



MEMORANDUM

DATE	December 26, 2014
TO	Psychology Board Members
FROM	Jonathan Burke Administrative Services Coordinator
SUBJECT	Telepsychology Committee Report

Background:

The California Board of Psychology (Board) formed a Telepsychology Committee (Committee) consisting of Stephen Phillips, JD, PsyD (Chair) and Andrew Harlem, PhD at its November 21, 2014 meeting to discuss and analyze the Interjurisdictional Telepsychology Compact (Compact) put forward by the Association of State and Provincial Psychology Boards (ASPPB). The Committee's first meeting took place on December 16, 2014. The Committee agreed with ASPPB that it is important to increase license portability and consumer access to psychological services. However, the Committee's initial review raised a number of fundamental concerns which will be communicated to the Board at its next meeting on January 9, 2015:

- 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 Task Force believes this requires further clarification.

The Committee recognizes the need for statutes and regulations that address the issue of Telepsychology. It is the Committee's opinion that the Compact unnecessarily cedes too much regulatory control and licensee information to non-governmental out-of-state entities. The Committee wishes to express the concerns outlined above via a letter to ASPPB. The Committee does not recommend joining the Compact at this time. The Committee also expressed interest in the E.Passport that is being developed by ASPPB. The Compact requires recognition of the E.Passport, but the acceptance of the E.Passport could be adopted by the Board without joining the Compact. This would be a matter of amending the Board's regulations. The E.Passport details have not been promulgated at this time, and while the Committee is amenable to the E.Passport, it is not yet ready to make a recommendation to the Board.

Action Requested:

The Committee requests that a letter expressing the concerns outlined in this memo be submitted to ASPPB.

INTERJURISDICTIONAL TELEPSYCHOLOGY COMPACT

ARTICLE I

PURPOSE

Whereas, states license psychologists, in order to protect the public through verification of education, training and experience and ensure accountability for professional practice; and

Whereas, this Compact is intended to regulate the day to day practice of telepsychology (i.e. the provision of psychological services using telecommunication technologies) by psychologists across state boundaries in the performance of their psychological practice as assigned by an appropriate authority; and

Whereas, this Compact is intended to authorize State Psychology Regulatory Bodies to afford legal recognition, in a manner consistent with the terms of the Compact, to psychologists licensed in another state;

Whereas, this Compact recognizes that states have a vested interest in protecting the public's health and safety through their licensing and regulation of psychologists and that such state regulation will best protect public health and safety;

Whereas this compact does not apply when a psychologist is licensed in both the home and receiving jurisdiction; and

Whereas this Compact does not apply to in-person practice.

Consistent with these principles, this Compact is designed to achieve the following purposes and objectives:

1. Increase public access to professional psychological services by allowing for telepsychological practice across state lines;
2. Enhance the states' ability to protect the public's health and safety, especially client/patient safety;
3. Encourage the cooperation of Compact States in the areas of psychology licensure, and regulation;
4. Facilitate the exchange of information between Compact States regarding psychologist licensure and adverse actions and disciplinary history;
5. Promote compliance with the laws governing psychological practice in each Compact State; and

- 32 6. Invest all Compact States with the authority to hold licensed psychologists accountable
33 through the mutual recognition of Compact State licenses.

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ARTICLE II

DEFINITIONS

- A. "Adverse Action" means: Any action taken by a licensing entity which finds a violation of a statute or regulation that is identified by the licensing entity as discipline and is a matter of public record.
- B. "Authority to Practice Interjurisdictional Telepsychology" means: a licensed psychologist's authority to practice, within the limits authorized under this Compact, in another Compact State.
- C. "By-Laws" means: those bylaws established by the Interjurisdictional Telepsychology Commission pursuant to Section IX for its governance, or for directing and controlling its actions and conduct.
- D. "Certification Appeals Committee" means: The committee appointed to review appeals of applicants who are denied certification or appeals from certificate holders who are denied renewal or revoked for cause.
- E. "Client/Patient" means: the recipient of psychological services, whether psychological services are delivered in the context of healthcare, corporate, supervision, and/or consulting services.
- F. "Commissioner" means the voting representative appointed by each member board pursuant to Section IX.
- G. "Compact State" means: a state, the District of Columbia, or US territory that has enacted this Compact legislation and which has not withdrawn pursuant to Article XII, Section C or been terminated pursuant to Article XI, Section B.
- H. "Coordinated Licensure Information System" means: an integrated process for collecting, storing, and sharing information on psychologists licensure and enforcement activities related to psychology licensure laws, which is administered by a non-profit organization composed of and controlled by State Psychology Regulatory Authorities.

