

SECOND REGULAR SESSION

SENATE BILL NO. 1519

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR LEWIS.

5905S.01I

KRISTINA MARTIN, Secretary

AN ACT

To amend chapter 334, RSMo, by adding thereto one new section relating to respiratory therapists.

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

Section A. Chapter 334, RSMo, is amended by adding thereto
2 one new section, to be known as section 334.935, to read as
3 follows:

334.935. SECTION 1. TITLE AND PURPOSE

2 A. The purpose of this Compact is to facilitate the
3 interstate Practice of Respiratory Therapy with the goal of
4 improving public access to Respiratory Therapy services by
5 providing Respiratory Therapists licensed in a Member State
6 the ability to practice in other Member States. The Compact
7 preserves the regulatory authority of states to protect
8 public health and safety through the current system of State
9 licensure.

10 B. This Compact is designed to achieve the following
11 objectives:

12 1. Increase public access to Respiratory Therapy
13 services by creating a responsible, streamlined pathway for
14 Licensees to practice in Member States with the goal of
15 improving outcomes for patients;

16 2. Enhance States' ability to protect the public's
17 health and safety;

18 3. Promote the cooperation of Member States in
19 regulating the Practice of Respiratory Therapy within those
20 Member States;

21 4. Ease administrative burdens on States by
22 encouraging the cooperation of Member States in regulating
23 multi-state Respiratory Therapy practice;

24 5. Support relocating Active Military Members and
25 their spouses; and

26 6. Promote mobility and address workforce shortages.

27 SECTION 2. DEFINITIONS

28 As used in this Compact, unless the context requires
29 otherwise, the following definitions shall apply:

30 A. "Active Military Member" means any person with a
31 full-time duty status in the armed forces of the United
32 States, including members of the National Guard and Reserve.

33 B. "Adverse Action" means any administrative, civil,
34 equitable, or criminal action permitted by a State's laws
35 which is imposed by any State authority with regulatory
36 authority over Respiratory Therapists, such as license
37 denial, censure, revocation, suspension, probation,
38 monitoring of the Licensee, or restriction on the Licensee's
39 practice, not including participation in an Alternative
40 Program.

41 C. "Alternative Program" means a non-disciplinary
42 monitoring or practice remediation process applicable to a
43 Respiratory Therapist approved by any State authority with
44 regulatory authority over Respiratory Therapists. This
45 includes, but is not limited to, programs to which Licensees
46 with substance abuse or addiction issues are referred in
47 lieu of Adverse Action.

48 D. "Charter Member States" means those Member States
49 who were the first seven states to enact the Compact into
50 the laws of their State.

51 E. "Commission" or "Respiratory Care Interstate
52 Compact Commission" means the government instrumentality and
53 body politic whose membership consists of all Member States
54 that have enacted the Compact.

55 F. "Commissioner" means the individual appointed by a
56 Member State to serve as the member of the Commission for
57 that Member State.

58 G. "Compact" means the Respiratory Care Interstate
59 Compact.

60 H. "Compact Privilege" means the authorization granted
61 by a Remote State to allow a Licensee from another Member
62 State to practice as a Respiratory Therapist in the Remote
63 State under the Remote State's laws and Rules. The Practice
64 of Respiratory Therapy occurs in the Member State where the
65 patient is located at the time of the patient encounter.

66 I. "Criminal Background Check" means the submission by
67 the Member State of fingerprints or other biometric-based
68 information on license applicants at the time of initial
69 licensing for the purpose of obtaining that applicant's
70 criminal history record information, as defined in 28 C.F.R.
71 § 20.3(d) or successor provision, from the Federal Bureau of
72 Investigation and the States criminal history record
73 repository, as defined in 28 C.F.R. § 20.3(f) or successor
74 provision.

75 J. "Data System" means the Commission's repository of
76 information about Licensees as further set forth in Section
77 8.

78 K. "Domicile" means the jurisdiction which is the
79 Licensee's principal home for legal purposes.

80 L. "Encumbered License" means a license that a State's
81 Respiratory Therapy Licensing Authority has limited in any
82 way.

83 M. "Executive Committee" means a group of directors
84 elected or appointed to act on behalf of, and within the
85 powers granted to them by the Commission.

86 N. "Home State" except as set forth in Section 5,
87 means the Member State that is the Licensee's primary
88 Domicile.

89 O. "Home State License" means an active license to
90 practice Respiratory Therapy in a Home State that is not an
91 Encumbered License.

92 P. "Jurisprudence Requirement" means an assessment of
93 an individual's knowledge of the State laws and regulations
94 governing the Practice of Respiratory Therapy in such State.

95 Q. "Licensee" means an individual who currently holds
96 an authorization from the State to practice as a Respiratory
97 Therapist.

98 R. "Member State" means a State that has enacted the
99 Compact and been admitted to the Commission in accordance
100 with the provisions herein and Commission Rules.

101 S. "Model Compact" means the model for the Respiratory
102 Care Interstate Compact on file with The Council of State
103 Governments or other entity as designated by the Commission.

104 T. "Remote State" means a Member State where a
105 Licensee is exercising or seeking to exercise the Compact
106 Privilege.

107 U. "Respiratory Therapist" or "Respiratory Care
108 Practitioner" means an individual who holds a credential
109 issued by the National Board for Respiratory Care (or its
110 successor) and holds a license in a State to practice
111 Respiratory Therapy. For purposes of this Compact, any

112 other title or status adopted by a State to replace the term
113 "Respiratory Therapist" or "Respiratory Care Practitioner"
114 shall be deemed synonymous with "Respiratory Therapist" and
115 shall confer the same rights and responsibilities to the
116 Licensee under the provisions of this Compact at the time of
117 its enactment.

118 V. "Respiratory Therapy," "Respiratory Therapy
119 Practice," "Respiratory Care," "the Practice of Respiratory
120 Care," and "the Practice of Respiratory Therapy" means the
121 care and services provided by or under the direction and
122 supervision of a Respiratory Therapist or Respiratory Care
123 Practitioner.

