

CHAPTER 189
SB 212-FN - FINAL VERSION

1Jun2017... 1372h
06/08/2017 2377EBA

2017 SESSION

17-0856
10/01

SENATE BILL ***212-FN***

AN ACT establishing the physical therapy licensure compact.

SPONSORS: Sen. Soucy, Dist 18; Sen. Carson, Dist 14; Sen. Gannon, Dist 23; Sen. Reagan,
Dist 17; Rep. Cilley, Straf. 4

COMMITTEE: Executive Departments and Administration

ANALYSIS

 This bill adopts the physical therapy licensure compact, implemented by the physical therapy governing board.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struck through.]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Seventeen

AN ACT establishing the physical therapy licensure compact.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 189:1 New Paragraph; Physical Therapy Governing Board; Rulemaking; Compact. Amend RSA
2 328-A:4 by inserting after paragraph VIII the following new paragraph:

3 IX. Regarding implementation and coordination of the physical therapy licensure compact
4 adopted in RSA 328-A:5-a.

5 189:2 New Section; Physical Therapy Licensure Compact. Amend RSA 328-A by inserting after
6 section 5 the following new section:

7 328-A:5-a Physical Therapy Licensure Compact. The physical therapy licensure compact is
8 enacted into law and entered into by this state with all states legally joining therein in the form
9 substantially as follows:

10 I. The purpose of this compact is to facilitate interstate practice of physical therapy with the
11 goal of improving public access to physical therapy services. The practice of physical therapy occurs
12 in the state where the patient/client is located at the time of the patient/client encounter. The
13 compact preserves the regulatory authority of states to protect public health and safety through the
14 current system of state licensure. This compact is designed to achieve the following objectives:

15 (a) Increase public access to physical therapy services by providing for the mutual
16 recognition of other member state licenses.

17 (b) Enhance the states' ability to protect the public's health and safety.

18 (c) Encourage the cooperation of member states in regulating multistate physical
19 therapy practice.

20 (d) Support spouses of relocating military members.

21 (e) Enhance the exchange of licensure, investigative, and disciplinary information
22 between member states.

23 (f) Allow a remote state to hold a provider of services with a compact privilege in that
24 state accountable to that state's practice standards.

25 II. Definitions. In in this compact:

26 (a) "Active duty military" means full-time duty status in the active uniformed service of
27 the United States, including members of the National Guard and Reserve on active duty orders
28 pursuant to 10 U.S.C. sections 1209 and 1211.

29 (b) "Adverse action" means disciplinary action taken by a physical therapy licensing

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board based upon misconduct, unacceptable performance, or a combination of both.

(c) "Alternative program" means a nondisciplinary monitoring or practice remediation process approved by a physical therapy licensing board. This includes, but is not limited to, substance abuse issues.

(d) "Compact privilege" means the authorization granted by a remote state to allow a licensee from another member state to practice as a physical therapist or work as a physical therapist assistant in the remote state under its laws and rules. The practice of physical therapy occurs in the member state where the patient/client is located at the time of the patient/client encounter.

(e) "Continuing competence" means a requirement, as a condition of license renewal, to provide evidence of participation in, and completion of, educational and professional activities relevant to practice or area of work.

(f) "Data system" means a repository of information about licensees, including examination, licensure, investigative, compact privilege, and adverse action.

(g) "Encumbered license" means a license that a physical therapy licensing board has limited in any way.

(h) "Executive board" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.

(i) "Home state" means the member state that is the licensee's primary state of residence.

(j) "Investigative information" means information, records, and documents received or generated by a physical therapy licensing board pursuant to an investigation.

(k) "Jurisprudence requirement" means the assessment of an individual's knowledge of the laws and rules governing the practice of physical therapy in a state.

(l) "Licensee" means an individual who currently holds an authorization from the state to practice as a physical therapist or to work as a physical therapist assistant.

(m) "Member state" means a state that has enacted the compact.

(n) "Party state" means any member state in which a licensee holds a current license or compact privilege or is applying for a license or compact privilege.

(o) "Physical therapist" means an individual who is licensed by a state to practice physical therapy.

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

(q) "Physical therapy," "physical therapy practice," and "the practice of physical therapy" mean the care and services provided by or under the direction and supervision of a licensed physical therapist.

(r) "Physical therapy compact commission" or "commission" means the national

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administrative body whose membership consists of all states that have enacted the compact.

(s) "Physical therapy licensing board" or "licensing board" means the agency of a state that is responsible for the licensing and regulation of physical therapists and physical therapist assistants.