- 61 I. "Confidentiality" means: the principle that data or information is not made available or
62 disclosed to unauthorized persons and/or processes.
- 63 J. "E.Passport" means: a certificate as referenced in sections III-D, IV-E, and VI-B and as
64 further defined by the Rules of the Commission.
- 65 K. "Home State" means: a Compact State where a psychologist is licensed to practice
66 psychology. If the psychologist is licensed in more than one compact state, the home state
67 is the compact state where the psychologist was physically present when the services
68 were delivered.
- 69 L. "In-Person" means: interactions in which the psychologist and the client/patient are in the
70 same physical space and does not include interactions that may occur through the use of
71 technologies.
- 72 M. "Interjurisdictional Telepsychology Compact Commission" also referred to as
73 "Commission" means: the national administration of which all Compact States are
74 members.
- 75 N. "License" means: authorization by a State Psychology Regulatory Authority to engage in
76 the independent practice of psychology, which would be unlawful without the
77 authorization.
- 78 O. "Non-Compact State" means: any State which is not at the time a Compact State.
- 79 P. "Psychologist" means: an individual licensed for independent practice of psychology.
- 80 Q. "Receiving State" means: a Compact State where the client/patient is physically located
81 when the services were delivered.
- 82 R. "Rule" means: a written statement by the Interjurisdictional Telepsychology Compact
83 Commission promulgated pursuant to Section X of the Compact that is of general
84 applicability, implements, interprets, or prescribes a policy or provision of the Compact,
85 or an organizational, procedural, or practice requirement of the Commission and has the

86 force and effect of statutory law in a Compact State, and includes the amendment, repeal
87 or suspension of an existing rule.

88 S. "Significant Investigatory Information" means:

89 a. investigative information that a State Psychology Licensing Authority, after a
90 preliminary inquiry that includes notification and an opportunity to respond if
91 required by state law, has reason to believe, if proved true, would indicate more
92 than a minor infraction; or

93 b. investigative information that indicates that the psychologist represents an
94 immediate threat to public health and safety regardless of whether the
95 psychologist has been notified and had an opportunity to respond.

96 T. "State" means: a state, territory, or possession of the United States, the District of
97 Columbia.

98 U. "State Psychology Regulatory Authority" means: the Board, office or other agency with
99 the legislative mandate to license and regulate the practice of psychology.

100 V. "Telepsychology" means: the provision of psychological services using
101 telecommunication technologies.

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ARTICLE III

HOME STATE LICENSURE

- A. A Compact State where a psychologist is licensed to practice psychology.
- B. A psychologist may hold one or more Compact State licenses at a time. If the psychologist is licensed in more than one Compact State, the Home State is the Compact State where the psychologist was physically present when the services were delivered.
- C. Any Compact State may require a psychologist to obtain and retain a license to be authorized to practice in the Compact State under circumstances not authorized by the Authority to Practice Interjurisdictional Telepsychology under the terms of this Compact.
- D. A Home State's license authorizes a psychologist to practice in a Receiving State under the Authority to Practice Interjurisdictional Telepsychology only if the Compact State:
1. Currently requires the psychologist to hold an active E.Passport Certificate;
 2. Has a mechanism in place for receiving and investigating complaints about licensed individuals;
 3. Notifies the Commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding a licensed individual;
 4. Requires an Identity History Summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation, no later than ten years after activation of the Compact; and
 5. Complies with the Bylaws and Rules of the Commission.

ARTICLE IV

COMPACT PRIVILEGE TO PRACTICE

A. Compact States shall recognize the right of a psychologist, licensed in a Compact State in conformance with Article III, to Practice Telepsychology in other Compact States (Receiving States) in which the psychologist is not licensed, under the Authority to Practice Interjurisdictional Telepsychology as provided in the Compact.

B. To exercise the Authority to Practice Interjurisdictional Telepsychology under the terms and provisions of this Compact, a psychologist licensed to practice in a Compact State must:

1. Hold a graduate degree in psychology from an institute of higher education that was, at the time of the degree was awarded:

A. Regionally accredited by an accrediting body recognized by the U.S. Department of Education to grant graduate degrees, OR authorized by Provincial statute or Royal Charter to grant doctoral degrees; OR

B. A foreign college or university deemed to be equivalent to 1 (A) above by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES) or by a recognized foreign credential evaluation service; AND

2. Hold a graduate degree in psychology that meets the following criteria:

a) *The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists;*

b) *The psychology program must stand as a recognizable, coherent, organizational entity within the institution;*

c) *There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;*

d) *The program must consist of an integrated, organized sequence of study;*

e) *There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;*

- f) *The designated director of the program must be a psychologist and a member of the core faculty;*
- g) *The program must have an identifiable body of students who are matriculated in that program for a degree;*
- h) *The program must include supervised practicum, internship, or field training appropriate to the practice of psychology;*
- i) *The curriculum shall encompass a minimum of three academic years of full-time graduate study for doctoral degrees and a minimum of one academic year of full-time graduate study for master's degree;*
- j) *The program includes an acceptable residency as defined by the Rules of the Commission.*

3. Possess a current, active E.Passport Certificate;

4. No history of adverse action that violate the Rules of the Commission;

5. No criminal record history that violates the Rules of the Commission;

6. Possess a current, full and unrestricted license to practice psychology in a Home State which is a Compact State;

7. Provide attestations in regard to 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

8. Meet other criteria as defined by the Rules of the Commission.

C. A psychologist practicing into a Receiving State under the Authority to Practice Interjurisdictional Telepsychology shall practice within the scope of practice authorized by the Home State.

