal background checks and use the results in making licensure decisions**
- 12 **in accordance with section 334.1206.B.;**
- 13 **5. Comply with the rules of the commission;**
- 14 **6. Utilize a recognized national examination as a requirement for licensure**
- 15 **pursuant to the rules of the commission; and**
- 16 **7. Have continuing competence requirements as a condition for license renewal.**
- 17 **B. Upon adoption of sections 334.1200 to 334.1233, the member state shall have the**
- 18 **authority to obtain biometric-based information from each physical therapy licensure**
- 19 **applicant and submit this information to the Federal Bureau of Investigation for a criminal**
- 20 **background check in accordance with 28 U.S.C. Section 534 and 42 U.S.C. Section 14616.**
- 21 **C. A member state shall grant the compact privilege to a licensee holding a valid**
- 22 **unencumbered license in another member state in accordance with the terms of the**
- 23 **compact and rules.**
- 24 **D. Member states may charge a fee for granting a compact privilege.**

334.1209. COMPACT PRIVILEGE

- 2 **A. To exercise the compact privilege under the terms and provisions of the**
- 3 **compact, the licensee shall:**
- 4 **1. Hold a license in the home state;**
- 5 **2. Have no encumbrance on any state license;**
- 6 **3. Be eligible for a compact privilege in any member state in accordance with**
- 7 **section 334.1209D, G and H;**
- 8 **4. Have not had any adverse action against any license or compact privilege within**
- 9 **the previous 2 years;**
- 10 **5. Notify the commission that the licensee is seeking the compact privilege within**
- 11 **a remote state(s);**
- 12 **6. Pay any applicable fees, including any state fee, for the compact privilege;**
- 13 **7. Meet any jurisprudence requirements established by the remote state(s) in which**
- 14 **the licensee is seeking a compact privilege; and**

15 **8. Report to the commission adverse action taken by any nonmember state within**
16 **thirty days from the date the adverse action is taken.**

17 **B. The compact privilege is valid until the expiration date of the home license. The**
18 **licensee must comply with the requirements of section 334.1209.A. to maintain the compact**
19 **privilege in the remote state.**

20 **C. A licensee providing physical therapy in a remote state under the compact**
21 **privilege shall function within the laws and regulations of the remote state.**

22 **D. A licensee providing physical therapy in a remote state is subject to that state's**
23 **regulatory authority. A remote state may, in accordance with due process and that state's**
24 **laws, remove a licensee's compact privilege in the remote state for a specific period of time,**
25 **impose fines, and/or take any other necessary actions to protect the health and safety of its**
26 **citizens. The licensee is not eligible for a compact privilege in any state until the specific**
27 **time for removal has passed and all fines are paid.**

28 **E. If a home state license is encumbered, the licensee shall lose the compact**
29 **privilege in any remote state until the following occur:**

30 **1. The home state license is no longer encumbered; and**

31 **2. Two years have elapsed from the date of the adverse action.**

32 **F. Once an encumbered license in the home state is restored to good standing, the**
33 **licensee must meet the requirements of section 334.1209A to obtain a compact privilege in**
34 **any remote state.**

35 **G. If a licensee's compact privilege in any remote state is removed, the individual**
36 **shall lose the compact privilege in any remote state until the following occur:**

37 **1. The specific period of time for which the compact privilege was removed has**
38 **ended;**

39 **2. All fines have been paid; and**

40 **3. Two years have elapsed from the date of the adverse action.**

41 **H. Once the requirements of section 334.1209G have been met, the license must**
42 **meet the requirements in section 334.1209A to obtain a compact privilege in a remote state.**

43 **334.1212. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES**

44 **A licensee who is active duty military or is the spouse of an individual who is active**
45 **duty military may designate one of the following as the home state:**

46 **A. Home of record;**

47 **B. Permanent change of station (PCS); or**

48 **C. State of current residence if it is different than the PCS state or home of record.**

334.1215. ADVERSE ACTIONS

2 **A. A home state shall have exclusive power to impose adverse action against a**
3 **license issued by the home state.**

4 **B. A home state may take adverse action based on the investigative information of**
5 **a remote state, so long as the home state follows its own procedures for imposing adverse**
6 **action.**

