


MEMORANDUM

DATE	October 30, 2018
TO	Board of Psychology Members
FROM	 Jeffrey Thomas Assistant Executive Officer
SUBJECT	Agenda Item #28 – PSYPACT – Status of PSYPACT and Review of Board Concerns and Feedback

Background:

At the February 2018 Board of Psychology meeting, the Board was asked to address its position on the Association of State and Provincial Psychology Board's (ASPPB) Psychology Interjurisdictional Compact (PSYPACT).

The Board formed a Telepsychology Committee (Committee) at its meeting on November 21, 2014 to discuss and analyze the content and requirements of the proposed PSYPACT. The Committee met on December 16, 2014 and reported its findings to the full Board at its January 9, 2015 meeting. A number of concerns were raised by the Committee, and these concerns were reported to ASPPB in a letter dated January 22, 2015. In addition to raising the concerns of the Board, the letter informed ASPPB that the Board would not be seeking to join the PSYPACT at that time.

There are currently seven (7) PSYPACT STATES:

Arizona (Enacted on 5/17/2016)
Utah (Enacted on 3/17/2017)
Nevada (Enacted on 5/26/2017)
Colorado (Enacted 4/12/2018)
Nebraska (Enacted 4/23/2018)
Missouri (Enacted 6/1/2018)
Illinois (Enacted 8/22/2018 – Effective 1/1/2020)

Attachments:

- January 22, 2015 Letter to ASPPB
- PSYPACT Fact Sheet
- PSYPACT Summary

Action Requested:

This item is informational purposes only. No action is required.

BOARD OF PSYCHOLOGY – EXECUTIVE OFFICE

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January 22, 2015

Janet P. Orwig, MBA,
Association Executive Officer for Member Services
Association of State and Provincial Psychology Boards (ASPPB)
P. O. Box 3079
Peachtree City, GA 30269

RE: INTERJURISDICTIONAL TELEPSYCHOLOGY COMPACT

Dear Ms. Orwig:

The California Board of Psychology (Board) formed a Telepsychology Committee (Committee) to discuss and analyze the Interjurisdictional Telepsychology Compact (Compact) put forward by the Association of State and Provincial Psychology Boards (ASPPB). The Committee presented its opinions on the Compact at the January 9th Board Meeting.

The Board would like to commend ASPPB for the time and effort that went into the generation of the proposed Compact. The Board agrees with ASPPB that it is important to increase license portability and consumer access to psychological services. However, the Board's review raised a number of fundamental concerns which are outlined below;

- Article IX addresses the creation of the "Interjurisdictional Telepsychology Compact Commission" (Commission). The Compact States would pay for the operations of the Commission via (as yet unspecified) fees through a currently unspecified "formula". There will be costs associated with reporting to a database and additional administrative costs to the Board while all fees paid by licensees and state contributions to the administration of the Commission, under the proposed scheme, will go to ASPPB and the Commission. In other words, the Board takes up additional burdens and costs while all of the fees go elsewhere.
- The Commission would also have the ability to promulgate regulations which would have the force of law in Compact States.
- Article X of the Compact grants the Commission to grant "emergency rules". The definition and implementation of the clause is vague and is another example of the extraordinary regulatory authority ceded to the Commission by the Compact States.
- Article XIII of the Compact addresses the "Coordinated Licensure Information Exchange." States would be forced to rely on a complex national database for

licensing, complaint, and discipline information exchange. The system, which is not yet developed and would be owned and operated by a nongovernmental agency. It is unclear at this time who will be the "administrator" of the database.

- The current Compact language does not require any Continuing Education (CE) of Home State licensees. The E.Passport has a 6 (six) hour requirement once a renewal cycle (two years). Licensees from jurisdictions that do not require CE (e.g., New York) would be able to practice on California consumers with only three hours of CE per year in the area of technology and psychological practice.
- That the Compact would also place responsibilities on the Board to report information regarding our licensees and possibly even complainants which may currently be classified as confidential under our existing statutory and regulatory scheme. This would alter some protections afforded to licensees and complainants, with little knowledge on our part as to the safeguards for confidential information undertaken by other Compact States. This would need to be addressed in advance of a recommendation to the legislature regarding joining the Compact. Since reporting can be required in advance of resolution of a complaint in some instances, the Committee believes this requires further clarification.