D. A psychologist practicing into a Receiving State under the Authority to Practice Interjurisdictional Telepsychology will be subject to the Receiving State's authority and laws. A Receiving State may, in accordance with that state's due process laws, limit or

181 revoke a psychologist's Authority to Practice Interjurisdictional Telepsychology in the
182 Receiving State and may take any other necessary actions under the Receiving State's
183 applicable laws to protect the health and safety of the Receiving State's citizens. If a
184 Receiving State takes action, the state shall promptly notify the Home State and the
185 Commission.

186 E. If a psychologist's license in any Home State, or any Authority to Practice Interjurisdictional
187 Telepsychology in any Receiving State, is restricted, suspended or otherwise limited, the
188 psychologist shall not be eligible to practice in a Compact State under an Authority to
189 Privilege to Interjurisdictional Telepsychology and the E.Passport shall be revoked.

ARTICLE V

CONDITIONS OF PRACTICE IN A RECEIVING STATE

- A. A psychologist may practice in a Receiving State under the Authority to Practice Interjurisdictional Telepsychology only in the performance of the scope of practice for psychology as assigned by an appropriate State Psychology Regulatory Authority, as defined in the Rules of the Commission, and under the following circumstances:
1. The psychologist originates a client/patient contact in a Home State via telecommunications technologies with a client/patient in a Receiving State;
 2. Other conditions regarding telepsychology as determined by Rules promulgated by the Commission.

ARTICLE VI

ADVERSE ACTIONS

A. A Home State shall have the power to impose adverse action against a psychologist's license issued by the Home State; a Receiving State may take adverse action on a psychologist's Authority to Practice Interjurisdictional Telepsychology within that Receiving State.

B. If a Home State takes adverse action against a psychologist's license, that psychologist's Authority to Practice Interjurisdictional Telepsychology is terminated and the E.Passport is revoked.

1. All Home State disciplinary orders which impose adverse action should be reported to the Commission in accordance with the Rules promulgated by the Commission. A Compact State shall report adverse actions in accordance with the Rules of the Commission.

2. In the event discipline is reported on a psychologist, the psychologist will not be eligible for telepsychology practice in accordance with the Rules of the Commission.

3. Other actions may be imposed as determined by the rules promulgated by the Commission.

C. A Home State's Psychology Regulatory Authority shall investigate and take appropriate action with respect to reported conduct which occurred in a Receiving State as it would if such conduct had occurred within the Home State. In such cases, the Home State's law shall control in determining the appropriate adverse action.

D. If a license granted by a Compact State is revoked, surrendered in lieu of discipline, or suspended following an investigation authorized in Section VII, Authorization to Practice Interjurisdictional Telepsychology in other Compact States shall be terminated upon entry of the final order in the Compact State taking the action.

E. Nothing in this Compact shall override a Compact State's decision that 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 laws. Compact States must require psychologists who enter any alternative programs to not provide telepsychology services under the Authority to Practice Interjurisdictional Telepsychology in any other Compact State during the term of the alternative program.

229 F. No other judicial or administrative remedies shall be available in event of ratification of an
230 adverse action pursuant to subsection B, above.

ARTICLE VII

ADDITIONAL AUTHORITIES INVESTED IN A COMPACT STATE'S PSYCHOLOGY

REGULATORY AUTHORITY

A. In addition to any other powers granted under state law, a Compact State's Psychology Regulatory Authority shall have the authority under this Compact to:

1. Issue subpoenas, for both hearings and investigations, which require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a Compact State's Psychology Regulatory Authority for the attendance and testimony of witnesses, and/or the production of evidence from another Compact State shall be enforced in the latter state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings. The issuing State Psychology Regulatory Authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state where the witnesses and/or evidence are located; and
2. Issue cease and desist and/or injunctive relief orders to revoke a psychologist's Authority to Practice Interjurisdictional Telepsychology.
3. During the course of any investigation, a psychologist may not change his/her Home State affiliation. A Home State Psychology Regulatory Authority is authorized to complete any pending investigations of a psychologist and to take appropriate action(s). The Home State Psychology Regulatory Authority shall promptly report the conclusions of such investigations to the Commission. Once an investigation has been completed, and pending the outcome of said investigation, the psychologist may change his/her Home State affiliation. The Commission shall promptly notify the new Home State of any such actions as provided in the Rules of the Commission. All information provided to the Commission or distributed by Compact States shall be confidential, filed under seal and used for investigatory or disciplinary matters. The Commission may create additional rules for mandated or discretionary sharing of information by Compact States.