124 W. "Respiratory Therapy Licensing Authority" means the
125 agency, board, or other body of a State that is responsible
126 for licensing and regulation of Respiratory Therapists.

127 X. "Rule" means a regulation promulgated by an entity
128 that has the force and effect of law.

129 Y. "Scope of Practice" means the procedures, actions,
130 and processes a Respiratory Therapist licensed in a State or
131 practicing under a Compact Privilege in a State is permitted
132 to undertake in that State and the circumstances under which
133 the Respiratory Therapist is permitted to undertake those
134 procedures, actions, and processes. Such procedures,
135 actions, and processes, and the circumstances under which
136 they may be undertaken may be established through means,
137 including, but not limited to, statute, regulations, case
138 law, and other processes available to the State Respiratory
139 Therapy Licensing Authority or other government agency.

140 Z. "Significant Investigative Information" means
141 information, records, and documents received or generated by
142 a State Respiratory Therapy Licensing Authority pursuant to
143 an investigation for which a determination has been made

144 that there is probable cause to believe that the Licensee
145 has violated a statute or regulation that is considered more
146 than a minor infraction for which the State Respiratory
147 Therapy Licensing Authority could pursue Adverse Action
148 against the Licensee.

149 AA. "State" means any state, commonwealth, district,
150 or territory of the United States.

151 SECTION 3. STATE PARTICIPATION IN THIS COMPACT

152 A. In order to participate in this Compact and
153 thereafter continue as a Member State, a Member State shall:

154 1. Enact a Compact that is not materially different
155 from the Model Compact;

156 2. License Respiratory Therapists;

157 3. Participate in the Commission's Data System;

158 4. Have a mechanism in place for receiving and
159 investigating complaints against Licensees and Compact
160 Privilege holders;

161 5. Notify the Commission, in compliance with the terms
162 of this Compact and Commission Rules, of any Adverse Action
163 against a Licensee, a Compact Privilege holder, or a license
164 applicant;

165 6. Notify the Commission, in compliance with the terms
166 of this Compact and Commission Rules, of the existence of
167 Significant Investigative Information;

168 7. Comply with the Rules of the Commission;

169 8. Grant the Compact Privilege to a holder of an
170 active Home State License and otherwise meet the applicable
171 requirements of Section 4 in a Member State; and

172 9. Complete a Criminal Background Check for each new
173 Licensee at the time of initial licensure.

174 a. Where expressly authorized or permitted by federal
175 law, whether such federal law is in effect prior to, at, or

176 after the time of a Member State's enactment of this
177 Compact, a Member State's enactment of this Compact shall
178 hereby authorize the Member State's Respiratory Therapy
179 Licensing Authority to perform Criminal Background Checks as
180 defined herein. The absence of such a federal law as
181 described in this subsection shall not prevent or preclude
182 such authorization where it may be derived or granted
183 through means other than the enactment of this Compact.

184 B. Nothing in this Compact prohibits a Member State
185 from charging a fee for granting and renewing the Compact
186 Privilege.

187 SECTION 4. COMPACT PRIVILEGE

188 A. To exercise the Compact Privilege under the terms
189 and provisions of the Compact, the Licensee shall:

190 1. Hold and maintain an active Home State License as a
191 Respiratory Therapist;

192 2. Hold and maintain an active credential from the
193 National Board for Respiratory Care (or its successor) that
194 would qualify them for licensure in the Remote State in
195 which they are seeking the privilege;

196 3. Have not had any Adverse Action against a license
197 within the previous two (2) years;

198 4. Notify the Commission that the Licensee is seeking
199 the Compact Privilege within a Remote State(s);

200 5. Pay any applicable fees, including any State and
201 Commission fees and renewal fees, for the Compact Privilege;

202 6. Meet any Jurisprudence Requirements established by
203 the Remote State in which the Licensee is seeking a Compact
204 Privilege;

205 7. Report to the Commission Adverse Action taken by
206 any non-Member State within thirty (30) days from the date
207 the Adverse Action is taken;

208 8. Report to the Commission, when applying for a
209 Compact Privilege, the address of the Licensee's Domicile
210 and thereafter promptly report to the Commission any change
211 in the address of the Licensee's Domicile within thirty (30)
212 days of the effective date of the change in address; and

213 9. Consent to accept service of process by mail at the
214 Licensee's Domicile on record with the Commission with
215 respect to any action brought against the Licensee by the
216 Commission or a Member State, and consent to accept service
217 of a subpoena by mail at the Licensee's Domicile on record
218 with the Commission with respect to any action brought or
219 investigation conducted by the Commission or a Member State.

220 B. The Compact Privilege is valid until the expiration
221 date or revocation of the Home State License unless
222 terminated pursuant to Adverse Action. The Licensee must
223 comply with all of the requirements of subsection 4.A,
224 above, to maintain the Compact Privilege in a Remote State.
225 If those requirements are met, no Adverse Actions are taken,
226 and the Licensee has paid any applicable Compact Privilege
227 renewal fees, then the Licensee will maintain the Licensee's
228 Compact Privilege.

229 C. A Licensee providing Respiratory Therapy in a
230 Remote State under the Compact Privilege shall function
231 within the Scope of Practice authorized by the Remote State
232 for the type of Respiratory Therapist license the Licensee
233 holds. Such procedures, actions, processes, and the
234 circumstances under which they may be undertaken may be
235 established through means, including, but not limited to,
236 statute, regulations, case law, and other processes
237 available to the State Respiratory Therapy Licensing
238 Authority or other government agency.

239 D. If a Licensee's Compact Privilege in a Remote State
240 is removed by the Remote State, the individual shall lose or
241 be ineligible for the Compact privilege in that Remote State
242 until the Compact Privilege is no longer limited or
243 restricted by that State.

244 E. If a Home State License is encumbered, the Licensee
245 shall lose the Compact Privilege in all Remote States until
246 the following occur:

247 1. The Home State License is no longer encumbered; and
248 2. Two (2) years have elapsed from the date on which
249 the license is no longer encumbered due to the Adverse
250 Action.

