



## **The Political Aspects of the PT Licensure Compact**

*This article is based on a presentation by Sen. Bo Watson, PT, Tennessee General Assembly, at the 2015 FSBPT Annual Meeting.*

*View the latest information on the PT Licensure Compact at the [Physical Therapy Licensure Compact webpage](#).*

This session focused on the political aspects of a PT compact, how state legislators may react to the proposal, how legislators think, how the legislative process works, and the importance of being involved in the political process.

### **Understanding your legislator**

Most legislators will have very little idea what it is you're asking of them. There are very few health practitioners, and particularly physical therapists, in state legislatures. Assume they know nothing — but treat them like they're the smartest person you ever met.

The technical part of the compact really isn't a legislator's concern. They are big idea people and will leave it to the experts to work out the details. Just tell them why they need to vote for this.

If you really want to get a legislator's attention, bring in people who vote. It's a fallacy that legislators take a position to get re-elected. Legislators take a position because they believe it's what the majority in their district wants, and when legislators do that, they get re-elected. So if a group of PTs from that person's district come in and say, "Hey, this is our idea, we want you to consider it," that will carry a lot more weight than if it comes from an administrator, a regulator, or most of all a lobbyist. Someone who is out in the field practicing and taking their own time and resources to help police their group is going to be much more influential.

If a legislator brushes you off initially, do not write a nasty note saying how stupid they are. Your enemy today may be your friend tomorrow. And, as Abraham Lincoln said, you attract more flies with honey than vinegar. It's best to work with the legislator. Perhaps they have been fed misinformation, or they don't understand the issue, or something in their home district has them uncomfortable with the issue. Legislators are pulled in many different directions and the issue most important to you may not be the issue that's most important to them.

Likewise, don't make things up. It's better to say, "I don't know, but I'll get that information for you." Because if you make something up, your opposition will jump on that and say, "They lied to you." Then the game is up.

Just because you show up at your state capital with an idea that is common sense, rational, and logical doesn't mean the people inside that building think rationally, logically, or with common sense. It's a political place and legislators have many different forces pulling at them at any one time. And sometimes it can take a while for a legislator to see the rationale, logic, or just common sense behind an idea.

In the clinical world, facts are reality. In the political world, perception is reality. If an opponent can convince the legislator a compact will have a negative economic impact on our licensing boards, then someone will have to convince him otherwise. Then there's the state superiority complex. Every state believes it is the best. But when you agree to a compact, you have to find common ground. One state may say, well you know, we require a lot more continuing education units than State B, and we're not going to lower our standards to that level.

There are three factors to a legislator's thinking. Am I the smartest person in the room? Yes, you are. Second, is this my idea? Well, yes it is. And third, is any other state doing it? Because legislators don't want to be the last on board, but they don't want to get too far out on a limb either. And if you can show them another state is doing it, it gives them cover and another state to blame if something goes wrong.

The late U.S. Supreme Court Justice Louis Brandeis once said states are the laboratories of democracy. States do learn from each other. And when legislators meet and discuss ideas with legislators from a state that already has been through the process, they'll say, "Here's what we did that didn't work."

The PT compact has been written by and large by physical therapists. Its ownership is by those it will apply to. And legislators love that because they don't have a lobbyist or some law firm telling them what they need or don't need to do. What they have is a professional organization coming in and saying we think this is good for our fellow professionals. We think this is good for healthcare in Tennessee. We actually believe this is good for healthcare in the southeast region of the United States. And we believe this is going to help with employment and economic development because today it costs PTs a lot to practice and be licensed in neighboring states. But if we do this, we think we can save your constituents money.

If your state only borders one other state or you don't have any metropolitan areas that border another state, it might not make sense for you to enter into compacts. But if you're a state like Tennessee, where you have eight states around you, you are considered one of the healthcare pivot points in the southeast United States.

#### Understanding the legislative process

All states have compacts. They are constitutionally based. A compact is nothing more than a contractual agreement between states. PTs aren't the only healthcare occupation pursuing compacts. Nurses have had one for a long time. EMS providers are pursuing compacts, spurred by the Katrina crisis in New Orleans. At the time, it was illegal for EMS personnel to cross state lines to help out. Physicians are looking at compacts because of mobility.

The most common compact all states recognize is the driver's license compact. It's an agreement between the states that one state will recognize another state's driver's license is valid for someone to operate a motor vehicle in that state. A legislator who sits on an oversight committee is probably already aware of compacts. A legislator who sits on an operational committee, like a health committee, may not know much about them.

Your legislator's interest may not be in healthcare, so you have to find out. If you have a lobbyist they can help. You need to find out who in the caucus everyone looks to for answers on that subject, who the committee chair looks to for advice on this issue.

Knowing if your state engages in the nurse compact is important. If your state opted not to participate in the nurse compact, you need to understand why because your opponents are probably planning to use the same arguments they used on the nurse compact. With knowledge, you can counter with the argument that we're not in the nursing compact because they did this, this, and this, and that's what this compact avoids.