ARTICLE VIII

COORDINATED LICENSURE INFORMATION SYSTEM

- A. The Commission shall provide for the development and maintenance of a Coordinated Licensure Information System (Coordinated Database) and reporting system containing licensure and disciplinary action information on all licensees of Compact States.
- B. Notwithstanding any other provision of state law to the contrary, a Compact State shall submit a uniform data set to the Coordinated Database on all individuals to whom this Compact is applicable as required by the Rules of the Commission, including:
1. Identifying information;
 2. Licensure data;
 3. Significant investigatory information;
 4. Adverse actions against a psychologist's license;
 5. An indicator that a psychologist's Authority to Practice Interjurisdictional Telepsychology is revoked;
 6. Non-confidential information related to alternative program participation information;
 7. Any denial of application for licensure, and the reasons for such denial; and
 8. Other information which may facilitate the administration of this Compact, as determined by the Rules of the Commission.
- C. The Coordinated Database administrator shall promptly notify all Compact States of any adverse action taken against, or significant investigative information on, any licensee in a Compact State.
- D. Compact States contributing information to the Coordinated Database may designate information that may not be shared with the public without the express permission of the contributing state.

282 E. Any information submitted to the Coordinated Database that is subsequently required to be
283 expunged by the laws of the Compact State contributing the information shall be removed
284 from the Coordinated Database.

ARTICLE IX

ESTABLISHMENT OF THE INTERJURISDICTIONAL TELEPSYCHOLOGY

COMPACT COMMISSION

A. The Compact states hereby create and establish a joint public agency known as the Interjurisdictional Telepsychology Compact Commission.

1. The Commission is a body politic and an instrumentality of the Compact states.

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

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings

1. The Commission shall consist of one voting representative appointed by each Compact State who shall serve as that state's Commissioner. The Psychology Regulatory Board shall appoint its delegate. This delegate shall be empowered to act on behalf of the Compact State. This delegate shall be limited to:

A. Executive Director, executive secretary or similar executive;

B. Current member of the Psychology Licensure Regulatory Authority of a Compact State; OR

C. Such designee empowered with the appropriate delegate authority to act on behalf of the Compact State

2. Any Commissioner may be removed or suspended from office as provided by the law of the state from which the Commissioner is appointed. Any vacancy occurring in

the Commission shall be filled in accordance with the laws of the Compact State in which the vacancy exists.

3. Each Commissioner shall be entitled to one (1) vote with regard to the promulgation of Rules and creation of Bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission. A Commissioner shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for Commissioners' participation in meetings by telephone or other means of communication.
4. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.
5. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article X.
6. The Commission may convene in a closed, non-public meeting if the Commission must discuss:
 - a. Non-compliance of a Compact State with its obligations under the Compact;
 - b. The employment, compensation, discipline or other personnel matters, practices or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;
 - c. Current, threatened, or reasonably anticipated litigation;
 - d. Negotiation of contracts for the purchase or sale of goods, services or real estate;
 - e. Accusing any person of a crime or formally censuring any person;
 - f. Disclosure of trade secrets or commercial or financial information which is privileged or confidential;
 - g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

- 334 h. Disclosure of investigatory records compiled for law enforcement purposes;
- 335 i. Disclosure of information related to any investigatory reports prepared by or on
- 336 behalf of or for use of the Commission or other committee charged with
- 337 responsibility of investigation or determination of compliance issues pursuant to the
- 338 Compact; or
- 339 j. Matters specifically exempted from disclosure by federal and state statute.
- 340 7. If a meeting, or portion of a meeting, is closed pursuant to this provision, the
- 341 Commission's legal counsel or designee shall certify that the meeting may be closed
- 342 and shall reference each relevant exempting provision. The Commission shall keep
- 343 minutes which fully and clearly describe all matters discussed in a meeting and shall
- 344 provide a full and accurate summary of actions taken, and the reasons therefore,
- 345 including a description of the views expressed. All documents considered in
- 346 connection with an action shall be identified in such minutes. All minutes and
- 347 documents of a closed meeting shall remain under seal, subject to release by a
- 348 majority vote of the Commission or order of a court of competent jurisdiction.
- 349 C. The Commission shall, by a majority vote of the Commissioners, prescribe Bylaws
- 350 and/or Rules to govern its conduct as may be necessary or appropriate to carry out the
- 351 purposes and exercise the powers of the Compact, including but not limited to:
- 352 1. Establishing the fiscal year of the Commission;
- 353 2. Providing reasonable standards and procedures:
- 354 a. for the establishment and meetings of other committees; and
- 355 b. governing any general or specific delegation of any authority or function of the
- 356 Commission;
- 357 3. Providing reasonable procedures for calling and conducting meetings of the
- 358 Commission, ensuring reasonable advance notice of all meetings and providing an
- 359 opportunity for attendance of such meetings by interested parties, with enumerated

exceptions designed to protect the public's interest, the privacy of individuals, and proprietary information, including trade secrets. The Commission may meet in closed session only after a majority of the Commissioners vote to close a meeting in whole or in part. As soon as practicable, the Commission must make public a copy of the vote to close the meeting revealing the vote of each Commissioner with no proxy votes allowed;

4. Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the Commission;

5. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar laws of any Compact State, the bylaws shall exclusively govern the personnel policies and programs of the Commission;

6. Promulgating a code of ethics to address permissible and prohibited activities of Commission members and employees;

7. Providing a mechanism for winding up the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment and/or reserving of all of its debts and obligations;

8. The Commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the Compact States;

9. The Commission shall maintain its financial records in accordance with the Bylaws; and

10. The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the Bylaws.

D. The Commission shall have the following powers:

- 385 1. The authority to promulgate uniform rules to facilitate and coordinate implementation
386 and administration of this Compact. The rules shall have the force and effect of law
387 and shall be binding in all Compact States;
- 388 2. To bring and prosecute legal proceedings or actions in the name of the Commission,
389 provided that the standing of any State Psychology Regulatory Authority or other
390 regulatory body responsible for psychology licensure to sue or be sued under
391 applicable law shall not be affected;
- 392 3. To purchase and maintain insurance and bonds;
- 393 4. To borrow, accept or contract for services of personnel, including, but not limited to,
394 employees of a Compact State;
- 395 5. To hire employees, elect or appoint officers, fix compensation, define duties, grant
396 such individuals appropriate authority to carry out the purposes of the Compact, and
397 to establish the Commission's personnel policies and programs relating to conflicts of
398 interest, qualifications of personnel, and other related personnel matters;
- 399 6. To accept any and all appropriate donations and grants of money, equipment,
400 supplies, materials and services, and to receive, utilize and dispose of the same;
401 provided that at all times the Commission shall strive to avoid any appearance of
402 impropriety and/or conflict of interest;
- 403 7. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own,
404 hold, improve or use, any property, real, personal or mixed; provided that at all times
405 the Commission shall strive to avoid any appearance of impropriety;
- 406 8. To sell convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of
407 any property real, personal or mixed;
- 408 9. To establish a budget and make expenditures;
- 409 10. To borrow money;

11. To appoint committees, including advisory committees comprised of Members, State regulators, State legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the bylaws;

12. To provide and receive information from, and to cooperate with, law enforcement agencies;

13. To adopt and use an official seal; and

14. To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of psychology licensure and telepsychology practice.

E. Financing of the Commission

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

2. The Commission may accept any and all appropriate revenue sources, donations and grants of money, equipment, supplies, materials and services.

3. The Commission may levy on and collect an annual assessment from each Compact State or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission which shall promulgate a rule binding upon all Compact States.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of Compact States, except by and with the authority of the Compact State.

- 435 5. The Commission shall keep accurate accounts of all receipts and disbursements. The
436 receipts and disbursements of the Commission shall be subject to the audit and
437 accounting procedures established under its bylaws. However, all receipts and
438 disbursements of funds handled by the Commission shall be audited yearly by a
439 certified or licensed public accountant and the report of the audit shall be included in
440 and become part of the annual report of the Commission.

441 F. Qualified Immunity, Defense, and Indemnification

- 442 1. The members, officers, Executive Director, employees and representatives of the
443 Commission shall be immune from suit and liability, either personally or in their
444 official capacity, for any claim for damage to or loss of property or personal injury or
445 other civil liability caused by or arising out of any actual or alleged act, error or
446 omission that occurred, or that the person against whom the claim is made had a
447 reasonable basis for believing occurred within the scope of Commission employment,
448 duties or responsibilities; provided that nothing in this paragraph shall be construed to
449 protect any such person from suit and/or liability for any damage, loss, injury or
450 liability caused by the intentional or willful or wanton misconduct of that person.
- 451 2. The Commission shall defend any member, officer, Executive Director, employee or
452 representative of the Commission in any civil action seeking to impose liability
453 arising out of any actual or alleged act, error or omission that occurred within the
454 scope of Commission employment, duties or responsibilities, or that the person
455 against whom the claim is made had a reasonable basis for believing occurred within
456 the scope of Commission employment, duties or responsibilities; provided that
457 nothing herein shall be construed to prohibit that person from retaining his or her own
458 counsel; and provided further, that the actual or alleged act, error or omission did not
459 result from that person's intentional or willful or wanton misconduct.
- 460 3. The Commission shall indemnify and hold harmless any member, officer, Executive
461 Director, employee or representative of the Commission for the amount of any
462 settlement or judgment obtained against that person arising out of any actual or
463 alleged act, error or omission that occurred within the scope of Commission

164 employment, duties or responsibilities, or that such person had a reasonable basis for
465 believing occurred within the scope of Commission employment, duties or
466 responsibilities, provided that the actual or alleged act, error or omission did not
467 result from the intentional or willful or wanton misconduct of that person.

ARTICLE X

RULEMAKING

A. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

B. If a majority of the legislatures of the Compact States rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Compact, then such rule shall have no further force and effect in any Compact State.

C. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

D. Prior to promulgation and adoption of a final rule or rules by the Commission, and at least sixty (60) days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:

1. On the website of the Commission; and

2. On the website of each Compact State psychology licensing or the publication in which each state would otherwise publish proposed rules.