251 F. Once a Licensee with a restricted or limited
252 license meets the requirements of subsection 7.E.1 and 2,
253 the Licensee must also meet the requirements of subsection
254 7.A to obtain a Compact Privilege in a Remote State.

255 SECTION 5. ACTIVE MILITARY MEMBER OR THEIR SPOUSE

256 A. An Active Military Member, or their spouse, shall
257 designate a Home State where the individual has a current
258 license in good standing. The individual may retain the
259 Home State designation during the period the service member
260 is on active duty.

261 B. An Active Military Member and their spouse shall
262 not be required to pay to the Commission for a Compact
263 Privilege any fee that may otherwise be charged by the
264 Commission. If a Remote State chooses to charge a fee for a
265 Compact Privilege, it may choose to charge a reduced fee or
266 no fee to an Active Military Member and their spouse for a
267 Compact Privilege.

268 SECTION 6. ADVERSE ACTIONS

269 A. A Member State in which a Licensee is licensed
270 shall have authority to impose Adverse Action against the
271 license issued by that Member State.

272 B. A Member State may take Adverse Action based on
273 Significant Investigative Information of a Remote State or
274 the Home State, so long as the Member State follows its own
275 procedures for imposing Adverse Action.

276 C. Nothing in this Compact shall override a Member
277 State's decision that participation in an Alternative
278 Program may be used in lieu of Adverse Action and that such
279 participation shall remain non-public if required by the
280 Member State's laws.

281 D. A Remote State shall have the authority to:

282 1. Take Adverse Actions as set forth herein against a
283 Licensee's Compact Privilege in that State;

284 2. Issue subpoenas for both hearings and
285 investigations that require the attendance and testimony of
286 witnesses, and the production of evidence.

287 a. Subpoenas may be issued by a Respiratory Therapy
288 Licensing Authority in a Member State for the attendance and
289 testimony of witnesses and the production of evidence.

290 b. Subpoenas issued by a Respiratory Therapy Licensing
291 Authority in a Member State for the attendance and testimony
292 of witnesses shall be enforced in the latter State by any
293 court of competent jurisdiction in the latter State,
294 according to the practice and procedure of that court
295 applicable to subpoenas issued in proceedings pending before
296 it.

297 c. Subpoenas issued by a Respiratory Therapy Licensing
298 Authority in a Member State for production of evidence from
299 another Member State shall be enforced in the latter State,
300 according to the practice and procedure of that court

301 applicable to subpoenas issued in the proceedings pending
302 before it.

303 d. The issuing authority shall pay any witness fees,
304 travel expenses, mileage, and other fees required by the
305 service statutes of the State where the witnesses or
306 evidence are located;

307 3. Unless otherwise prohibited by State law, recover
308 from the Licensee the costs of investigations and
309 disposition of cases resulting from any Adverse Action taken
310 against that Licensee;

311 4. Notwithstanding subsection 6.D.2., a Member State
312 may not issue a subpoena to gather evidence of conduct in
313 another Member State that is lawful in such other Member
314 State for the purpose of taking Adverse Action against a
315 Licensee's Compact Privilege or application for a Compact
316 Privilege in that Member State; and

317 5. Nothing in this Compact authorizes a Member State
318 to impose discipline against a Respiratory Therapist's
319 Compact Privilege in that Member State for the individual's
320 otherwise lawful practice in another State.

321 E. Joint Investigations

322 1. In addition to the authority granted to a Member
323 State by its respective Respiratory Therapy Practice act or
324 other applicable state law, a Member State may participate
325 with other Member States in joint investigations of
326 Licensees, provided, however, that a Member State receiving
327 such a request has no obligation to respond to any subpoena
328 issued regarding an investigation of conduct or practice
329 that was lawful in a Member State at the time it was
330 undertaken.

331 2. Member States shall share any Significant
332 Investigative Information, litigation, or compliance

333 materials in furtherance of any joint or individual
334 investigation initiated under the Compact. In sharing such
335 information between Member State Respiratory Therapy
336 Licensing Authorities, all information obtained shall be
337 kept confidential, except as otherwise mutually agreed upon
338 by the sharing and receiving Member State(s).

339 F. Nothing in this Compact may permit a Member State
340 to take any Adverse Action against a Licensee or holder of a
341 Compact Privilege for conduct or practice that was legal in
342 the Member State at the time it was undertaken.

343 G. Nothing in this Compact may permit a Member State
344 to take disciplinary action against a Licensee or holder of
345 a Compact Privilege for conduct or practice that was legal
346 in the Member State at the time it was undertaken.

347 SECTION 7. ESTABLISHMENT OF THE RESPIRATORY CARE
348 INTERSTATE COMPACT COMMISSION

349 A. The Compact Member States hereby create and
350 establish a joint government agency whose membership
351 consists of all Member States that have enacted the Compact
352 known as the Respiratory Care Interstate Compact
353 Commission. The Commission is an instrumentality of the
354 Compact Member States acting jointly and not an
355 instrumentality of any one State. The Commission shall come
356 into existence on or after the effective date of the
357 Compact, as set forth in Section 11.

358 B. Membership, Voting, and Meetings

359 1. Each Member State shall have and be limited to one
360 (1) Commissioner selected by that Member State's Respiratory
361 Therapy Licensing Authority.

362 2. The Commissioner shall be an administrator or their
363 designated staff member of the Member State's Respiratory
364 Therapy Licensing Authority.

365 3. The Commission shall by Rule or bylaw establish a
366 term of office for Commissioners and may by Rule or bylaw
367 establish term limits.

368 4. The Commission may recommend to a Member State the
369 removal or suspension of any Commissioner from office.

370 5. A Member State's Respiratory Therapy Licensing
371 Authority shall fill any vacancy of its Commissioner
372 occurring on the Commission within sixty (60) days of the
373 vacancy.

374 6. Each Commissioner shall be entitled to one vote on
375 all matters before the Commission requiring a vote by
376 Commissioners.