The Board recognizes the need for statutes and regulations that address the issue of Telepsychology; however, it is the Board's opinion that the Compact unnecessarily cedes too much regulatory control and licensee information to non-governmental out-of-state entities.

The Board looks forward to exploring other Interjurisdictional Telepsychology possibilities, but will not seek to join the Compact at this time.

Sincerely,



MICHAEL ERICKSON, PHD
President, Board of Psychology

cc: Ms. Nicole J. Jones (Vice President)
Ms. Lucille Aquaye-Baddoo
Ms. Johanna Arias-Bhatia
Miguel Gallardo, PsyD
Andrew Harlem, PhD
Jacqueline Horn, PhD
Stephen Phillips, PhD, JD
Ms. Linda Starr

PSYPACT

Advancing the Interjurisdictional Practice of Psychology

Created by the Association of State and Provincial Psychology Boards (ASPPB), the Psychology Interjurisdictional Compact (PSYPACT) is an interstate compact that facilitates the practice of psychology using telecommunications technologies (telepsychology) and/or temporary in-person, face-to-face psychological practice.

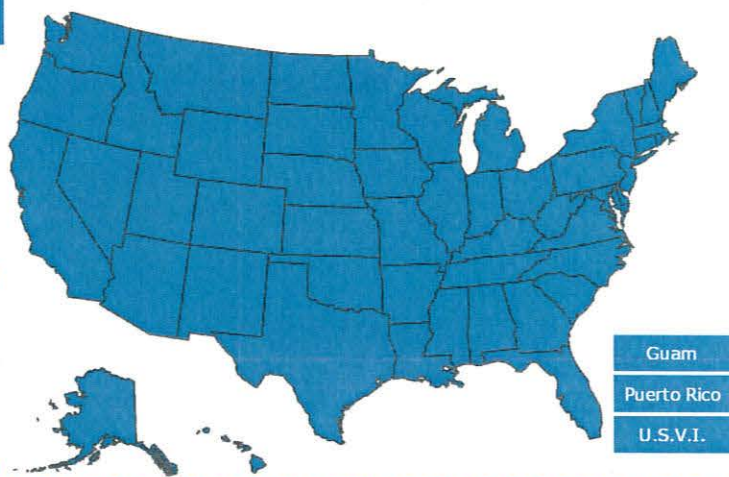
About PSYPACT

PSYPACT is a cooperative agreement enacted into law by participating states

Addresses increased demand to provide/receive psychological services via electronic means (telepsychology)

Authorizes both telepsychology and temporary in-person, face-to-face practice of psychology across state lines in PSYPACT states

PSYPACT states have the ability to regulate telepsychology and temporary in-person, face-to-face practice



How PSYPACT Works

PSYPACT becomes operational when seven states enact PSYPACT into law



Psychologists who wish to practice under PSYPACT obtain:

E.Passport Certificate for telepsychology

Interjurisdictional Practice Certificate (IPC) for temporary in-person, face-to-face practice



PSYPACT states communicate and exchange information including verification of licensure and disciplinary sanctions

Benefits of PSYPACT



Increases client/patient access to care



Facilitates continuity of care when client/patient relocates, travels, etc.