One big misinformation issue about compacts is that compacts are a means to nationalize a health licensure rule. ALEC, the American Legislative Exchange Council, a very conservative group, has been pushing this idea. If you live in the Southeast, there is nothing worse you can do to a piece of legislation than to tell them the federal government is going to do it for you. But the opposite is actually true. Compacts are the states' defense against nationalization. This is not Germany, which is a nationalistic country. Germany writes a law and it applies to everyone in the country universally. The United States is a federation. There are only a small number of things the federal government can tell states to do.

One major difference between compacts and national licensure is you can get out of a compact.

Choose a compact your state already has — veterans, juvenile justice — and ask the legislator, "Is this nationalization?" They'll have to say no. Then you can say, "Well, there's no difference."

There have been bills introduced by Congress to try to nationalize healthcare licensure. The avenue to do it is to make healthcare an interstate commerce function, which would invoke the commerce clause of the Fourth Amendment of the U.S. Constitution. The interstate commerce argument was used in the Affordable Care Act debate on how Congress could implement national healthcare policy. You would say that healthcare occurs across state lines and when commerce extends across state lines the federal government has the opportunity to take jurisdiction.

States need to realize this is occurring, so they had best figure out a way they can collectively agree on what the standards would be for licensures across several states to negate it.

Tennessee probably has about 50 or 60 compacts. They all have sunset clauses so periodically the legislature has to review them. That means Tennessee could pull itself out of the driver's license compact if it chose to. Perhaps one of the oldest compacts is the juvenile compact, whereby a juvenile can be returned to his state without having to go through a legal tangle.

At the end of the day, a lot of decisions made in state capitols are done on financial implications.

We can talk about public safety. We can say it's good for the children. But when you boil all that away, you end up in a discussion on what it will cost the state. So on the compact, eventually your finance committee is going to say, "OK, this is a good idea. We like it. We really want to do it. What's it cost?" All your states have a committee or other entity that puts a fiscal price tag on legislation. And they will bring it to the finance committee and say we are going to lose so many positions that will cost X number of dollars, but for every position we lose, we will bring in X number more because our price is lower and they can afford to come in. The nurse compact has proven that paying less in-state is pretty much neutralized by the number of new licensees from out-of-state.

We've been trying to craft this so there is minimal financial impact. But a financial impact is an impact.

You have to understand how your legislature works, how a bill becomes a law. Each state has its nuances. But you need to know when a bill is introduced who the sponsor is and what committee it goes to. The first step is you have to move it out of committee. So you find out who are the committee members. Are legislators from your area on that committee? Are they a ranking member? Do they have influence on the committee? Are they the go-to person on this type of issue? If not, then go to her because she's the go-to person on the committee. A lobbyist can help you figure that out but a lobbyist cannot do that for you. It has to be from the people who are affected by the compact.

It's often a long process. Sometimes a bill that seems like a slam dunk is hung up for whatever reason and you just have to massage it through. Committees probably will want some testimony. So groom your best speaker to articulate your position before the committee and answer any questions the committee has. Be able to answer the questions when they're not in favor of what you want to do too.

Be involved in the process

Clinical people tend to get very frustrated with the political nature of the legislature.

But PTs need to be involved in the process because whether it's compact legislation or other legislation, citizens speak louder than any lobbyist, any organization, or any consultant you can hire. Citizens from the legislator's district speak louder than anyone. What you do is determined and governed by a bunch of people who have no idea what you do. So you have to inform them.

There's a saying in the political world that if you're not sitting at the table, then we're probably having you for dinner. In Tennessee, there is no income tax. So to increase revenues, the legislature instituted a professional fee for the privilege of being licensed in Tennessee. Doctors, lawyers, and engineers are among those hit with the tax. PTs were at the table and made the argument why they shouldn't have to pay the tax. They don't. Nurses were at the table and made the argument why they shouldn't have to pay the tax. They don't. Speech pathologists do, because they weren't at the table. A legislature acts on critical mass.

One of the questions that comes up is how much are licenses going to cost. And a lot of that is

done through rule-making after the compact passes. And one of the arguments for having a seat at the table is then you get to help write those rules.

The first 10 or 15 states that opt in are the ones that will structure the rules and regulations that guide the compact. Reserving a seat at the table early puts you in a good position relative to the compact.

Healthcare is changing and we don't know what scopes of practice are going to look like five years from now as we bring in another 50 million people who didn't have access to healthcare before. So being involved in this conversation will get you involved in other healthcare decisions as we move forward and legislators begin to understand who physical therapists are, what they do, and what they can bring to the table.



**Senator Bo Watson** is a member of the Tennessee Senate. He was first elected as a State Senator for the 105th Tennessee General Assembly, having previously served as a State Representative during the 104th General Assembly. Bo represents the 11th district, which encompasses part of Hamilton County. In July 2011, he became Speaker Pro Tempore of the Tennessee Senate. Bo graduated Magna Cum Laude from the University of Tennessee at Chattanooga in 1983 with a B.A. in Biology and received his education and training in physical therapy at the University of Tennessee Center for Health Sciences in Memphis, Tennessee.