(t) "Remote state" means a member state other than the home state, where a licensee is exercising or seeking to exercise the compact privilege.

(u) "Rule" means a regulation, principle, or directive promulgated by the commission that has the force of law.

(v) "State" means any state, commonwealth, district, or territory of the United States of America that regulates the practice of physical therapy.

III. State Participation in the Compact.

(a) To participate in the compact, a state must:

(1) Participate fully in the commission's data system, including using the commission's unique identifier as defined in rules;

(2) Have a mechanism in place for receiving and investigating complaints about licensees;

(3) Notify the commission, in compliance with the terms of the compact and rules, of any adverse action or the availability of investigative information regarding a licensee;

(4) Fully implement a criminal background check requirement, within a time frame established by rule, by receiving the results of the Federal Bureau of Investigation record search on criminal background checks and use the results in making licensure decisions in accordance with subparagraph (b);

(5) Comply with the rules of the commission;

(6) Utilize a recognized national examination as a requirement for licensure pursuant to the rules of the commission; and

(7) Have continuing competence requirements as a condition for license renewal.

(b) Upon adoption of this statute, the member state shall have the authority to obtain biometric-based information from each physical therapy licensure applicant and submit this information to the Federal Bureau of Investigation for a criminal background check in accordance with 28 U.S.C. section 534 and 42 U.S.C. section 14616.

(c) A member state shall grant the compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the compact and rules.

(d) Member states may charge a fee for granting a compact privilege.

IV. Compact Privilege.

(a) To exercise the compact privilege under the terms and provisions of the compact, the licensee shall:

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- 1 (1) Hold a license in the home state;
- 2 (2) Have no encumbrance on any state license;
- 3 (3) Be eligible for a compact privilege in any member state in accordance with
- 4 subparagraphs (d), (g), and (h);
- 5 (4) Have not had any adverse action against any license or compact privilege within
- 6 the previous 2 years;
- 7 (5) Notify the commission that the licensee is seeking the compact privilege within a
- 8 remote state;
- 9 (6) Pay any applicable fees, including any state fee, for the compact privilege;
- 10 (7) Meet any jurisprudence requirements established by the remote states in which
- 11 the licensee is seeking a compact privilege; and
- 12 (8) Report to the commission adverse action taken by any nonmember state within
- 13 30 days from the date the adverse action is taken.
- 14 (b) The compact privilege is valid until the expiration date of the home license. The
- 15 licensee must comply with the requirements of subparagraph (a) to maintain the compact privilege
- 16 in the remote state.
- 17 (c) A licensee providing physical therapy in a remote state under the compact privilege
- 18 shall function within the laws and regulations of the remote state.
- 19 (d) A licensee providing physical therapy in a remote state is subject to that state's
- 20 regulatory authority. A remote state may, in accordance with due process and that state's laws,
- 21 remove a licensee's compact privilege in the remote state for a specific period of time, impose fines,
- 22 and/or take any other necessary actions to protect the health and safety of its citizens. The licensee
- 23 is not eligible for a compact privilege in any state until the specific time for removal has passed and
- 24 all fines are paid.
- 25 (e) If a home state license is encumbered, the licensee shall lose the compact privilege in
- 26 any remote state until the following occur:
- 27 (1) The home state license is no longer encumbered; and
- 28 (2) Two years have elapsed from the date of the adverse action.
- 29 (f) Once an encumbered license in the home state is restored to good standing, the
- 30 licensee must meet the requirements of subparagraph (a) to obtain a compact privilege in any
- 31 remote state.
- 32 (g) If a licensee's compact privilege in any remote state is removed, the individual shall
- 33 lose the compact privilege in any remote state until the following occur:
- 34 (1) The specific period of time for which the compact privilege was removed has
- 35 ended;
- 36 (2) All fines have been paid; and
- 37 (3) Two years have elapsed from the date of the adverse action.

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1 (h) Once the requirements of subparagraph (g) have been met, the license must meet
2 the requirements in subparagraph (a) to obtain a compact privilege in a remote state.

3 V. Active Duty Military Personnel or Their Spouses. A licensee who is active duty military
4 or is the spouse of an individual who is active duty military may designate one of the following as
5 the home state:

6 (a) Home of record;

7 (b) Permanent change of station (PCS); or

8 (c) State of current residence if it is different than the PCS state or home of record.

9 VI. Adverse Actions.

10 (a) A home state shall have exclusive power to impose adverse action against a license
11 issued by the home state.

