



Memorandum

To: Tim Terranova, Chair, PA Compact Commission

From: Nahale Freeland Kalfas, Interim Legal Counsel

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Re: Subpoena Authority and Joint Investigation Process Under the PA Compact

Executive Summary

- Occupational licensure compacts expressly recognize that enforcement mechanisms, including subpoenas, must operate through each participating state's existing judicial processes and due process requirements.
- The PA Compact Commission itself plays no role in issuing, enforcing, or serving subpoenas, though the Commission has the authority and responsibility to ensure that member states comply with the Compact's terms.
- Compact language requiring that subpoenas be enforced in another state by a court of competent jurisdiction "according to the practice and procedure of that court" makes clear that enforcement is never automatic.¹
- The receiving state's board, agency, or court must independently assess enforceability and apply its own procedural and substantive law governing subpoenas.
- Accordingly, a member state board, agency, or court may lawfully decline to enforce a subpoena if enforcement would violate the Compact or due process protections.

Issue Presented

This memorandum explains how subpoenas and joint investigations function under interstate licensure compacts and, specifically, the PA Compact. It focuses on the legal authority for subpoena issuance and enforcement, the role of courts of competent jurisdiction, the limits imposed by state sovereignty under the U.S. Constitution and scope-of-practice laws, and the oversight responsibilities of the Compact Commission.

Background and Legal Framework

Professional licensure and scope of practice are matters of state authority grounded in the Tenth Amendment to the U.S. Constitution. Each state retains sovereign power to regulate the practice of licensed professionals within its borders through its practice act and related statutes. Interstate licensure compacts do not displace this authority. Instead, interstate compacts create a coordinated legal framework that facilitates multistate practice while preserving each member state's right to regulate professional

¹ See Section 6.B.2 of the PA Compact Model Language.



conduct occurring within its jurisdiction. It is important to note that this right ends at the border of that state. The Full Faith and Credit Clause of the U.S. Constitution contained in Art. IV, Section 1, imposes the requirement that states respect the laws and judgments of other states as made clear under relevant case law.²

A foundational principle across all but one occupational licensure compacts is that professional practice is deemed to occur in the state where the patient or client is located at the time services are rendered, regardless of whether services are delivered in person or through telepractice.³ Section 2.B of the PA Compact Model Legislation requires a Physician Assistant to provide medical services under the “laws and regulations” where a patient is located. As a result, the applicable scope-of-practice, standard-of-care, and professional conduct laws are those of the patient’s location at the time services are rendered.

Because interstate compacts are statutes and contracts among the states, where a direct conflict exists between compact language and a member state statute, the compact controls. All participating states agree to the same obligations under the compact by enacting the compact. At the same time, compacts expressly recognize that enforcement mechanisms, including subpoenas, must operate through each participating state’s existing judicial processes and due process requirements.

Subpoena Authority Under the Compact

Subpoena activity under interstate licensure compacts, and under Section 6.B.2 and 6.B.3 of the PA Compact Model Legislation particularly, works in a substantively similar way to subpoena enforcement among multiple states that are not parties to a compact. However, understanding subpoena processes for interstate licensure compacts require careful distinction between initiation/issuance, enforcement, and service. A subpoena is initiated by a requesting participating state, typically through its licensing board, as part of an investigation into alleged misconduct. However, the legal effectiveness of that subpoena in another member state depends entirely on whether it is a lawful subpoena that would be enforced by a court of competent jurisdiction in the receiving state. Only after a subpoena is deemed lawful and enforceable may it be served, and service is carried out by the entity authorized under the receiving state’s law, often a state agency or other authority designated by the court. The compact commission itself plays no role in issuing, enforcing, or serving subpoenas.

Compact language requiring that subpoenas be enforced in another state by a court of competent jurisdiction “according to the practice and procedure of that court” makes clear that enforcement is never automatic.⁴ The receiving state’s board, agency, or court must independently assess enforceability and apply its own procedural and substantive law governing subpoenas. Accordingly, a member state board,

² *Franchise Tax Board v. Hyatt*, 538 U.S. 488, 494 (2003); *Allstate v. Hague*, 449 U.S. 302 (1981).

³ The EMS Compact is slightly different due to the nature of emergency response and primarily requires EMS personnel to follow Home State Scope of Practice, though remote state protocols and direction cannot be ignored.

⁴ See Section 6.B.2 of the PA Compact Model Language.



agency, or court may lawfully decline to enforce a subpoena if enforcement would violate the Compact or due process protections.

Lawfulness Standard for Enforceability

The dispositive question in assessing subpoena enforceability is whether the conduct under investigation was lawful or unlawful in the participating state in which the patient was located at the time treatment was provided. Under 6.B.3 of the PA Compact Model Legislation, if the alleged conduct was lawful under the applicable scope-of-practice and standard-of-care laws of that participating state, the subpoena is not enforceable. Conversely, if the conduct was unlawful in that jurisdiction, the subpoena should be enforced, subject to ordinary procedural safeguards and applicable privacy laws. No fishing expeditions are allowed under the Compact.