E. The Notice of Proposed Rulemaking shall include:

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

2. The text of the proposed rule or amendment and the reason for the proposed rule;

3. A request for comments on the proposed rule from any interested person; and

4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

F. Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions and arguments, which shall be made available to the public.

G. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. At least twenty-five (25) independent persons;
2. A governmental subdivision or agency; or
3. An association having at least twenty-five (25) members.

H. If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing.

1. All persons wishing to be heard at the hearing shall notify the Executive Director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five (5) business days before the scheduled date of the hearing.
2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.
3. No transcript of the hearing is required, unless a written request for a transcript is made, in which case the person requesting the transcript shall bear the cost of producing the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the Commission from making a transcript or recording of the hearing if it so chooses.
4. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

J. The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

K. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.

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

1. Meet an imminent threat to public health, safety, or welfare;
2. Prevent a loss of Commission or Compact State funds;
3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or
4. Protect public health and safety.

M. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule.

540 A challenge shall be made in writing, and delivered to the Chair of the Commission prior
541 to the end of the notice period. If no challenge is made, the revision will take effect
542 without further action. If the revision is challenged, the revision may not take effect
543 without the approval of the Commission.

ARTICLE XI

OVERSIGHT, DISPUTE RESOLUTION AND ENFORCEMENT

A. Oversight

1. The executive, legislative and judicial branches of state government in each Compact State shall enforce this Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of this Compact and the rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the Compact and the rules in any judicial or administrative proceeding in a Compact State pertaining to the subject matter of this Compact which may affect the powers, responsibilities or actions of the Commission.

3. The Commission shall be entitled to receive service of process in any such proceeding, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact or promulgated rules.

B. Default, Technical Assistance, and Termination

1. If the Commission determines that a Compact State has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated rules, the Commission shall:

A. Provide written notice to the defaulting state and other Compact States of the nature of the default, the proposed means of curing the default and/or any other action to be taken by the Commission; and

B. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the Compact States, and all rights, privileges and benefits conferred by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.
3. Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the Governor, the majority and minority leaders of the defaulting state's legislature, and each of the Compact States.
4. A Compact State which has been terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of termination, including obligations which extend beyond the effective date of termination.
5. The Commission shall not bear any costs related to a state which is found to be in default or which has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting state.
6. The defaulting state may appeal the action of the Commission by petitioning the U.S. District Court for the state of Georgia or the federal district where the Compact has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

C. Dispute Resolution

1. Upon request by a Compact State, the Commission shall attempt to resolve disputes related to the Compact which arise among Compact States and between Compact and Non-Compact States.

589 2. The Commission shall promulgate a rule providing for both mediation and binding
590 dispute resolution for disputes as appropriate.

591 D. Enforcement

592 1. The Commission, in the reasonable exercise of its discretion, shall enforce the
593 provisions and rules of this Compact.

594 2. By majority vote, the Commission may initiate legal action in the United States
595 District Court for the State of Georgia or the federal district where the Compact has
596 its principal offices against a Compact State in default to enforce compliance with the
597 provisions of the Compact and its promulgated rules and bylaws. The relief sought
598 may include both injunctive relief and damages. In the event judicial enforcement is
599 necessary, the prevailing member shall be awarded all costs of such litigation,
600 including reasonable attorney's fees.

601 3. The remedies herein shall not be the exclusive remedies of the Commission. The
602 Commission may pursue any other remedies available under federal or state law.

ARTICLE XII

**DATE OF IMPLEMENTATION OF INTERSTATE COMMISSION FOR
TELEPSYCHOLOGY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND
AMENDMENT**

A. The Compact shall come into effect on the date on which the Compact is enacted into law in the seventh Compact State. The provisions which become effective at that time shall be limited to the powers granted to the Commission relating to assembly and the promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the Compact.

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

C. Any Compact State may withdraw from this Compact by enacting a statute repealing the same.

1. A Compact State's withdrawal shall not take effect until six (6) months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing State's Psychology Regulatory Authority to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.

D. Nothing contained in this Compact shall be construed to invalidate or prevent any psychology licensure agreement or other cooperative arrangement between a Compact State and a Non-Compact State which does not conflict with the provisions of this Compact.

628 E. This Compact may be amended by the Compact States. No amendment to this Compact
629 shall become effective and binding upon any Compact State until it is enacted into the
630 laws of all Compact States.

ARTICLE XIII

CONSTRUCTION AND SEVERABILITY

531
632
633 This Compact shall be liberally construed so as to effectuate the purposes thereof. If this
634 Compact shall be held contrary to the constitution of any state member thereto, the Compact
635 shall remain in full force and effect as to the remaining Compact States.

Overview of Interstate Compacts

Background Information: Interstate Compacts

An interstate compact is an agreement between states to enact legislation and enter into a contract for a specific, limited purpose or address a particular policy issue. Compact agreements are unique in their duality as statute and contract. Once a state ratifies a compact, the provisions of the compact take precedence over conflicting state laws. In order to take effect, compacts must have adoption by at least two states. However, many modern compacts are drafted in a way to not become effective until an established number of states have joined.¹

There are more than 200 interstate compacts currently in existence today and any one state is on average a member of 25 interstate compacts².