12 (b) A home state may take adverse action based on the investigative information of a
13 remote state, so long as the home state follows its own procedures for imposing adverse action.

14 (c) Nothing in this compact shall override a member state's decision that participation
15 in an alternative program may be used in lieu of adverse action and that such participation shall
16 remain nonpublic if required by the member state's laws. Member states must require licensees
17 who enter any alternative programs in lieu of discipline to agree not to practice in any other
18 member state during the term of the alternative program without prior authorization from such
19 other member state.

20 (d) Any member state may investigate actual or alleged violations of the statutes and
21 rules authorizing the practice of physical therapy in any other member state in which a physical
22 therapist or physical therapist assistant holds a license or compact privilege.

23 (e) A remote state shall have the authority to:

24 (1) Take adverse actions as set forth in subparagraph IV(d) against a licensee's
25 compact privilege in the state;

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

34 (3) If otherwise permitted by state law, recover from the licensee the costs of
35 investigations and disposition of cases resulting from any adverse action taken against that
36 licensee.

37 (f) Joint Investigations.

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

4 (2) Member states shall share any investigative, litigation, or compliance materials
5 in furtherance of any joint or individual investigation initiated under the compact.

6 VII. Establishment of the Physical Therapy Compact Commission.

7 (a) The compact member states hereby create and establish a joint public agency known
8 as the physical therapy compact commission:

9 (1) The commission is an instrumentality of the compact states.

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

14 (3) Nothing in this compact shall be construed to be a waiver of sovereign
15 immunity.

16 (b) Membership, Voting, and Meetings. Each member state shall have and be limited to
17 one delegate selected by that member state's licensing board. The delegate shall be a current
18 member of the licensing board, who is a physical therapist, physical therapist assistant, public
19 member, or the board administrator. Any delegate may be removed or suspended from office as
20 provided by the law of the state from which the delegate is appointed. The member state board
21 shall fill any vacancy occurring in the commission. Each delegate shall be entitled to one vote with
22 regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity
23 to participate in the business and affairs of the commission. A delegate shall vote in person or by
24 such other means as provided in the bylaws. The bylaws may provide for delegates' participation in
25 meetings by telephone or other means of communication. The commission shall meet at least once
26 during each calendar year. Additional meetings shall be held as set forth in the bylaws.

27 (c) The commission shall have the following powers and duties:

28 (1) Establish the fiscal year of the commission.

29 (2) Establish bylaws.

30 (3) Maintain its financial records in accordance with the bylaws.

31 (4) Meet and take such actions as are consistent with the provisions of this compact
32 and the bylaws.

33 (5) Promulgate uniform rules to facilitate and coordinate implementation and
34 administration of this compact. The rules shall have the same force and effect as provisions of this
35 compact and shall be binding in all member states.

36 (6) Bring and prosecute legal proceedings or actions in the name of the commission,
37 provided that the standing of any state physical therapy licensing board to sue or be sued under

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1 applicable law shall not be affected.

2 (7) Purchase and maintain insurance and bonds.

3 (8) Borrow, accept, or contract for services of personnel, including, but not limited
4 to, employees of a member state.

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

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

12 (11) Lease, purchase, accept appropriate gifts or donations of, or otherwise to own,
13 hold, improve, or use, any property, real, personal, or mixed; provided that at all times the
14 commission shall avoid any appearance of impropriety.

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

17 (13) Establish a budget and make expenditures.

18 (14) Borrow money.

19 (15) Appoint committees, including standing committees comprised of members,
20 state regulators, state legislators or their representatives, and consumer representatives, and such
21 other interested persons as may be designated in this compact and the bylaws.

22 (16) Provide and receive information from, and cooperate with, law enforcement
23 agencies.

24 (17) Establish and elect an executive board.

25 (18) Perform such other functions as may be necessary or appropriate to achieve the
26 purposes of this compact consistent with the state regulation of physical therapy licensure and
27 practice.

28 (d) The Executive Board. The executive board shall have the power to act on behalf of
29 the commission according to the terms of this compact.

30 (1) The executive board shall be comprised of 9 members:

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

33 (B) One ex-officio, nonvoting member from the recognized national physical
34 therapy professional association; and

35 (C) One ex-officio, nonvoting member from the recognized membership
36 organization of the physical therapy licensing boards.

37 (2) The ex-officio members will be selected by their respective organizations.

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1 (3) The commission may remove any member of the executive board as provided in
2 bylaws.