Certifies that psychologists have met acceptable standards of practice



Promotes cooperation between PSYPACT states in the areas of licensure and regulation



Offers a higher degree of consumer protection across state lines

How PSYPACT Impacts Psychologists

Allows licensed psychologists to practice telepsychology and/or conduct temporary in-person, face-to-face practice across state lines without having to become licensed in additional PSYPACT states

Permits psychologists to provide services to populations currently underserved or geographically isolated

Standardizes time allowances for temporary practice regulations in PSYPACT states

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PSYPACT

Advancing the Interjurisdictional Practice of Psychology

Purpose

- Allows for Telepsychological Communications from providers to patients in separate states.
- Allows for up to 30 days of In-Person Face-to-Face Practice
- Recognizes that states have vested interest in protection public health and safety and through this compact and regulation will afford the best available protection.
- Only applies to person not holding licenses in both home and receiving jurisdictions
- Compact does not apply to permanent In-Person Face-to-Face practice

Article II

Definitions

This article is used to define the terms as used throughout the compact. This was done in an effort to alleviate confusion on the part of the states and practitioners.

Article III

Home State Licensure

This article denotes what home state licensure means and further requirements to provide services through the compact.

This section defines the Home state. "Home state in which a psychologist is licensed shall be a compact state where a psychologist is licensed to practice psychology." To provide the services allowed by this compact the professional must hold a license in a compact state.

Section E. Allows for practice to the receiving jurisdiction to practice telepsychology only if the state requires:

- That the psychologist holds an active E. Passport
- Has a mechanism in place for receiving and investigating complaints about licensed individuals.
- Notifies the commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding a licensed individual.
- Requires an identity history summary of all applicants at initial licensure.
- Complies with the bylaws and rules of the commission.

Section F. Allows for temporary face-to-face practice in a distant state if requires:

- That the psychologist holds active Interjurisdictional Practice Certificate (IPC).
- Has a mechanism in place for receiving and investigating complaints about licensed individuals.
- Notifies the commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding a licensed individual.
- Requires an identity history summary of all applicants at initial licensure.
- Complies with the bylaws and rules of the commission.

Article IV

Compact Privilege to Practice Telepsychology

This section lays out the requirements of education and training to provide services through the Compact.

This section allows for the practice of telepsychology in a “receiving state” in which the psychologist is not licensed. Only if the psychologist:

- Holds a graduate degree in psychology from an institute of higher education that was at the time the degree was awarded;
 - Regionally accredited by an accrediting body recognized by the US Department of Education to grant graduate degrees or authorize by provincial statute or royal charter to grant doctoral degrees.
 - A foreign college or university deemed to be equivalent by a foreign credential evaluation service that is a member of the NACES or by a recognize foreign credential evaluation.
- Hold a graduate degree in psychology that meets designated criteria
- Possess current, full and unrestricted license to practice psychology in a home state which is a compact state
- Have no history of adverse action that violate the rules of the commission
- Have no criminal record history that violates the rules of the commission
- Possess a current and active E. Passport
- Provide attestations regarding areas of intended practice, conformity with standards of practice, competence in telepsychology technology, criminal background and knowledge and adherence to legal requirements in the home and receiving states, and provide a release of information to allow for primary source verification in a manner specified by the Commission; and
- Meet other criteria as defined by the rules of the Commission.

This section also requires a psychologist practicing under the compact must practice within the areas of competencies and is subject to the scope of practice of the receiving state.

A receiving state may, in accordance with that state’s due process law, limit or revoke a psychologist’s authority to practice interjurisdictional telepsychology in the receiving state and may take any other necessary actions under the receiving state’s applicable law to protect the health and safety of the receiving state’s citizens. If a receiving state takes action, the state shall promptly notify the home state and the Commission.

If a psychologist’s license in any home state or another compact state or any authority to practice interjurisdictional telepsychology in any receiving state is restricted, suspended or otherwise limited, the E. Passport shall be revoked and therefore the psychologist shall not be eligible to practice telepsychology in a compact state under the authority to practice interjurisdictional telepsychology.

Article V

Compact Temporary Authorization to Practice

By accepting the compact the jurisdiction will allow for temporary face-to-face practice.

The education requirements are like those listed in Article IV with the substitution of a psychologist to be required to hold an Interjurisdictional Practice Certificate (IPC) instead of the E. Passport. The other components are similar to those in Article IV.

Article VI

Condition of Telepsychological Practice in a Receiving State.