377 7. A Commissioner shall vote in person or by such
378 other means as provided in the bylaws. The bylaws may
379 provide for Commissioners to meet by telecommunication,
380 videoconference, or other means of communication.

381 8. The Commission shall meet at least once during each
382 calendar year. Additional meetings may be held as set forth
383 in the bylaws.

384 C. The Commission shall have the following powers:

385 1. Establish and amend the fiscal year of the
386 Commission;

387 2. Establish and amend bylaws and policies, including
388 but not limited to, a code of conduct and conflict of
389 interest;

390 3. Establish and amend Rules, which shall be binding
391 in all Member States;

392 4. Maintain its financial records in accordance with
393 the bylaws;

394 5. Meet and take such actions as are consistent with
395 the provisions of this Compact, the Commission's Rules, and
396 the bylaws;

397 6. Initiate and conduct legal proceedings or actions
398 in the name of the Commission, provided that the standing of
399 any Respiratory Therapy Licensing Authority to sue or be
400 sued under applicable law shall not be affected;

401 7. Maintain and certify records and information
402 provided to a Member State as the authenticated business
403 records of the Commission, and designate an agent to do so
404 on the Commission's behalf;

405 8. Purchase and maintain insurance and bonds;

406 9. Accept or contract for services of personnel,
407 including, but not limited to, employees of a Member State;

408 10. Conduct an annual financial review;

409 11. Hire employees, elect or appoint officers, fix
410 compensation, define duties, grant such individuals
411 appropriate authority to carry out the purposes of the
412 Compact, and establish the Commission's personnel policies
413 and programs relating to conflicts of interest,
414 qualifications of personnel, and other related personnel
415 matters;

416 12. Assess and collect fees;

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

421 a. The Commission shall avoid any appearance of
422 impropriety; and

423 b. The Commission shall avoid any appearance of
424 conflict of interest;

425 14. Lease, purchase, retain, own, hold, improve, or
426 use any property, real, personal, or mixed, or any undivided
427 interest therein;

428 15. Sell, convey, mortgage, pledge, lease, exchange,
429 abandon, or otherwise dispose of any property real,
430 personal, or mixed;

431 16. Establish a budget and make expenditures;

432 17. Borrow money in a fiscally responsible manner;

433 18. Appoint committees, including standing committees,
434 composed of Commissioners State regulators, State
435 legislators or their representatives, and consumer
436 representatives, and such other interested persons as may be
437 designated in this Compact and the bylaws;

438 19. Provide and receive information from, and
439 cooperate with, law enforcement agencies;

440 20. Establish and elect an Executive Committee,
441 including a chair, vice-chair, secretary, treasurer, and
442 such other offices as the Commission shall establish by Rule
443 or bylaw;

444 21. Enter into contracts or arrangements for the
445 management of the affairs of the Commission;

446 22. Determine whether a State's adopted language is
447 materially different from the Model Compact language such
448 that the State would not qualify for participation in the
449 Compact; and

450 23. Perform such other functions as may be necessary
451 or appropriate to achieve the purposes of this Compact.

452 D. The Executive Committee

453 1. The Executive Committee shall have the power to act
454 on behalf of the Commission according to the terms of this
455 Compact. The powers, duties, and responsibilities of the
456 Executive Committee shall include:

457 a. Overseeing the day-to-day activities of the
458 administration of the Compact, including enforcement and

459 compliance with the provisions of the Compact, its Rules and
460 bylaws, and other such duties as deemed necessary;

461 b. Recommending to the Commission changes to the Rules
462 or bylaws, changes to this Compact legislation, fees charged
463 to Compact Member States, fees charged to Licensees, and
464 other fees;

465 c. Ensuring Compact administration services are
466 appropriately provided, including by contract;

467 d. Preparing and recommending the budget;

468 e. Maintaining financial records on behalf of the
469 Commission;

470 f. Monitoring Compact compliance of Member States and
471 providing compliance reports to the Commission;

472 g. Establishing additional committees as necessary;

473 h. Exercising the powers and duties of the Commission
474 during the interim between Commission meetings, except for
475 adopting or amending Rules, adopting or amending bylaws, and
476 exercising any other powers and duties expressly reserved to
477 the Commission by Rule or bylaw; and

478 i. Performing other duties as provided in the Rules or
479 bylaws of the Commission.

480 2. The Executive Committee shall be composed of up to
481 nine (9) members, as further set forth in the bylaws of the
482 Commission:

483 a. Seven (7) voting members who are elected by the
484 Commission from the current membership of the Commission; and

485 b. Two (2) ex-officio, non-voting members.

486 3. The Commission may remove any member of the
487 Executive Committee as provided in the Commission's bylaws.

488 4. The Executive Committee shall meet at least
489 annually.

490 a. Executive Committee meetings shall be open to the
491 public, except that the Executive Committee may meet in a
492 closed, non-public meeting as provided in subsection 7.F.4
493 below;

494 b. The Executive Committee shall give advance notice
495 of its meetings, posted on its website and as determined to
496 provide notice to persons with an interest in the business
497 of the Commission; and

498 c. The Executive Committee may hold a special meeting
499 in accordance with subsection 7.F.2 below.

500 E. The Commission shall adopt and provide to the
501 Member States an annual report.

502 F. Meetings of the Commission

503 1. All meetings of the Commission that are not closed
504 pursuant to subsection 7.F.4 shall be open to the public.
505 Notice of public meetings shall be posted on the
506 Commission's website at least thirty (30) days prior to the
507 public meeting.

508 2. Notwithstanding subsection 7.F.1, the Commission
509 may convene an emergency public meeting by providing at
510 least twenty-four (24) hours prior notice on the
511 Commission's website, and any other means as provided in the
512 Commission's Rules, for any of the reasons it may dispense
513 with notice of proposed rulemaking under subsection 9.G.
514 The Commission's legal counsel shall certify that one of the
515 reasons justifying an emergency public meeting has been met.