3 (4) The executive board shall meet at least annually.

4 (5) The executive board shall have the following duties and responsibilities:

5 (A) Recommend to the entire commission changes to the rules or bylaws,
6 changes to this compact legislation, fees paid by compact member states such as annual dues, and
7 any commission compact fee charged to licensees for the compact privilege;

8 (B) Ensure compact administration services are appropriately provided,
9 contractual or otherwise;

10 (C) Prepare and recommend the budget;

11 (D) Maintain financial records on behalf of the commission;

12 (E) Monitor compact compliance of member states and provide compliance
13 reports to the commission;

14 (F) Establish additional committees as necessary; and

15 (G) Other duties as provided in rules or bylaws.

16 (e) Meetings of the Commission.

17 (1) All meetings shall be open to the public, and public notice of meetings shall be
18 given in the same manner as required under the rulemaking provisions in paragraph IX.

19 (2) The commission or the executive board or other committees of the commission
20 may convene in a closed, nonpublic meeting if the commission or executive board or other
21 committees of the commission must discuss:

22 (A) Noncompliance of a member state with its obligations under the compact;

23 (B) The employment, compensation, discipline, or other matters, practices, or
24 procedures related to specific employees or other matters related to the commission's internal
25 personnel practices and procedures;

26 (C) Current, threatened, or reasonably anticipated litigation;

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

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

30 (F) Disclosure of trade secrets or commercial or financial information that is
31 privileged or confidential;

32 (G) Disclosure of information of a personal nature where disclosure would
33 constitute a clearly unwarranted invasion of personal privacy;

34 (H) Disclosure of investigative records compiled for law enforcement purposes;

35 (I) Disclosure of information related to any investigative reports prepared by or
36 on behalf of or for use of the commission or other committee charged with responsibility of
37 investigation or determination of compliance issues pursuant to the compact; or

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1 (J) Matters specifically exempted from disclosure by federal or member state
2 statute.

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

6 (4) The commission shall keep minutes that fully and clearly describe all matters
7 discussed in a meeting and shall provide a full and accurate summary of actions taken, and the
8 reasons therefore, including a description of the views expressed. All documents considered in
9 connection with an action shall be identified in such minutes. All minutes and documents of a
10 closed meeting shall remain under seal, subject to release by a majority vote of the commission or
11 order of a court of competent jurisdiction.

12 (f) Financing of the Commission.

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

15 (2) The commission may accept any and all appropriate revenue sources, donations,
16 and grants of money, equipment, supplies, materials, and services.

17 (3) The commission may levy on and collect an annual assessment from each
18 member state or impose fees on other parties to cover the cost of the operations and activities of the
19 commission and its staff, which must be in a total amount sufficient to cover its annual budget as
20 approved each year for which revenue is not provided by other sources. The aggregate annual
21 assessment amount shall be allocated based upon a formula to be determined by the commission,
22 which shall promulgate a rule binding upon all member states.

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

26 (5) The commission shall keep accurate accounts of all receipts and disbursements.
27 The receipts and disbursements of the commission shall be subject to the audit and accounting
28 procedures established under its bylaws. However, all receipts and disbursements of funds handled
29 by the commission shall be audited yearly by a certified or licensed public accountant, and the
30 report of the audit shall be included in and become part of the annual report of the commission.

31 (g) Qualified Immunity, Defense, and Indemnification.

32 (1) The members, officers, executive director, employees, and representatives of the
33 commission shall be immune from suit and liability, either personally or in their official capacity,
34 for any claim for damage to or loss of property or personal injury or other civil liability caused by or
35 arising out of any actual or alleged act, error, or omission that occurred, or that the person against
36 whom the claim is made had a reasonable basis for believing occurred within the scope of
37 commission employment, duties, or responsibilities; provided that nothing in this paragraph shall

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1 be construed to protect any such person from suit and/or liability for any damage, loss, injury, or
2 liability caused by the intentional or willful or wanton misconduct of that person.

3 (2) The commission shall defend any member, officer, executive director, employee,
4 or representative of the commission in any civil action seeking to impose liability arising out of any
5 actual or alleged act, error, or omission that occurred within the scope of commission employment,
6 duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis
7 for believing occurred within the scope of commission employment, duties, or responsibilities;
8 provided that nothing herein shall be construed to prohibit that person from retaining his or her
9 own counsel; and provided further, that the actual or alleged act, error, or omission did not result
10 from that person's intentional or willful or wanton misconduct.