7 **C. Nothing in this compact shall override a member state's decision that**
8 **participation in an alternative program may be used in lieu of adverse action and that such**
9 **participation shall remain nonpublic if required by the member state's laws. Member**
10 **states must require licensees who enter any alternative programs in lieu of discipline to**
11 **agree not to practice in any other member state during the term of the alternative program**
12 **without prior authorization from such other member state.**

13 **D. Any member state may investigate actual or alleged violations of the statutes and**
14 **rules authorizing the practice of physical therapy in any other member state in which a**
15 **physical therapist or physical therapist assistant holds a license or compact privilege.**

16 **E. A remote state shall have the authority to:**

17 **1. Take adverse actions as set forth in section 334.1209.D. against a licensee's**
18 **compact privilege in the state;**

19 **2. Issue subpoenas for both hearings and investigations that require the attendance**
20 **and testimony of witnesses, and the production of evidence. Subpoenas issued by a**
21 **physical therapy licensing board in a party state for the attendance and testimony of**
22 **witnesses, and/or the production of evidence from another party state, shall be enforced**
23 **in the latter state by any court of competent jurisdiction, according to the practice and**
24 **procedure of that court applicable to subpoenas issued in proceedings pending before it.**
25 **The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees**
26 **required by the service statutes of the state where the witnesses and/or evidence are**
27 **located; and**

28 **3. If otherwise permitted by state law, recover from the licensee the costs of**
29 **investigations and disposition of cases resulting from any adverse action taken against that**
30 **licensee.**

31 **F. Joint Investigations**

32 **1. In addition to the authority granted to a member state by its respective physical**
33 **therapy practice act or other applicable state law, a member state may participate with**
34 **other member states in joint investigations of licensees.**

35 **2. Member states shall share any investigative, litigation, or compliance materials**
36 **in furtherance of any joint or individual investigation initiated under the compact.**

334.1218. ESTABLISHMENT OF THE PHYSICAL THERAPY COMPACT

2 COMMISSION.

**3 A. The compact member states hereby create and establish a joint public agency
4 known as the physical therapy compact commission:**

5 1. The commission is an instrumentality of the compact states.

**6 2. Venue is proper and judicial proceedings by or against the commission shall be
7 brought solely and exclusively in a court of competent jurisdiction where the principal
8 office of the commission is located. The commission may waive venue and jurisdictional
9 defenses to the extent it adopts or consents to participate in alternative dispute resolution
10 proceedings.**

11 3. Nothing in this compact shall be construed to be a waiver of sovereign immunity.

12 B. Membership, Voting, and Meetings

**13 1. Each member state shall have and be limited to one delegate selected by that
14 member state's licensing board.**

**15 2. The delegate shall be a current member of the licensing board, who is a physical
16 therapist, physical therapist assistant, public member, or the board administrator.**

**17 3. Any delegate may be removed or suspended from office as provided by the law
18 of the state from which the delegate is appointed.**

19 4. The member state board shall fill any vacancy occurring in the commission.

**20 5. Each delegate shall be entitled to one vote with regard to the promulgation of
21 rules and creation of bylaws and shall otherwise have an opportunity to participate in the
22 business and affairs of the commission.**

**23 6. A delegate shall vote in person or by such other means as provided in the bylaws.
24 The bylaws may provide for delegates' participation in meetings by telephone or other
25 means of communication.**

**26 7. The commission shall meet at least once during each calendar year. Additional
27 meetings shall be held as set forth in the bylaws.**

28 C. The commission shall have the following powers and duties:

29 1. Establish the fiscal year of the commission;

30 2. Establish bylaws;

31 3. Maintain its financial records in accordance with the bylaws;

**32 4. Meet and take such actions as are consistent with the provisions of this compact
33 and the bylaws;**

**34 5. Promulgate uniform rules to facilitate and coordinate implementation and
35 administration of this compact. The rules shall have the force and effect of law and shall
36 be binding in all member states;**

37 **6. Bring and prosecute legal proceedings or actions in the name of the commission,**
38 **provided that the standing of any state physical therapy licensing board to sue or be sued**
39 **under applicable law shall not be affected;**

40 **7. Purchase and maintain insurance and bonds;**

41 **8. Borrow, accept, or contract for services of personnel, including, but not limited**
42 **to, employees of a member state;**