516 3. Notice of all Commission meetings shall provide the
517 time, date, and location of the meeting, and if the meeting
518 is to be held or accessible via telecommunication, video
519 conference, or other electronic means, the notice shall
520 include the mechanism for access to the meeting.

521 4. The Commission or the Executive Committee may
522 convene in a closed, non-public meeting for the Commission
523 or Executive Committee to receive or solicit legal advice or
524 to discuss:

525 a. Non-compliance of a Member State with its
526 obligations under the Compact;

527 b. The employment, compensation, discipline or other
528 matters, practices or procedures related to specific
529 employees;

530 c. Current or threatened discipline of a Licensee or
531 Compact Privilege holder by the Commission or by a Member
532 State's Respiratory Therapy Licensing Authority;

533 d. Current, threatened, or reasonably anticipated
534 litigation;

535 e. Negotiation of contracts for the purchase, lease,
536 or sale of goods, services, or real estate;

537 f. Accusing any person of a crime or formally
538 censuring any person;

539 g. Trade secrets or commercial or financial
540 information that is privileged or confidential;

541 h. Information of a personal nature where disclosure
542 would constitute a clearly unwarranted invasion of personal
543 privacy;

544 i. Investigative records compiled for law enforcement
545 purposes;

546 j. Information related to any investigative reports
547 prepared by or on behalf of or for use of the Commission or
548 other committee charged with responsibility of investigation
549 or determination of compliance issues pursuant to the
550 Compact;

551 k. Legal advice;

552 1. Matters specifically exempted from disclosure by
553 federal or Member State law; or

554 m. Other matters as promulgated by the Commission by
555 Rule.

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

560 6. The Commission shall keep minutes in accordance
561 with Commission Rules and bylaws. All documents considered
562 in connection with an action shall be identified in such
563 minutes. All minutes and documents of a closed meeting
564 shall remain under seal, subject to release only by a
565 majority vote of the Commission or order of a court of
566 competent jurisdiction.

567 G. Financing of the Commission

568 1. The Commission shall pay, or provide for the
569 payment of, the reasonable expenses of its establishment,
570 organization, and ongoing activities.

571 2. The Commission may accept any and all appropriate
572 revenue sources as provided herein.

573 3. The Commission may levy on and collect an annual
574 assessment from each Member State and impose fees on
575 Licensees of Member States to whom it grants a Compact
576 Privilege to cover the cost of the operations and activities
577 of the Commission and its staff. The aggregate annual
578 assessment amount for Member States, if any, shall be
579 allocated based upon a formula that the Commission shall
580 promulgate by Rule.

581 4. The Commission shall not incur obligations of any
582 kind prior to securing the funds or a loan adequate to meet
583 the same; nor shall the Commission pledge the credit of any

584 of the Member States, except by and with the authority of
585 the Member State.

586 5. The Commission shall keep accurate accounts of all
587 receipts and disbursements. The receipts and disbursements
588 of the Commission shall be subject to the financial review
589 and accounting procedures established under its bylaws.
590 However, all receipts and disbursements of funds handled by
591 the Commission shall be subject to an annual financial
592 review by a certified or licensed public accountant, and the
593 report of the financial review shall be included in and
594 become part of the annual report of the Commission.

595 H. Qualified Immunity, Defense, and Indemnification

596 1. Nothing herein shall be construed as a limitation
597 on the liability of any Licensee for professional
598 malpractice or misconduct, which shall be governed solely by
599 any other applicable state laws.

600 2. The Member States, Commissioners, officers,
601 executive directors, employees, and agents of the Commission
602 shall be immune from suit and liability, both personally and
603 in their official capacity, for any claim for damage to or
604 loss of property or personal injury or other civil liability
605 caused by or arising out of any actual or alleged act,
606 error, or omission that occurred, or that the person against
607 whom the claim is made had a reasonable basis for believing
608 occurred within the scope of Commission employment, duties
609 or responsibilities; provided that nothing in this
610 subsection shall be construed to protect any such person
611 from suit or liability for any damage, loss, injury, or
612 liability caused by the intentional or willful or wanton
613 misconduct of that person. The procurement of insurance of
614 any type by the Commission shall not in any way compromise
615 or limit the immunity granted hereunder.

616 3. The Commission shall defend any Commissioner,
617 officer, executive director, employee, and agent of the
618 Commission in any civil action seeking to impose liability
619 arising out of any actual or alleged act, error, or omission
620 that occurred within the scope of Commission employment,
621 duties, or responsibilities, or as determined by the
622 Commission that the person against whom the claim is made
623 had a reasonable basis for believing occurred within the
624 scope of Commission employment, duties, or responsibilities;
625 provided that nothing herein shall be construed to prohibit
626 that person from retaining their own counsel at their own
627 expense; and provided further, that the actual or alleged
628 act, error, or omission did not result from that person's
629 intentional or willful or wanton misconduct.

630 4. The Commission shall indemnify and hold harmless
631 any Commissioner, member, officer, executive director,
632 employee, and agent of the Commission for the amount of any
633 settlement or judgment obtained against that person arising
634 out of any actual or alleged act, error, or omission that
635 occurred within the scope of Commission employment, duties,
636 or responsibilities, or that such person had a reasonable
637 basis for believing occurred within the scope of Commission
638 employment, duties, or responsibilities, provided that the
639 actual or alleged act, error, or omission did not result
640 from the intentional or willful or wanton misconduct of that
641 person.

642 5. Nothing in this Compact shall be interpreted to
643 waive or otherwise abrogate a Member State's state action
644 immunity or state action affirmative defense with respect to
645 antitrust claims under the Sherman Act, Clayton Act, or any
646 other State or federal antitrust or anticompetitive law or
647 regulation.

648 6. Nothing in this Compact shall be construed to be a
649 waiver of sovereign immunity by the Member States or by the
650 Commission.

651 **SECTION 8. DATA SYSTEM**

652 A. The Commission shall provide for the development,
653 maintenance, operation, and utilization of a coordinated
654 database and reporting system containing licensure, Adverse
655 Action, and the presence of Significant Investigative
656 Information.