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

18 VIII. Data System.

19 (a) The commission shall provide for the development, maintenance, and utilization of a
20 coordinated database and reporting system containing licensure, adverse action, and investigative
21 information on all licensed individuals in member states.

22 (b) Notwithstanding any other provision of state law to the contrary, a member state
23 shall submit a uniform data set to the data system on all individuals to whom this compact is
24 applicable as required by the rules of the commission, including:

25 (1) Identifying information.

26 (2) Licensure data.

27 (3) Adverse actions against a license or compact privilege.

28 (4) Nonconfidential information related to alternative program participation.

29 (5) Any denial of application for licensure, and the reasons for such denial.

30 (6) Other information that may facilitate the administration of this compact, as
31 determined by the rules of the commission.

32 (c) Investigative information pertaining to a licensee in any member state will only be
33 available to other party states.

34 (d) The commission shall promptly notify all member states of any adverse action taken
35 against a licensee or an individual applying for a license. Adverse action information pertaining to
36 a licensee in any member state will be available to any other member state.

37 (e) Member states contributing information to the data system may designate

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1 information that may not be shared with the public without the express permission of the
2 contributing state.

3 (f) Any information submitted to the data system that is subsequently required to be
4 expunged by the laws of the member state contributing the information shall be removed from the
5 data system.

6 IX. Rulemaking.

7 (a) The commission shall exercise its rulemaking powers pursuant to the criteria set
8 forth in this section and the rules adopted thereunder. Rules and amendments shall become
9 binding as of the date specified in each rule or amendment.

10 (b) If a majority of the legislatures of the member states rejects a rule, by enactment of
11 a statute or resolution in the same manner used to adopt the compact within 4 years of the date of
12 adoption of the rule, then such rule shall have no further force and effect in any member state.

13 (c) Rules or amendments to the rules shall be adopted at a regular or special meeting of
14 the commission.

15 (d) Prior to promulgation and adoption of a final rule or rules by the commission, and at
16 least 30 days in advance of the meeting at which the rule will be considered and voted upon, the
17 commission shall file a notice of proposed rulemaking:

18 (1) On the website of the commission or other publicly accessible platform; and

19 (2) On the website of each member state physical therapy licensing board or other
20 publicly accessible platform or the publication in which each state would otherwise publish proposed
21 rules.

22 (e) The notice of proposed rulemaking shall include:

23 (1) The proposed time, date, and location of the meeting in which the rule will be
24 considered and voted upon.

25 (2) The text of the proposed rule or amendment and the reason for the proposed
26 rule.

27 (3) A request for comments on the proposed rule from any interested person.

28 (4) The manner in which interested persons may submit notice to the commission of
29 their intention to attend the public hearing and any written comments.

30 (f) Prior to adoption of a proposed rule, the commission shall allow persons to submit
31 written data, facts, opinions, and arguments, which shall be made available to the public.

32 (g) The commission shall grant an opportunity for a public hearing before it adopts a
33 rule or amendment if a hearing is requested by:

34 (1) At least 25 persons;

35 (2) A state or federal governmental subdivision or agency; or

36 (3) An association having at least 25 members.

37 (h) If a hearing is held on the proposed rule or amendment, the commission shall

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1 publish the place, time, and date of the scheduled public hearing. If the hearing is held via
2 electronic means, the commission shall publish the mechanism for access to the electronic hearing.

3 (1) All persons wishing to be heard at the hearing shall notify the executive director
4 of the commission or other designated member in writing of their desire to appear and testify at the
5 hearing not less than 5 business days before the scheduled date of the hearing.

6 (2) Hearings shall be conducted in a manner providing each person who wishes to
7 comment a fair and reasonable opportunity to comment orally or in writing.

8 (3) All hearings will be recorded. A copy of the recording will be made available on
9 request.

10 (4) Nothing in this section shall be construed as requiring a separate hearing on
11 each rule. Rules may be grouped for the convenience of the commission at hearings required by this
12 section.

13 (i) Following the scheduled hearing date, or by the close of business on the scheduled
14 hearing date if the hearing was not held, the commission shall consider all written and oral
15 comments received.

16 (j) If no written notice of intent to attend the public hearing by interested parties is
17 received, the commission may proceed with promulgation of the proposed rule without a public
18 hearing.

19 (k) The commission shall, by majority vote of all members, take final action on the
20 proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking
21 record and the full text of the rule.