43 **9. Hire employees, elect or appoint officers, fix compensation, define duties, grant**
44 **such individuals appropriate authority to carry out the purposes of the compact, and to**
45 **establish the commission's personnel policies and programs relating to conflicts of interest,**
46 **qualifications of personnel, and other related personnel matters;**

47 **10. Accept any and all appropriate donations and grants of money, equipment,**
48 **supplies, materials and services, and to receive, utilize and dispose of the same; provided**
49 **that at all times the commission shall avoid any appearance of impropriety and/or conflict**
50 **of interest;**

51 **11. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own,**
52 **hold, improve or use, any property, real, personal or mixed; provided that at all times the**
53 **commission shall avoid any appearance of impropriety;**

54 **12. Sell convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose**
55 **of any property real, personal, or mixed;**

56 **13. Establish a budget and make expenditures;**

57 **14. Borrow money;**

58 **15. Appoint committees, including standing committees comprised of members,**
59 **state regulators, state legislators or their representatives, and consumer representatives,**
60 **and such other interested persons as may be designated in this compact and the bylaws;**

61 **16. Provide and receive information from, and cooperate with, law enforcement**
62 **agencies;**

63 **17. Establish and elect an executive board; and**

64 **18. Perform such other functions as may be necessary or appropriate to achieve the**
65 **purposes of this compact consistent with the state regulation of physical therapy licensure**
66 **and practice.**

67 **D. The Executive Board**

68 **The executive board shall have the power to act on behalf of the commission**
69 **according to the terms of this compact.**

70 **1. The executive board shall be comprised of nine members:**

71 **a. Seven voting members who are elected by the commission from the current**
72 **membership of the commission;**

- 73 **b. One ex officio, nonvoting member from the recognized national physical therapy**
74 **professional association; and**
- 75 **c. One ex officio, nonvoting member from the recognized membership organization**
76 **of the physical therapy licensing boards.**
- 77 **2. The ex officio members will be selected by their respective organizations.**
- 78 **3. The commission may remove any member of the executive board as provided in**
79 **bylaws.**
- 80 **4. The executive board shall meet at least annually.**
- 81 **5. The executive board shall have the following duties and responsibilities:**
- 82 **a. Recommend to the entire commission changes to the rules or bylaws, changes to**
83 **this compact legislation, fees paid by compact member states such as annual dues, and any**
84 **commission compact fee charged to licensees for the compact privilege;**
- 85 **b. Ensure compact administration services are appropriately provided, contractual**
86 **or otherwise;**
- 87 **c. Prepare and recommend the budget;**
- 88 **d. Maintain financial records on behalf of the commission;**
- 89 **e. Monitor compact compliance of member states and provide compliance reports**
90 **to the commission;**
- 91 **f. Establish additional committees as necessary; and**
- 92 **g. Other duties as provided in rules or bylaws.**
- 93 **E. Meetings of the Commission**
- 94 **1. All meetings shall be open to the public, and public notice of meetings shall be**
95 **given in the same manner as required under the rulemaking provisions in section 334.1224.**
- 96 **2. The commission or the executive board or other committees of the commission**
97 **may convene in a closed, nonpublic meeting if the commission or executive board or other**
98 **committees of the commission must discuss:**
- 99 **a. Noncompliance of a member state with its obligations under the compact;**
- 100 **b. The employment, compensation, discipline or other matters, practices or**
101 **procedures related to specific employees or other matters related to the commission's**
102 **internal personnel practices and procedures;**
- 103 **c. Current, threatened, or reasonably anticipated litigation;**
- 104 **d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real**
105 **estate;**
- 106 **e. Accusing any person of a crime or formally censuring any person;**
- 107 **f. Disclosure of trade secrets or commercial or financial information that is**
108 **privileged or confidential;**

109 **g. Disclosure of information of a personal nature where disclosure would constitute**
110 **a clearly unwarranted invasion of personal privacy;**

111 **h. Disclosure of investigative records compiled for law enforcement purposes;**

112 **i. Disclosure of information related to any investigative reports prepared by or on**
113 **behalf of or for use of the commission or other committee charged with responsibility of**
114 **investigation or determination of compliance issues pursuant to the compact; or**