657 B. Notwithstanding any other provision of State law to
658 the contrary, a Member State shall submit a uniform data set
659 to the Data System as required by the Rules of the
660 Commission, including but not limited to:

661 1. Identifying information;

662 2. Licensure data;

663 3. Adverse Actions against a Licensee, license
664 applicant, or Compact Privilege holder and information
665 related thereto;

666 4. Non-confidential information related to Alternative
667 Program participation, the beginning and ending dates of
668 such participation, and other information related to such
669 participation not made confidential under Member State law;

670 5. Any denial of application for licensure, and the
671 reason(s) for such denial;

672 6. The presence of current Significant Investigative
673 Information; and

674 7. Other information that may facilitate the
675 administration of this Compact or the protection of the
676 public, as determined by the Rules of the Commission.

677 C. No Member State shall submit any information which
678 constitutes criminal history record information, as defined

679 by applicable federal law, to the Data System established
680 hereunder.

681 D. The records and information provided to a Member
682 State pursuant to this Compact or through the Data System,
683 when certified by the Commission or an agent thereof, shall
684 constitute the authenticated business records of the
685 Commission, and shall be entitled to any associated hearsay
686 exception in any relevant judicial, quasi-judicial or
687 administrative proceedings in a Member State.

688 E. Significant Investigative Information pertaining to
689 a Licensee in any Member State will only be available to
690 other Member States.

691 F. It is the responsibility of the Member States to
692 report any Adverse Action against a Licensee and to monitor
693 the database to determine whether Adverse Action has been
694 taken against a Licensee. Adverse Action information
695 pertaining to a Licensee in any Member State will be
696 available to any other Member State.

697 G. Member States contributing information to the Data
698 System may designate information that may not be shared with
699 the public without the express permission of the
700 contributing State.

701 H. Any information submitted to the Data System that
702 is subsequently expunged pursuant to federal law or the laws
703 of the Member State contributing the information shall be
704 removed from the Data System.

705 SECTION 9. RULEMAKING

706 A. The Commission shall promulgate reasonable Rules in
707 order to effectively and efficiently implement and
708 administer the purposes and provisions of the Compact. A
709 Rule shall be invalid and have no force or effect only if a
710 court of competent jurisdiction holds that the Rule is

711 invalid because the Commission exercised its rulemaking
712 authority in a manner that is beyond the scope and purposes
713 of the Compact, or the powers granted hereunder, or based
714 upon another applicable standard of review.

715 B. For purposes of the Compact, the Rules of the
716 Commission shall have the force of law in each Member State.

717 C. The Commission shall exercise its rulemaking powers
718 pursuant to the criteria set forth in this section and the
719 Rules adopted thereunder. Rules shall become binding as of
720 the date specified in each Rule.

721 D. If a majority of the legislatures of the Member
722 States rejects a Rule or portion of a Rule, by enactment of
723 a statute or resolution in the same manner used to adopt the
724 Compact within four (4) years of the date of adoption of the
725 Rule, then such Rule shall have no further force and effect
726 in any Member State.

727 E. Rules shall be adopted at a regular or special
728 meeting of the Commission.

729 F. Prior to adoption of a proposed Rule, the
730 Commission shall hold a public hearing and allow persons to
731 provide oral and written comments, data, facts, opinions,
732 and arguments.

733 G. Prior to adoption of a proposed Rule by the
734 Commission, and at least thirty (30) days in advance of the
735 meeting at which the Commission will hold a public hearing
736 on the proposed Rule, the Commission shall provide a notice
737 of proposed rulemaking:

738 1. On the website of the Commission or other publicly
739 accessible platform;

740 2. To persons who have requested notice of the
741 Commission's notices of proposed rulemaking, and

742 3. In such other way(s) as the Commission may by Rule
743 specify.

744 H. The notice of proposed rulemaking shall include:

745 1. The time, date, and location of the public hearing
746 at which the Commission will hear public comments on the
747 proposed Rule and, if different, the time, date, and
748 location of the meeting where the Commission will consider
749 and vote on the proposed Rule;

750 2. If the hearing is held via telecommunication, video
751 conference, or other electronic means, the Commission shall
752 include the mechanism for access to the hearing in the
753 notice of proposed rulemaking;

754 3. The text of the proposed Rule and the reason
755 therefor;

756 4. A request for comments on the proposed Rule from
757 any interested person; and

758 5. The manner in which interested persons may submit
759 written comments.

760 I. All hearings will be recorded. A copy of the
761 recording and all written comments and documents received by
762 the Commission in response to the proposed Rule shall be
763 available to the public.

764 J. Nothing in this section shall be construed as
765 requiring a separate hearing on each Rule. Rules may be
766 grouped for the convenience of the Commission at hearings
767 required by this section.

768 K. The Commission shall, by majority vote of all
769 Commissioners, take final action on the proposed Rule based
770 on the rulemaking record and the full text of the Rule.

771 1. The Commission may adopt changes to the proposed
772 Rule provided the changes are consistent with the original
773 purpose of the proposed Rule.

774 2. The Commission shall provide an explanation of the
775 reasons for substantive changes made to the proposed Rule as
776 well as reasons for substantive changes not made that were
777 recommended by commenters.

778 3. The Commission shall determine a reasonable
779 effective date for the Rule. Except for an emergency as
780 provided in subsection 9.L, the effective date of the Rule
781 shall be no sooner than thirty (30) days after issuing the
782 notice that it adopted or amended the Rule.

783 L. Upon determination that an emergency exists, the
784 Commission may consider and adopt an emergency Rule with
785 twenty-four (24) hours' notice, and with opportunity to
786 comment, provided that the usual rulemaking procedures
787 provided in the Compact and in this section shall be
788 retroactively applied to the Rule as soon as reasonably
789 possible, in no event later than ninety (90) days after the
790 effective date of the Rule. For the purposes of this
791 provision, an emergency Rule is one that must be adopted
792 immediately in order to:

793 1. Meet an imminent threat to public health, safety,
794 or welfare;

795 2. Prevent a loss of Commission or Member State funds;

796 3. Meet a deadline for the promulgation of a Rule that
797 is established by federal law or Rule; or

798 4. Protect public health and safety.