A participating state may not use the Compact to investigate, discipline, or obtain information about a practitioner for conduct that was otherwise lawful where the patient was located at the time treatment was rendered, even if that same conduct would be unlawful under the requesting state's laws. Attempts to apply a requesting state's scope-of-practice laws extraterritorially, or to use subpoena authority to wrongfully override another state's lawful regulatory determinations, exceed the authority granted under the Compact.

The medical services provided to a patient are controlled by the medical practice act in the state where the patient is located at the time they are receiving care. This is based on the principal, reiterated in the PA Compact Model Legislation, that the practice of medicine takes place where the patient is located regardless of whether it is an in-person or telemedicine encounter.

Joint Investigations and Information Sharing

Interstate licensure compacts encourage cooperation among member states through joint investigations. When there is a legitimate basis to believe that a practitioner has violated applicable laws or standards of care in the jurisdiction where the patient was located when treatment occurred, member states may coordinate investigative efforts and share relevant information under 6.F of the PA Compact. Subpoenas may be used in support of such investigations, but only within the limits imposed by the enforceability standard and judicial review in the receiving state.

Joint investigations may not be used as a mechanism to circumvent jurisdictional boundaries or to compel participation in investigations of otherwise lawful conduct. The compact structure relies on judicial oversight and state sovereignty as safeguards to prevent misuse of investigative and subpoena powers.

Role of the Compact Commission



The PA Compact does not give the Commission authority to initiate/issue, request, serve, or enforce subpoenas. Its role is supervisory and structural rather than prosecutorial. Nonetheless, the Commission has the authority and responsibility to ensure that member states comply with the Compact's terms. This authority includes acting when a requesting state overreaches by attempting to discipline, investigate, or subpoena a practitioner for conduct that was lawful in the relevant member state. It also includes acting when a receiving state refuses to assist with service or enforcement of a lawful subpoena that a court of competent jurisdiction has determined to be valid based on unlawful conduct by a practitioner. The Commission may compel member state compliance through injunctive action in accordance with the enforcement mechanisms allowed through the Compact.⁵

It is important to note that Section 5.A.2 of the PA Compact does require that a Physician Assistant consent to service of process at their primary residential address as provided to the Commission. Though the Commission receives the address, the relevant party state, and not the Commission, would be responsible for issuance of any subpoena to the Physician Assistant in accordance with the terms of the Compact.

Experience under existing licensure compacts indicates that investigatory conflicts amongst party states are rare, and there is no evidence of systemic misuse of subpoena authority amongst participating states.

Rights of Practitioners and Patients

Practitioners who wish to challenge a subpoena must do so in the court of competent jurisdiction in the participating state where enforcement is sought and a subpoena has been received for purposes of executing service. Well-settled interstate compact law provides that there is no private right of action against a compact commission unless the compact language expressly confers that private right of action.⁶ The PA Compact does not confer any private right of action against the Commission. Practitioners who elect to practice under a Compact Privilege remain responsible for complying with the scope-of-practice and standard-of-care laws of the patient's location at the time services are rendered and may only seek recourse against the participating state at issue.

Patients retain all applicable federal and state privacy protections. Interstate compacts do not supersede federal privacy laws, such as HIPAA, or state privacy laws that do not directly conflict with compact provisions. Challenges to subpoenas seeking patient records are properly brought in the court of competent jurisdiction in the participating state from which the records are sought.

Conclusion

⁵ See Section 10.D.1 of the PA Compact Model Language.

⁶ See *Doe v. PA Bd. of Prob. And Parole*, 513 F.3d 95 (3rd Cir. 2008).



Like other interstate health professional licensure compacts, the PA Compact establishes a balanced legal framework that supports practice in multiple states while preserving state sovereignty, judicial oversight, and due process. Subpoenas and joint investigations are permissible tools only when grounded in alleged unlawful conduct under the laws of the participating state where the patient was located when treatment was provided. Courts of competent jurisdiction serve as the primary gatekeepers against misuse, and compact commissions function as institutional safeguards to ensure that member states neither exceed nor neglect their obligations under a compact.

Like all interstate compacts, the PA Compact remains apolitical regarding how a state regulates and enforces its regulation of the practice of medicine. However, the Compact takes the position that such regulation and enforcement must be subject to and limited by the U.S. Constitution as referenced above and that in order for PA licensure portability to exist, the sovereign authority of each state, under the Constitution, must be protected. The PA Compact provides for these protections to be necessarily enforced through legal action in the unlikely event that there is a violation of the Compact.