115 **j. Matters specifically exempted from disclosure by federal or member state statute.**

116 **3. If a meeting, or portion of a meeting, is closed pursuant to this provision, the**
117 **commission's legal counsel or designee shall certify that the meeting may be closed and**
118 **shall reference each relevant exempting provision.**

119 **4. The commission shall keep minutes that fully and clearly describe all matters**
120 **discussed in a meeting and shall provide a full and accurate summary of actions taken, and**
121 **the reasons therefore, including a description of the views expressed. All documents**
122 **considered in connection with an action shall be identified in such minutes. All minutes**
123 **and documents of a closed meeting shall remain under seal, subject to release by a majority**
124 **vote of the commission or order of a court of competent jurisdiction.**

125 **F. Financing of the Commission**

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

128 **2. The commission may accept any and all appropriate revenue sources, donations,**
129 **and grants of money, equipment, supplies, materials, and services.**

130 **3. The commission may levy on and collect an annual assessment from each**
131 **member state or impose fees on other parties to cover the cost of the operations and**
132 **activities of the commission and its staff, which must be in a total amount sufficient to**
133 **cover its annual budget as approved each year for which revenue is not provided by other**
134 **sources. The aggregate annual assessment amount shall be allocated based upon a formula**
135 **to be determined by the commission, which shall promulgate a rule binding upon all**
136 **member states.**

137 **4. The commission shall not incur obligations of any kind prior to securing the**
138 **funds adequate to meet the same; nor shall the commission pledge the credit of any of the**
139 **member states, except by and with the authority of the member state.**

140 **5. The commission shall keep accurate accounts of all receipts and disbursements.**
141 **The receipts and disbursements of the commission shall be subject to the audit and**
142 **accounting procedures established under its bylaws. However, all receipts and**
143 **disbursements of funds handled by the commission shall be audited yearly by a certified**

144 or licensed public accountant, and the report of the audit shall be included in and become
145 part of the annual report of the commission.

146 **G. Qualified Immunity, Defense, and Indemnification**

147 **1. The members, officers, executive director, employees and representatives of the**
148 **commission shall be immune from suit and liability, either personally or in their official**
149 **capacity, for any claim for damage to or loss of property or personal injury or other civil**
150 **liability caused by or arising out of any actual or alleged act, error or omission that**
151 **occurred, or that the person against whom the claim is made had a reasonable basis for**
152 **believing occurred within the scope of commission employment, duties or responsibilities;**
153 **provided that nothing in this paragraph shall be construed to protect any such person from**
154 **suit and/or liability for any damage, loss, injury, or liability caused by the intentional or**
155 **willful or wanton misconduct of that person.**

156 **2. The commission shall defend any member, officer, executive director, employee**
157 **or representative of the commission in any civil action seeking to impose liability arising**
158 **out of any actual or alleged act, error, or omission that occurred within the scope of**
159 **commission employment, duties, or responsibilities, or that the person against whom the**
160 **claim is made had a reasonable basis for believing occurred within the scope of commission**
161 **employment, duties, or responsibilities; provided that nothing herein shall be construed**
162 **to prohibit that person from retaining his or her own counsel; and provided further, that**
163 **the actual or alleged act, error, or omission did not result from that person's intentional**
164 **or willful or wanton misconduct.**

165 **3. The commission shall indemnify and hold harmless any member, officer,**
166 **executive director, employee, or representative of the commission for the amount of any**
167 **settlement or judgment obtained against that person arising out of any actual or alleged**
168 **act, error or omission that occurred within the scope of commission employment, duties,**
169 **or responsibilities, or that such person had a reasonable basis for believing occurred within**
170 **the scope of commission employment, duties, or responsibilities, provided that the actual**
171 **or alleged act, error, or omission did not result from the intentional or willful or wanton**
172 **misconduct of that person.**

334.1221. DATA SYSTEM

2 **A. The commission shall provide for the development, maintenance, and utilization**
3 **of a coordinated database and reporting system containing licensure, adverse action, and**
4 **investigative information on all licensed individuals in member states.**

5 **B. Notwithstanding any other provision of state law to the contrary, a member state**
6 **shall submit a uniform data set to the data system on all individuals to whom this compact**
7 **is applicable as required by the rules of the commission, including:**