799 M. The Commission or an authorized committee of the
800 Commission may direct revisions to a previously adopted Rule
801 for purposes of correcting typographical errors, errors in
802 format, errors in consistency, or grammatical errors.
803 Public notice of any revisions shall be posted on the
804 website of the Commission. The revision shall be subject to
805 challenge by any person for a period of thirty (30) days

806 after posting. The revision may be challenged only on
807 grounds that the revision results in a material change to a
808 Rule. A challenge shall be made in writing and delivered to
809 the Commission prior to the end of the notice period. If no
810 challenge is made, the revision will take effect without
811 further action. If the revision is challenged, the revision
812 may not take effect without the approval of the Commission.

813 N. No Member State's rulemaking process or procedural
814 requirements shall apply to the Commission.

815 1. The Commission shall have no authority over any
816 Member State's rulemaking process or procedural requirements
817 that do not pertain to the Compact.

818 O. Nothing in this Compact, nor any Rule or regulation
819 of the Commission, shall be construed to limit, restrict, or
820 in any way reduce the ability of a Member State to enact and
821 enforce laws, regulations, or other Rules related to the
822 Practice of Respiratory Therapy in that State, where those
823 laws, regulations, or other Rules are not inconsistent with
824 the provisions of this Compact.

825 SECTION 10. OVERSIGHT, DISPUTE RESOLUTION, AND
826 ENFORCEMENT

827 A. Oversight

828 1. The executive and judicial branches of State
829 government in each Member State shall enforce this Compact
830 and take all actions necessary and appropriate to implement
831 the Compact.

832 2. Venue is proper and judicial proceedings by or
833 against the Commission shall be brought solely and
834 exclusively in a court of competent jurisdiction where the
835 principal office of the Commission is located. The
836 Commission may waive venue and jurisdictional defenses to
837 the extent it adopts or consents to participate in

838 alternative dispute resolution proceedings. Nothing herein
839 shall affect or limit the selection or propriety of venue in
840 any action against a Licensee for professional malpractice,
841 misconduct or any such similar matter.

842 3. The Commission shall be entitled to receive service
843 of process in any proceeding regarding the enforcement or
844 interpretation of the Compact and shall have standing to
845 intervene in such a proceeding for all purposes. Failure to
846 provide the Commission service of process shall render a
847 judgment or order void as to the Commission, this Compact,
848 or promulgated Rules.

849 B. Default, Technical Assistance, and Termination

850 1. If the Commission determines that a Member State
851 has defaulted in the performance of its obligations or
852 responsibilities under this Compact or the promulgated
853 Rules, the Commission shall provide written notice to the
854 defaulting State. The notice of default shall describe the
855 default, the proposed means of curing the default, and any
856 other action that the Commission may take, and shall offer
857 training and specific technical assistance regarding the
858 default.

859 2. The Commission shall provide a copy of the notice
860 of default to the other Member States.

861 C. If a State in default fails to cure the default,
862 the defaulting State may be terminated from the Compact upon
863 an affirmative vote of a majority of the Commissioners of
864 the Member States, and all rights, privileges and benefits
865 conferred on that State by this Compact may be terminated on
866 the effective date of termination. A cure of the default
867 does not relieve the offending State of obligations or
868 liabilities incurred during the period of default.

869 D. Termination of membership in the Compact shall be
870 imposed only after all other means of securing compliance
871 have been exhausted. Notice of intent to suspend or
872 terminate shall be given by the Commission to the governor,
873 the majority and minority leaders of the defaulting State's
874 legislature, the defaulting State's Respiratory Therapy
875 Licensing Authority and each of the Member States'
876 Respiratory Therapy Licensing Authorities.

877 E. A State that has been terminated is responsible for
878 all assessments, obligations, and liabilities incurred
879 through the effective date of termination, including
880 obligations that extend beyond the effective date of
881 termination, if necessary.

882 F. Upon the termination of a State's membership from
883 this Compact, that State shall immediately provide notice to
884 all Licensees and Compact Privilege holders (of which the
885 Commission has a record) within that State of such
886 termination. The terminated State shall continue to
887 recognize all licenses granted pursuant to this Compact for
888 a minimum of one hundred eighty (180) days after the date of
889 said notice of termination.

890 G. The Commission shall not bear any costs related to
891 a State that is found to be in default or that has been
892 terminated from the Compact, unless agreed upon in writing
893 between the Commission and the defaulting State.

894 H. The defaulting State may appeal the action of the
895 Commission by petitioning the U.S. District Court for the
896 District of Columbia or the federal district where the
897 Commission has its principal offices. The prevailing party
898 shall be awarded all costs of such litigation, including
899 reasonable attorney's fees.

900 I. Dispute Resolution

901 1. Upon request by a Member State, the Commission
902 shall attempt to resolve disputes related to the Compact
903 that arise among Member States and between Member and non-
904 Member States.

905 2. The Commission shall promulgate a Rule providing
906 for both mediation and binding dispute resolution for
907 disputes, as appropriate.

908 J. Enforcement

909 1. By majority vote, as may be further provided by
910 Rule, the Commission may initiate legal action against a
911 Member State in default in the United States District Court
912 for the District of Columbia or the federal district where
913 the Commission has its principal offices to enforce
914 compliance with the provisions of the Compact and its
915 promulgated Rules. A Member State by enactment of this
916 Compact consents to venue and jurisdiction in such court for
917 the purposes set forth herein. The relief sought may
918 include both injunctive relief and damages. In the event
919 judicial enforcement is necessary, the prevailing party
920 shall be awarded all costs of such litigation, including
921 reasonable attorney's fees. The remedies herein shall not
922 be the exclusive remedies of the Commission. The Commission
923 may pursue any other remedies available under federal or the
924 defaulting Member State's law.

