NORTH DAKOTA BOARD OF MEDICINE
Established 1890

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SENATE WORKFORCE DEVELOPMENT COMMITTEE
JANUARY 9, 2025

TESTIMONY OF
NORTH DAKOTA BOARD OF MEDICINE
SENATE BILL NO. 2108

Chair Wobbema, members of the Committee, I'm Sandra DePountis, Executive Director of the North Dakota Board of Medicine, appearing on behalf of the Board to provide information on Senate Bill 2108 which implements the PA Licensure Compact into North Dakota.

The Board recognizes the benefits of licensure compacts. The Interstate Medical Licensure Compact (IMLC) was implemented in North Dakota in 2019 and since then, more than 3,000 licenses through the compact have been issued and over 60% of physician licensure each year occurs through the compact.

When the PA Compact was being drafted, comments were requested. Board staff was present at several roundtable discussion as the PA Compact was drafted in which questions were raised on why the model of the PA Compact was not utilizing the same model as the IMLC Compact – as there are big differences between the two – the biggest being that the PA Compact provides a "privilege to practice" in another state – not a license. Despite concerns being raised, the PA Compact moved forward with model legislation for a "privilege" versus "licensure" model – and the implications of such are still unknown. For example, PA's must enroll in the Prescription Drug Monitoring Program and obtain and DEA license to prescribe in North Dakota. In contacting the PDMP, it was unclear at this time whether this "privilege" would suffice for registration, whether this would require legislation changes, and how the DEA would respond.

Because the PA Compact is not yet operational, there are several unknowns as to the potential impacts of the Compact on the State of North Dakota. One of the biggest unknowns centers around allowable fees and costs associated with the Compact. The Compact requires a PA to obtain a license in a member state. The licensing state is the "qualifying state." The PA can then use that qualifying license to obtain a practice "privilege" in all other compact states.

Section 4(B) contains an unresolved question that appears to exempt PAs from having to renew their "privilege" or pay renewal fees in states granting a privilege to practice – and instead only allows the qualifying state that issues a license the ability to obtain renewal fees and require renewal applications be submitted. We have asked for clarification on this issue but have not received a definitive answer. Under the language, it appears that once a privilege is provided in a state, it is for an indefinite amount of time, and that state cannot require a renewal application or obtain a renewal fee unless the license in the qualifying state expires. If the PA continually renews their license in the qualifying state, and it never expires, then the other states can't charge a renewal fee for the privilege to practice. The state would still be responsible for all the services that come along with maintaining the privilege to practice including utilizing its resources and database to maintain the "privilege" and investigate complaints. Without the collection of renewal fees, the cost associated with implementing the PA Compact would pass onto current PAs or those not obtaining a privilege to offset the cost. If this cost cannot be covered by the PA fees, they would then need to be passed onto the other professions under jurisdiction of the Board.

In addition, the Compact in section 7(E)(3) includes broad language that allows the PA Compact Commission to levy and collect annual assessments in North Dakota as well as fees to compact privilege holders. Compact costs include staffing, database development, technology creation to share information between states, etc. The PA Compact is not yet operational, and it is unclear what costs may be assessed to the State. This unknown cost

could be demanded yearly from the Board, which the Board would be required to pay without recourse.

Finally, Section 3(A)(2) requires the Board to participate in the PA Compact's Data System. This will require the Board to spend funds upgrading its IT system to comport with the Compact Commission's system. We do not know at this time what this will require so we are unable to obtain an estimate from our database developer on cost.

With no renewal revenue and unknown expenses that would be placed on the Board, the Board cannot adequately identify a fiscal effect at this time.

Another concern with the PA Compact – is the ability to independently verify the PA before they are authorized to practice in the State of North Dakota. Section 3(A)(8) **requires** a participating state to grant a privilege to the holder of a qualifying license – taking away the ability of the Board to perform its own verification over the individual. North Dakota law only allows PAs to practice at specific locations: (1) at a licensed health care facility, (2) at a facility with a credentialing and privileging system, or (3) at a physician owned facility or practice – all of which must be done under collaboration with "the appropriate member of the health care team." A limited exception to is granted for PAs who wish to practice independently in a rural, underserved area in North Dakota, which must be approved by the full Board. The practice of medicine occurs where the patient is located, and if the patient is in North Dakota, the PA must practice under North Dakota law. The Board has seen an increase in PAs wanting to practice telemedicine in North Dakota under laws of another state that allow practice outside of these parameters. Before issuing the license, we inquire how the PA will be practicing within North Dakota – with some not in compliance with North Dakota law. We are able to catch these issues before granting a license as it is part of our vetting process. However, if a "privilege" must automatically be issued to PAs, the Board loses its ability to verify the PAs practice is in compliance with North Dakota law. To put the onus on the Board to enforce this AFTER a

privilege is issued, will require additional administrative and potentially investigatory resources and costs be expended.

Finally, Section (3)(A)(5) requires background checks to be obtained within a time frame established by Commission rule. While the Board is quick and efficient in licensing applicants, the background check process is reliant on state and federal actors that the Board has no authority or control over. While every attempt would be made by the Board to meet any deadline set by Commission rule, it is not something the Board would be able to commit to.

There are other portions of the PA Compact that require additional legal analysis and review. The Compact places several requirements upon the State of North Dakota that, to the Board's understanding, do not comply with North Dakota law. This includes providing immunity and indemnification for commission staff and agreeing to jurisdiction, dispute resolution, and attorney fee provisions the State typically does not agree to. The Compact may need more review from the Office of Attorney General and Risk Management to fully understand the potential legal ramifications at odds with North Dakota law.

If this Compact does move forward, there are additional legislative changes that would be required. The Medical Practice Act in North Dakota Century Code chapter 43-17 only recognizes a "license" to practice – so language would need to be update throughout 43-17 to recognize a "privilege" to practice and requiring the privilege be subject to all laws and rules required of a license (i.e. 43-17-01 definitions to "licensee" and "physician assistant" will need to include privilege; 43-17-02.1(1) – physician assistant scope of practice for licensees and privilege holders, 43-17-02.2 – prohibiting certain individuals from using the title of PA without proper license will now also need to include privilege). The Board would also request updating N.D.C.C. 43-17-46 to allow the Board to obtain additional information after a privilege is provided, as allowed under the IMLC compact. Finally, Section 3(B) allows states to charge a fee for granting the initial compact privilege but a law must specifically grant the Board the ability

to assess such fee. We would be happy to work with Legislative Council on these updates if the Compact moves forward.

The PA Compact is not scheduled to be up and running for at least a year and a half. When the IMLC Compact was first brought forward, the North Dakota legislature waited until it was operational before joining, allowing some time for the unknowns to be answered. With all the unknowns of the above, the Board would recommend the same cautious approach to see how the PA Compact is implemented and to work out legal ramifications.

Thank you for your time and attention and I would be happy to answer any questions.