- 8 **1. Identifying information;**
9 **2. Licensure data;**
10 **3. Adverse actions against a license or compact privilege;**
11 **4. Nonconfidential information related to alternative program participation;**
12 **5. Any denial of application for licensure, and the reason(s) for such denial; and**
13 **6. Other information that may facilitate the administration of this compact, as**
14 **determined by the rules of the commission.**

15 **C. Investigative information pertaining to a licensee in any member state will only**
16 **be available to other party states.**

17 **D. The commission shall promptly notify all member states of any adverse action**
18 **taken against a licensee or an individual applying for a license. Adverse action information**
19 **pertaining to a licensee in any member state will be available to any other member state.**

20 **E. Member states contributing information to the data system may designate**
21 **information that may not be shared with the public without the express permission of the**
22 **contributing state.**

23 **F. Any information submitted to the data system that is subsequently required to**
24 **be expunged by the laws of the member state contributing the information shall be**
25 **removed from the data system.**

334.1224. RULEMAKING

2 **A. The commission shall exercise its rulemaking powers pursuant to the criteria set**
3 **forth in this section and the rules adopted thereunder. Rules and amendments shall**
4 **become binding as of the date specified in each rule or amendment.**

5 **B. If a majority of the legislatures of the member states rejects a rule, by enactment**
6 **of a statute or resolution in the same manner used to adopt the compact within four years**
7 **of the date of adoption of the rule, then such rule shall have no further force and effect in**
8 **any member state.**

9 **C. Rules or amendments to the rules shall be adopted at a regular or special**
10 **meeting of the commission.**

11 **D. Prior to promulgation and adoption of a final rule or rules by the commission,**
12 **and at least thirty days in advance of the meeting at which the rule will be considered and**
13 **voted upon, the commission shall file a notice of proposed rulemaking:**

- 14 **1. On the website of the commission or other publicly accessible platform; and**
15 **2. On the website of each member state physical therapy licensing board or other**
16 **publicly accessible platform or the publication in which each state would otherwise publish**
17 **proposed rules.**

18 **E. The notice of proposed rulemaking shall include:**

- 19 **1. The proposed time, date, and location of the meeting in which the rule will be**
20 **considered and voted upon;**
- 21 **2. The text of the proposed rule or amendment and the reason for the proposed**
22 **rule;**
- 23 **3. A request for comments on the proposed rule from any interested person; and**
24 **4. The manner in which interested persons may submit notice to the commission**
25 **of their intention to attend the public hearing and any written comments.**
- 26 **F. Prior to adoption of a proposed rule, the commission shall allow persons to**
27 **submit written data, facts, opinions, and arguments, which shall be made available to the**
28 **public.**
- 29 **G. The commission shall grant an opportunity for a public hearing before it adopts**
30 **a rule or amendment if a hearing is requested by:**
- 31 **1. At least twenty-five persons;**
32 **2. A state or federal governmental subdivision or agency; or**
33 **3. An association having at least twenty-five members.**
- 34 **H. If a hearing is held on the proposed rule or amendment, the commission shall**
35 **publish the place, time, and date of the scheduled public hearing. If the hearing is held via**
36 **electronic means, the commission shall publish the mechanism for access to the electronic**
37 **hearing.**
- 38 **1. All persons wishing to be heard at the hearing shall notify the executive director**
39 **of the commission or other designated member in writing of their desire to appear and**
40 **testify at the hearing not less than five business days before the scheduled date of the**
41 **hearing.**
- 42 **2. Hearings shall be conducted in a manner providing each person who wishes to**
43 **comment a fair and reasonable opportunity to comment orally or in writing.**
- 44 **3. All hearings will be recorded. A copy of the recording will be made available on**
45 **request.**
- 46 **4. Nothing in this section shall be construed as requiring a separate hearing on each**
47 **rule. Rules may be grouped for the convenience of the commission at hearings required**
48 **by this section.**
- 49 **I. Following the scheduled hearing date, or by the close of business on the scheduled**
50 **hearing date if the hearing was not held, the commission shall consider all written and oral**
51 **comments received.**
- 52 **J. If no written notice of intent to attend the public hearing by interested parties**
53 **is received, the commission may proceed with promulgation of the proposed rule without**
54 **a public hearing.**

