



## **What Do PT Boards Need to Know About the PT Licensure Compact Commission?**

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Like most compacts the Physical Therapy Licensure Compact ('PTLC') is 'statutory,' and therefore enforceable within each member state and 'contractual' in terms of the relationships among the member states.<sup>i</sup> As a contract between the member states codified by statute, PTLC, like other compacts supersedes state laws that are inconsistent with the terms of the compact under the Contract Clause of the U.S. Constitution. Therefore, the member states may not take unilateral actions, such as the adoption of conflicting legislation or the issuance of executive orders or court rules that violate the terms of a compact.

As is the case with other compacts, the PTLC establishes a governing structure consisting of compact administrators who are authorized to make rules governing the implementation of the PTLC. Because it is created by legislative enactment by the states, the compact entities (PTLC Commission in this case), which have been delegated authority to make administrative rules, are, in effect, government administrative agencies.

The PTLC statute delegates to the PTLC Compact Commission the power to promulgate rules which under the PTLC for the purposes of implementation of the interstate recognition of licenses which are binding in the compact member states. This approach to interstate regulation is common for interstate compacts which 'govern complex, high-volume transactions or that address ongoing multistate concerns requiring the development of shared regulatory solutions' and which require oversight for the implementation and administration of compact activities.<sup>ii</sup> However, the rules promulgated must only apply to the governance, administration, and function of the PTLC,

not the practice of physical therapy as a whole. For example, the PTLC Commission may promulgate a rule that a member state must have unrestricted direct access in place; in order to become or stay a member of the PTLC, the state must have direct access. If the state does not have direct access, the state would leave the PTLC because it does not meet the requirements of a “member state.” The PTLC Commission does not have the authority to re-write the practice act of its member states through its rulemaking abilities.

The authority of a State legislature to create such an interstate agency and to empower it with regulatory authority has been recognized by the U.S. Supreme Court. One of the ‘axioms of modern government’ is the ability of a state legislature to delegate to an administrative body the power to make rules and decide particular cases. This delegation of authority extends to the creation of interstate commissions through the vehicle of an interstate compact.<sup>iii</sup> It has been held that the states may validly agree by interstate compact with other states to delegate to interstate commissions or agencies both legislative and administrative powers and duties.<sup>iv</sup>

Based upon the above analysis of the relationship by and between the PTLC Commission and the Compact Commissioners whose relationship for purposes of carrying out the governmental function of mutual recognition of physical therapy licenses is that of a joint public agency,” and an “instrumentality of the Compacting States.” Under such an analysis, its tax status can also be classified as that of a governmental instrumentality rather than a private, not for profit corporation. Under such an analysis, the PTLC Commission is an entity which also qualifies for a ‘receipts-based’ IRC §115(1) federal income tax exclusion as have other unincorporated organizations formed pursuant to an interstate compact which have also successfully obtained private letter rulings (‘PLR’) in which such status was recognized by the IRS.<sup>v</sup> Such status will allow the Commission to avoid the potential argument that it has waived sovereign immunity for purposes of any legal liability to third parties as well as a defense against the argument that as a not for profit corporation, the PTLC Commission rules aren’t valid because such rulemaking authority can’t be delegated to a private corporate entity. Moreover, this will also allow the Commission to be exempt from the requirements otherwise applicable to tax reporting such as the annual filing of IRS Form 990 which in the past has caused problems for other such organizations which led to revocation of the exempt status due to previous failure to file these forms and related compliance issues.



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Rick has been involved in extensive research and writing in the field of interstate compacts and has published a wide variety of law review articles, bench books used by state court judges, and other publications concerning the law and use of interstate compacts. He is also the co-author of the most comprehensive compilation of legal authorities and commentary on the subject published by the American Bar Association in 2007 entitled *The Evolving Use and Changing Role of Interstate Compacts: A Practitioner's Guide*.

Rick received his Juris Doctorate from the Brandeis School of Law of the University of Louisville and his B.A. from Asbury University. He is a former Assistant Attorney General for the Commonwealth of Kentucky and also served as General Counsel to the Council of State Governments. He was recently asked by Kentucky Governor Steve Beshear to serve as a Special Justice to the Kentucky Supreme Court and was appointed by the Governor in November 2012 to serve a four (4) year term as a Commissioner on the Executive Branch Ethics Commission.

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<sup>i</sup> *Broun, Buenger, Masters & McCabe, The Evolving Use and Changing Role of Interstate Compacts: A Practitioner's Guide*, ABA, 2076 at pp. 163.

<sup>ii</sup> *Broun, Buenger, Masters & McCabe, The Evolving Use and Changing Role of Interstate Compacts: A Practitioner's Guide*, ABA, 2006 at pp. 140-147.

<sup>iii</sup> *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 30 (1951).

<sup>iv</sup> *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92 (1938); *Scott v. Virginia*, 676 S.E.2d 343, 346 (Va. App. 2009); *Dutton v. Tawes*, 171 A.2d 688 (Md. 1961); *Application of Waterfront Commission of New York Harbor*, 120 A.2d 504, 509 (N.J. Super. 1956).

<sup>v</sup> See PLRs 9831025, 9830006 (regional low-level radioactive waste compact), 9401010, 8622034 (regional low-level radioactive waste compact); 8544015 (fisheries management compact); 85442010, and 8243165 (regional energy research and development compact).