925 2. A Member State may initiate legal action against
926 the Commission in the U.S. District Court for the District
927 of Columbia or the federal district where the Commission has
928 its principal offices to enforce compliance with the
929 provisions of the Compact and its promulgated Rules. The
930 relief sought may include both injunctive relief and
931 damages. In the event judicial enforcement is necessary,

932 the prevailing party shall be awarded all costs of such
933 litigation, including reasonable attorney's fees.

934 3. No person other than a Member State shall enforce
935 this Compact against the Commission.

936 SECTION 11. EFFECTIVE DATE, WITHDRAWAL, AND AMENDMENT

937 A. The Compact shall come into effect on the date on
938 which the Compact statute is enacted into law in the seventh
939 Member State ("Effective Date").

940 1. On or after the Effective Date of the Compact, the
941 Commission shall convene and review the enactment of each of
942 the first seven Member States ("Charter Member States") to
943 determine if the statute enacted by each such Charter Member
944 State is materially different than the Model Compact.

945 a. A Charter Member State whose enactment is found to
946 be materially different from the Model Compact shall be
947 entitled to the default process set forth in Section 10.

948 b. If any Member State is later found to be in
949 default, or is terminated or withdraws from the Compact, the
950 Commission shall remain in existence and the Compact shall
951 remain in effect even if the number of Member States should
952 be less than seven.

953 2. Member States enacting the Compact subsequent to
954 the seven initial Charter Member States shall be subject to
955 the process set forth herein and Commission Rule to
956 determine if their enactments are materially different from
957 the Model Compact and whether they qualify for participation
958 in the Compact.

959 3. All actions taken for the benefit of the Commission
960 or in furtherance of the purposes of the administration of
961 the Compact prior to the effective date of the Compact or
962 the Commission coming into existence shall be considered to
963 be actions of the Commission unless specifically repudiated

964 by the Commission. The Commission shall own and have all
965 rights to any intellectual property developed on behalf or
966 in furtherance of the Commission by individuals or entities
967 involved in organizing or establishing the Commission, as
968 may be further set forth in Rules of the Commission.

969 4. Any State that joins the Compact subsequent to the
970 Commission's initial adoption of the Rules and bylaws shall
971 be subject to the Rules and bylaws as they exist on the date
972 on which the Compact becomes law in that State. Any Rule
973 that has been previously adopted by the Commission shall
974 have the full force and effect of law on the date the
975 Compact becomes law in that State.

976 B. Any Member State may withdraw from this Compact by
977 enacting a statute repealing the same.

978 1. A Member State's withdrawal shall not take effect
979 until one hundred eighty (180) days after enactment of the
980 repealing statute.

981 2. Withdrawal shall not affect the continuing
982 requirement of the withdrawing State's Respiratory Therapy
983 Licensing Authority to comply with the investigative and
984 Adverse Action reporting requirements of this Compact prior
985 to the effective date of withdrawal.

986 3. Upon the enactment of a statute withdrawing from
987 this Compact, a State shall immediately provide notice of
988 such withdrawal to all Licensees and Compact Privilege
989 holders (of which the Commission has a record) within that
990 State. Notwithstanding any subsequent statutory enactment
991 to the contrary, such withdrawing State shall continue to
992 recognize all licenses granted pursuant to this Compact for
993 a minimum of one hundred eighty (180) days after the date of
994 such notice of withdrawal.

995 C. Nothing contained in this Compact shall be
996 construed to invalidate or prevent any licensure agreement
997 or other cooperative arrangement between a Member State and
998 a non-Member State that does not conflict with the
999 provisions of this Compact.

1000 D. This Compact may be amended by the Member States.
1001 No amendment to this Compact shall become effective and
1002 binding upon any Member State until it is enacted into the
1003 laws of all Member States.

1004 SECTION 12. CONSTRUCTION AND SEVERABILITY

1005 A. This Compact and the Commission's rulemaking
1006 authority shall be liberally construed so as to effectuate
1007 the purposes and the implementation and administration of
1008 the Compact. Provisions of the Compact expressly
1009 authorizing or requiring the promulgation of Rules shall not
1010 be construed to limit the Commission's rulemaking authority
1011 solely for those purposes.

1012 B. The provisions of this Compact shall be severable,
1013 and if any phrase, clause, sentence or provision of this
1014 Compact is held by a court of competent jurisdiction to be
1015 contrary to the constitution of any Member State, a State
1016 seeking participation in the Compact, or of the United
1017 States, or the applicability thereof to any government,
1018 agency, person or circumstance is held to be
1019 unconstitutional by a court of competent jurisdiction, the
1020 validity of the remainder of this Compact and the
1021 applicability thereof to any other government, agency,
1022 person or circumstance shall not be affected hereby.

1023 C. Notwithstanding subsection 12.B of this section,
1024 the Commission may deny a State's participation in the
1025 Compact or, in accordance with the requirements of Section
1026 10, terminate a Member State's participation in the Compact,

1027 if it determines that a constitutional requirement of a
1028 Member State is a material departure from the Compact.
1029 Otherwise, if this Compact shall be held to be contrary to
1030 the constitution of any Member State, the Compact shall
1031 remain in full force and effect as to the remaining Member
1032 States and in full force and effect as to the Member State
1033 affected as to all severable matters.

1034 SECTION 13. CONSISTENT EFFECT AND CONFLICT WITH OTHER
1035 STATE LAWS

1036 A. Nothing herein shall prevent or inhibit the
1037 enforcement of any other law of a Member State that is not
1038 inconsistent with the Compact.

1039 B. Any laws, statutes, regulations, or other legal
1040 requirements in a Member State in conflict with the Compact
1041 are superseded to the extent of the conflict, including any
1042 subsequently enacted State laws.

1043 C. All permissible agreements between the Commission
1044 and the Member States are binding in accordance with their
1045 terms.

1046 D. Other than as expressly set forth herein, nothing
1047 in this Compact will impact initial licensure.

✓