55 **K. The commission shall, by majority vote of all members, take final action on the**
56 **proposed rule and shall determine the effective date of the rule, if any, based on the**
57 **rulemaking record and the full text of the rule.**

58 **L. Upon determination that an emergency exists, the commission may consider and**
59 **adopt an emergency rule without prior notice, opportunity for comment, or hearing,**
60 **provided that the usual rulemaking procedures provided in the compact and in this section**
61 **shall be retroactively applied to the rule as soon as reasonably possible, in no event later**
62 **than ninety days after the effective date of the rule. For the purposes of this provision, an**
63 **emergency rule is one that must be adopted immediately in order to:**

- 64 **1. Meet an imminent threat to public health, safety, or welfare;**
65 **2. Prevent a loss of commission or member state funds;**
66 **3. Meet a deadline for the promulgation of an administrative rule that is established**
67 **by federal law or rule; or**
68 **4. Protect public health and safety.**

69 **M. The commission or an authorized committee of the commission may direct**
70 **revisions to a previously adopted rule or amendment for purposes of correcting**
71 **typographical errors, errors in format, errors in consistency, or grammatical errors.**
72 **Public notice of any revisions shall be posted on the website of the commission. The**
73 **revision shall be subject to challenge by any person for a period of thirty days after**
74 **posting. The revision may be challenged only on grounds that the revision results in a**
75 **material change to a rule. A challenge shall be made in writing, and delivered to the chair**
76 **of the commission prior to the end of the notice period. If no challenge is made, the**
77 **revision will take effect without further action. If the revision is challenged, the revision**
78 **may not take effect without the approval of the commission.**

334.1227. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

2 A. Oversight

3 **1. The executive, legislative, and judicial branches of state government in each**
4 **member state shall enforce this compact and take all actions necessary and appropriate to**
5 **effectuate the compact's purposes and intent. The provisions of this compact and the rules**
6 **promulgated hereunder shall have standing as statutory law.**

7 **2. All courts shall take judicial notice of the compact and the rules in any judicial**
8 **or administrative proceeding in a member state pertaining to the subject matter of this**
9 **compact which may affect the powers, responsibilities or actions of the commission.**

10 **3. The commission shall be entitled to receive service of process in any such**
11 **proceeding, and shall have standing to intervene in such a proceeding for all purposes.**

12 **Failure to provide service of process to the commission shall render a judgment or order**
13 **void as to the commission, this compact, or promulgated rules.**

14 **B. Default, Technical Assistance, and Termination**

15 **1. If the commission determines that a member state has defaulted in the**
16 **performance of its obligations or responsibilities under this compact or the promulgated**
17 **rules, the commission shall:**

18 **a. Provide written notice to the defaulting state and other member states of the**
19 **nature of the default, the proposed means of curing the default and/or any other action to**
20 **be taken by the commission; and**

21 **b. Provide remedial training and specific technical assistance regarding the default.**

22 **2. If a state in default fails to cure the default, the defaulting state may be**
23 **terminated from the compact upon an affirmative vote of a majority of the member states,**
24 **and all rights, privileges and benefits conferred by this compact may be terminated on the**
25 **effective date of termination. A cure of the default does not relieve the offending state of**
26 **obligations or liabilities incurred during the period of default.**

27 **3. Termination of membership in the compact shall be imposed only after all other**
28 **means of securing compliance have been exhausted. Notice of intent to suspend or**
29 **terminate shall be given by the commission to the governor, the majority and minority**
30 **leaders of the defaulting state's legislature, and each of the member states.**

31 **4. A state that has been terminated is responsible for all assessments, obligations,**
32 **and liabilities incurred through the effective date of termination, including obligations that**
33 **extend beyond the effective date of termination.**

34 **5. The commission shall not bear any costs related to a state that is found to be in**
35 **default or that has been terminated from the compact, unless agreed upon in writing**
36 **between the commission and the defaulting state.**

37 **6. The defaulting state may appeal the action of the commission by petitioning the**
38 **United States District Court for the District of Columbia or the federal district where the**
39 **commission has its principal offices. The prevailing member shall be awarded all costs of**
40 **such litigation, including reasonable attorney's fees.**