Healthcare Professions: Interstate Compacts

At this time, nursing is the only profession with an interstate compact. However, many other professions are reviewing its use to facilitate mobility. The Federation of State Medical Boards (FSMB) has reallocated a portion of its Licensure Portability Grant (the same grant ASPPB was awarded) to pursue an interstate compact for physicians. Emergency Management is currently finalizing its interstate compact language. Physical Therapy has passed a motion to pursue interstate compacts.

The nursing compact and any other compact from the healthcare profession would be a regulatory compact. Regulatory compacts were developed in the 20th century to cover a wide range of policy topics. The type of compact being proposed by the ASPPB Telepsychology Task Force (ASPPB TTF) would serve as the mechanism to provide practice across state lines, while the state professional practice act still remains as the authority to regulate profession practice in the state.³

Why a Compact for Telepsychology?

A properly drafted compact facilitates the practice of telepsychology by offering legal recognition to individuals properly licensed in their jurisdiction of origin to practice telepsychology across jurisdictional lines. It is important to note that the interstate compact would not circumvent licensure within jurisdictions for the in-person practice of psychology based upon licensure in one home jurisdiction. It is specific to the provision of telepsychological services across jurisdictions, not within the boundaries of the home jurisdictions.

Many issues surrounding regulating telepsychology revolve around complaints and disciplinary sanctions. A compact can be drafted to include specific criteria regarding the handling of

complaints. The compact can grant the authority to the remote state to take action against a psychologist for an infraction in that state. The compact can also be drafted to require all parties of the compact to share significant information relevant to any current investigations and report all disciplinary actions to the ASPPB Disciplinary Data System. Many states do not currently have the authority to share investigation information and in some cases may not have the authority to discipline unlicensed psychologists within their state. Since the compact is a legal document, the criteria becomes legally binding on the parties to the compact.

Although ASPPB could promote the E.Passport much as it did the CPQ, a contract between jurisdictions would be needed for the E.Passport. A contract lends itself to being modified by each jurisdiction allowing for variation in content. While a compact has established language and would provide consistent language across the participating jurisdictions.

Feasibility of ASPPB as the Facilitator of an Interstate Compact

Many of ASPPB's current initiatives would work well with the management of a compact. First, the ASPPB Disciplinary Data System would provide information to compact members regarding disciplined psychologists. Also, the PLUS is working to get licensure information standardized and to expedite the licensure process. Since the E.Passport will be added as criteria to the compact, being able to manage a certification program will be essential. The CPQ program has successfully existed since 1998, and the E.Passport could be housed within the ASPPB Mobility Program.

Conclusion

Interstate compacts are not a new idea. Compacts can be drafted in such a way as to promote the profession while protecting the public. Unfortunately, due to the Nursing Compact, many people have a negative reaction to interstate compacts. It needs to be noted that the Nursing Compact currently has 24 members and is expecting several new members within the next two years. It should also be noted that ASPPB TTF is not recommending following the Nursing Compact model but has drafted a telepsychology compact that works to meet the needs of the psychology profession.

¹ The Council of State Governments. Best Practices in Compact Development.
<http://knowledgecenter.csg.org/kc/content/best-practices-compact-development> Accessed September 20, 2013.

² The Council of State Governments. 10 Frequently Asked Questions.
<http://www.csg.org/knowledgecenter/docs/ncic/CompactFAQ.pdf>. Accessed October 3, 2013.

³ The Council of State Governments. Best Practices in Compact Development.
<http://knowledgecenter.csg.org/kc/content/best-practices-compact-development> Accessed September 20, 2013.

CALIFORNIA STATE BOARD OF PSYCHOLOGY
ASSOCIATION OF STATE AND PROVINCIAL PSYCHOLOGY BOARDS (ASPPB)
INTERJURISDICTIONAL TELEPSYCHOLOGY COMPACT ANALYSIS

The Board is committed to exploring options and developing and implementing strategies that are reflective of technological changes that maximize consumer protection and access to psychological services.

Background:

States that currently have Telehealth/ Telepsychology statutes and/or regulations include: Arizona, California, Delaware, Georgia, Idaho, Kentucky, New Hampshire, Ohio, Oklahoma, Texas, and Vermont.

States that currently specifically include telepsychology in the definition of the "Practice of Psychology" include: California, Florida, Georgia, Kansas, Kentucky, Mississippi, Montana, New Hampshire, North Dakota, Ohio, South Carolina, Utah, Vermont, and Wisconsin.

States that currently have Telehealth Coverage Mandate include: Arizona, California, Colorado, Georgia, Hawaii, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota (only for Medicaid), Mississippi, Missouri, Montana, Nebraska (only for Medicaid), New Hampshire, New Mexico, Oklahoma, Oregon, Texas, Vermont, and Virginia.