A psychologist must practice interjurisdictional telepsychology in accordance with the scope of practice of the receiving jurisdiction and within the rules of the commission, as well as;

- The psychologist initiates a client/patient contact in home state via telecommunications technologies with a client/patient in a receiving state or

- other condition regarding telepsychology as determined by rule promulgated by the commission.

Article VII

Adverse Actions

This section covers how the compact, home and receiving states will conduct and report adverse actions. As well as the consequences for a psychologist who receives adverse actions.

- The home state may take adverse actions against a psychologist license. A receiving state may take adverse action on a psychologist authority to practice interjurisdictional telepsychology and temporary authorization to practice within that receiving state.
- If home state does take adverse action a psychologist's authority to practice interjurisdictional telepsychology is terminated and the E. Passport is revoked. In addition, that psychologist's temporary practice is terminated, and the IPC is revoked.
 - All adverse actions taken should be reported to the Commission. In accordance to the rules of the Commission.
 - If Discipline is reported against a psychologist, the psychologist will not be eligible for telepsychology or temporary practice in accordance with the rules of the Commission.
 - Other actions may be imposed as determined by the rules promulgated by the commission.
- A home state's psychology regulatory authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a licensee which occurred in a receiving state as it would if such conduct had occurred by a licensee within the home state. In such cases, the home state's law shall control in determining any adverse action against a psychologist's license.
- A license revoked, surrendered in lieu of discipline or suspended following investigation of all services granted through the compact would be terminated.
- Nothing in the compact will override a compact state's decision that a psychologist's participation in an alternative program may be used in lieu of adverse action and that such participation shall remain non-public if required by the compact state's law. The psychologist must cease providing services while in an alternative program.

Article VIII

Additional Authorities Invested in a Compact State's Psychology Regulatory Authority.

This section provides all compact states the right to maintain their psychology regulatory authority.

- Issue Subpoenas, for both hearings and investigations.
- Issue Cease and Desists and injunctive relief orders to revoke a psychologist's authority to practice interjurisdictional telepsychology or through temporary authorization.

It also states if an investigation is taking place, a psychologist may not change their home state status. The conclusion of all investigations should be reported to the Commission. All information provided to the commission or distributed by compact states pursuant to the psychologist shall remain confidential, filed under seal and used for investigatory or disciplinary matters. The commission may create additional rules for mandated discretionary sharing of information by compact states.

Article IX

Coordinated Licensure Information System

This section denotes the requirement of sharing licensee information for all compact states. Notwithstanding any other provision of state law to the contrary, a compact state shall submit a uniform dataset to the Coordinated Database on all

psychologists to whom this compact is applicable as required by the rules of the commission. This database will allow for the expedited sharing of adverse action against compact psychologists. The coordinated database information will be expunged by the law of the reporting compact state.

Article X

Establishment of the Psychology Interjurisdictional Compact Commission

This section establishes the ruling commission of the compact. The compact is not a waiver of sovereign immunity.

- The commission shall consist of one voting representative appointed by each compact state who shall serve as that state's commissioner. Appointed by each states regulatory Board.
- Vacancies of Commissioners must be filled in accordance of the laws of the compact state.
- Each commissioner is granted (1) vote in regard to creation of rules and bylaws and shall otherwise have the opportunity to participate in the business and affairs of the Commission.

Article XI

Rulemaking

This section lays out the requirements for rules made to the current compact once accepted by the first 7 states.

Article XII

Oversight, Dispute Resolution and Enforcement

This section details the oversight and enforcement of the compact by accepting states.

Article XIII

Date of Implementation of Psychology Interjurisdictional Compact Commission and Associated Rules, Withdrawal and Amendment

The compact becomes effective on the date of enactment in the seventh compact state. States that join after the adoption of the rules shall be subject to the rules as they exist on the date which the compact becomes law in that state.

Article XIV

Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. If this Compact shall be held contrary to the constitution of any state member thereto, the compact shall remain in full force and effect as to the remaining compact states.