41 **C. Dispute Resolution**

42 **1. Upon request by a member state, the commission shall attempt to resolve**
43 **disputes related to the compact that arise among member states and between member and**
44 **nonmember states.**

45 **2. The commission shall promulgate a rule providing for both mediation and**
46 **binding dispute resolution for disputes as appropriate.**

47 **D. Enforcement**

48 **1. The commission, in the reasonable exercise of its discretion, shall enforce the**
49 **provisions and rules of this compact.**

50 **2. By majority vote, the commission may initiate legal action in the United States**
51 **District Court for the District of Columbia or the federal district where the commission has**
52 **its principal offices against a member state in default to enforce compliance with the**
53 **provisions of the compact and its promulgated rules and bylaws. The relief sought may**
54 **include both injunctive relief and damages. In the event judicial enforcement is necessary,**
55 **the prevailing member shall be awarded all costs of such litigation, including reasonable**
56 **attorney's fees.**

57 **3. The remedies herein shall not be the exclusive remedies of the commission. The**
58 **commission may pursue any other remedies available under federal or state law.**

334.1230. DATE OF IMPLEMENTATION OF THE INTERSTATE
2 **COMMISSION FOR PHYSICAL THERAPY PRACTICE AND ASSOCIATED RULES,**
3 **WITHDRAWAL, AND AMENDMENT**

4 **A. The compact shall come into effect on the date on which the compact statute is**
5 **enacted into law in the tenth member state. The provisions, which become effective at that**
6 **time, shall be limited to the powers granted to the commission relating to assembly and the**
7 **promulgation of rules. Thereafter, the commission shall meet and exercise rulemaking**
8 **powers necessary to the implementation and administration of the compact.**

9 **B. Any state that joins the compact subsequent to the commission's initial adoption**
10 **of the rules shall be subject to the rules as they exist on the date on which the compact**
11 **becomes law in that state. Any rule that has been previously adopted by the commission**
12 **shall have the full force and effect of law on the day the compact becomes law in that state.**

13 **C. Any member state may withdraw from this compact by enacting a statute**
14 **repealing the same.**

15 **1. A member state's withdrawal shall not take effect until six months after**
16 **enactment of the repealing statute.**

17 **2. Withdrawal shall not affect the continuing requirement of the withdrawing**
18 **state's physical therapy licensing board to comply with the investigative and adverse action**
19 **reporting requirements of this act prior to the effective date of withdrawal.**

20 **D. Nothing contained in this compact shall be construed to invalidate or prevent**
21 **any physical therapy licensure agreement or other cooperative arrangement between a**
22 **member state and a nonmember state that does not conflict with the provisions of this**
23 **compact.**

24 **E. This compact may be amended by the member states. No amendment to this**
25 **compact shall become effective and binding upon any member state until it is enacted into**
26 **the laws of all member states.**

334.1233. CONSTRUCTION AND SEVERABILITY

2 **This compact shall be liberally construed so as to effectuate the purposes thereof.**
3 **The provisions of this compact shall be severable and if any phrase, clause, sentence or**
4 **provision of this compact is declared to be contrary to the constitution of any party state**
5 **or of the United States or the applicability thereof to any government, agency, person or**
6 **circumstance is held invalid, the validity of the remainder of this compact and the**
7 **applicability thereof to any government, agency, person or circumstance shall not be**
8 **affected thereby. If this compact shall be held contrary to the constitution of any party**
9 **state, the compact shall remain in full force and effect as to the remaining party states and**
10 **in full force and effect as to the party state affected as to all severable matters.**

 336.020. It shall be unlawful for any person to practice, to attempt to practice, or to offer
2 to practice optometry, or to be employed by any person, corporation, partnership, association,
3 or other entity that practice or attempts to practice without a license as an optometrist issued by
4 the board. Nothing in this section shall be construed to prohibit a person licensed or registered
5 under chapter 334 whose license is in good standing from acting within the scope of his or her
6 practice or a person licensed as an optometrist in any state to serve as an expert witness in a civil,
7 criminal, or administrative proceeding **or optometry students in any accredited optometry**
8 **school from training in the practice of optometry under the direct supervision of a**
9 **physician licensed under chapter 334 or an optometrist licensed under chapter 336.**

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