22 (l) Upon determination that an emergency exists, the commission may consider and
23 adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that
24 the usual rulemaking procedures provided in the compact and in this section shall be retroactively
25 applied to the rule as soon as reasonably possible, in no event later than 90 days after the effective
26 date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted
27 immediately in order to:

28 (1) Meet an imminent threat to public health, safety, or welfare;

29 (2) Prevent a loss of commission or member state funds;

30 (3) Meet a deadline for the promulgation of an administrative rule that is
31 established by federal law or rule; or

32 (4) Protect public health and safety.

33 (m) The commission or an authorized committee of the commission may direct revisions
34 to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in
35 format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted
36 on the website of the commission. The revision shall be subject to challenge by any person for a
37 period of 30 days after posting. The revision may be challenged only on grounds that the revision

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1 results in a material change to a rule. A challenge shall be made in writing, and delivered to the
2 chair of the commission prior to the end of the notice period. If no challenge is made, the revision
3 will take effect without further action. If the revision is challenged, the revision may not take effect
4 without the approval of the commission.

5 X. Oversight, Dispute Resolution, and Enforcement.

6 (a) Oversight.

7 (1) The executive, legislative, and judicial branches of state government in each
8 member state shall enforce this compact and take all actions necessary and appropriate to
9 effectuate the compact's purposes and intent. The provisions of this compact and the rules
10 promulgated hereunder shall have standing as statutory law.

11 (2) All courts shall take judicial notice of the compact and the rules in any judicial
12 or administrative proceeding in a member state pertaining to the subject matter of this compact
13 which may affect the powers, responsibilities, or actions of the commission.

14 (3) The commission shall be entitled to receive service of process in any such
15 proceeding, and shall have standing to intervene in such a proceeding for all purposes. Failure to
16 provide service of process to the commission shall render a judgment or order void as to the
17 commission, this compact, or promulgated rules.

18 (b) Default, Technical Assistance, and Termination

19 (1) If the commission determines that a member state has defaulted in the
20 performance of its obligations or responsibilities under this compact or the promulgated rules, the
21 commission shall:

22 (A) Provide written notice to the defaulting state and other member states of the
23 nature of the default, the proposed means of curing the default, and/or any other action to be taken
24 by the commission; and

25 (B) Provide remedial training and specific technical assistance regarding the
26 default.

27 (2) If a state in default fails to cure the default, the defaulting state may be
28 terminated from the compact upon an affirmative vote of a majority of the member states, and all
29 rights, privileges, and benefits conferred by this compact may be terminated on the effective date of
30 termination. A cure of the default does not relieve the offending state of obligations or liabilities
31 incurred during the period of default.

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

36 (4) A state that has been terminated is responsible for all assessments, obligations,
37 and liabilities incurred through the effective date of termination, including obligations that extend

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beyond the effective date of termination.

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

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

(c) Dispute Resolution.

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

(2) The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

(d) Enforcement.

(1) The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

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

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

XI. Date of Implementation of the Interstate Commission for Physical Therapy Practice and Associated Rules, Withdrawal, and Amendment.

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

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

(c) Any member state may withdraw from this compact by enacting a statute repealing

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1 the same.

2 (1) A member state's withdrawal shall not take effect until 6 months after
3 enactment of the repealing statute.

4 (2) Withdrawal shall not affect the continuing requirement of the withdrawing
5 state's physical therapy licensing board to comply with the investigative and adverse action
6 reporting requirements of this act prior to the effective date of withdrawal.

7 (d) Nothing contained in this compact shall be construed to invalidate or prevent any
8 physical therapy licensure agreement or other cooperative arrangement between a member state
9 and a nonmember state that does not conflict with the provisions of this compact.

10 (e) This compact may be amended by the member states. No amendment to this
11 compact shall become effective and binding upon any member state until it is enacted into the laws
12 of all member states.

13 XII. Construction and Severability. This compact shall be liberally construed so as to
14 effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase,
15 clause, sentence, or provision of this compact is declared to be contrary to the constitution of any
16 party state or of the United States or the applicability thereof to any government, agency, person, or
17 circumstance is held invalid, the validity of the remainder of this compact and the applicability
18 thereof to any government, agency, person, or circumstance shall not be affected thereby. If this
19 compact shall be held contrary to the constitution of any party state, the compact shall remain in
20 full force and effect as to the remaining party states and in full force and effect as to the party state
21 affected as to all severable matters.

22 189:3 Effective Date. This act shall take effect July 1, 2017.

Approved: June 30, 2017
Effective Date: July 01, 2017