States that currently provide a Temporary/Guest Practice Provision include all states EXCEPT Arkansas and Connecticut.

In California, the Telemedicine Development Act of 1996 (TDA) was established by SB 1665 (Thompson, Chapter 864, Statutes of 1996), making California one of the first states to utilize telemedicine (now referred to as "telehealth").

AB 415 (Logue, Chapter 547, Statutes of 2011) updated the TDA by removing the term "telemedicine," and its corresponding outdated definition. In its place, the term "telehealth" was used, and telehealth was defined to include a broader, more current range of services.

AB 809 (Logue, Chapter 404, Statutes of 2014), which became effective on September 18, 2014, amended the TDA to delete the requirement that the health care provider obtain informed consent at the originating site, and permitted consent to be made verbally or in writing.

In addition, this statute corrected the problem of requiring consent prior to every instance of telehealth by making an amendment stating that the initial consent applies to subsequent instances of telehealth. Instead, it requires the documented written or oral permission to have been received prior to beginning telehealth.

Existing CA Law:

1) Requires valid licensure to provide telehealth services to California residents; telehealth includes live interactive and store and forward technologies; patient's verbal consent must be

obtained prior to delivery of telehealth services and documented in the patient's medical record. Failure to obtain patient consent in advance constitutes unprofessional conduct (BPC §§ 2904.5, 2290.5)

2) Allows any person who is licensed as a psychologist at the doctoral level in another state or territory of the United States or in Canada can provide psychological services in this state for a period not to exceed 30 days in any calendar year (BPC §2912)

3) Defines "telehealth" as the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management and self-management of a patient's health care while the patient is at the originating site and the health care provider is at a distant site.

4) Requires a health care provider to verbally inform the patient that telehealth may be used, obtain verbal or written consent from the patient for this use and requires the consent to be documented.

5) Establishes that failure to inform the patient that telehealth may be used and to obtain their informed consent constitutes unprofessional conduct.

6) States that all laws regarding the confidentiality of health care information and a patient's rights to his/her medical information apply to telehealth interactions.

Analysis

Pros:

The Board's participation in such a compact would allow for portability for licensees to practice freely via telehealth between compact states.

The 'Overview of Interstate Compacts' also raises the possibility that the Board could proceed with complaints against licensees in another jurisdiction. There is also mention of the possibility of sharing information on current investigations. These are desirable features of any Compact.

The compact can grant the authority to the remote state (where the patient is located) to take action against a psychologist for an infraction in that state. The compact can also be drafted to require all parties of the compact to share significant information relevant to any current investigations and report all disciplinary actions to the ASPPB Disciplinary Data System. ('Overview of Interstate Compacts' p.2)

Cons:

1. Article VI of the Compact would deprive some CA psychologists of the ability to perform interjurisdictional telepsychology if they graduated from a CA "approved school". Article VI of the Compact reads in part;

Hold a graduate degree in psychology from an institute of higher education that was, at the time of the degree was awarded:

A. Regionally accredited by an accrediting body recognized by the U.S. Department of Education to grant graduate degrees, OR authorized by Provincial statute or Royal Charter to grant doctoral degrees (Article VI p. 7);

Section 2914 of the Business and Professions Code requires each applicant for licensure to possess a doctoral degree in psychology, educational psychology, or in education with a field of specialization in counseling psychology or educational psychology from a regionally accredited educational institution in the United States or Canada, or from an educational institution in California that is approved by the BPPE.

2. The Boards' ability to investigate complaints and pursue disciplinary action across state lines could be negatively impacted. There is a possibility mentioned in the 'Overview of Interstate Compacts' provided by ASPPB that the Board could proceed with disciplinary action against a licensee of a home state, but this language is currently not in the compact. The Board could only seek the removal of the licensee's ability to practice telepsychology. (Article VII p. 13 Lines 245-246)

3. 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, would be owned and operated by a nongovernmental agency. It is unclear at this time who will be the "administrator" of the database. (Article VIII p. 14-15)

4. The model presumes and requires the Board to recognize the E. Passport (see below).

5. Furthermore, it is a complex system, which would require legislative involvement and concurrence by each state whenever a change in compact language is necessary. (Article XII E p. 32) The Compact requires participation of seven (7) states before it would become effective.

6. Similar compacts have been initiated in other practice areas such as nursing (BRN). California is not part of the 24 participating states in the compact for boards of registered nursing. The Board has reached out to BRN to gather information regarding concerns they had which barred them from participating in a compact.

E.Passport

The Compact will only be possible between states that recognize the E.Passport. The E.Passport will allow licensees who are eligible to qualify to practice telepsychology on patients in other states that recognize the E.Passport. The E.Passport standards and rules have not yet been formalized and promulgated by ASPPB.

Staff Recommendation:

Board Staff does not recommend participating in the compact at this time. Staff recommend the Board instead wait for the compact to be finalized and approved before making any necessary statutory and regulatory amendments that would not preclude us from practicing telepsychology across state lines.

