

1 AN ACT relating to respiratory care.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 314A IS CREATED TO
4 READ AS FOLLOWS:

5 **RESPIRATORY CARE INTERSTATE COMPACT**

6 **SECTION 1.**

7 **TITLE AND PURPOSE**

8 **A. The purpose of this compact is to facilitate the interstate practice of respiratory**
9 **therapy with the goal of improving public access to respiratory therapy services by**
10 **providing respiratory therapists licensed in a member state the ability to practice**
11 **in other member states. This compact preserves the regulatory authority of states**
12 **to protect public health and safety through the current system of state licensure.**

13 **B. This compact is designed to achieve the following objectives:**

14 **1. Increase public access to respiratory therapy services by creating a**
15 **responsible, streamlined pathway for licensees to practice in member states**
16 **with the goal of improving outcomes for patients;**

17 **2. Enhance states' ability to protect the public's health and safety;**

18 **3. Promote the cooperation of member states in regulating the practice of**
19 **respiratory therapy within those member states;**

20 **4. Ease administrative burdens on states by encouraging the cooperation of**
21 **member states in regulating multistate respiratory therapy practice;**

22 **5. Support relocating active military members and their spouses; and**

23 **6. Promote mobility and address workforce shortages.**

24 **SECTION 2.**

25 **DEFINITIONS**

26 **As used in this compact, unless the context requires otherwise, the following**
27 **definitions shall apply:**

- 1 A. "Active military member" means any person with a full-time duty status in the
2 Armed Forces of the United States, including members of the National Guard
3 and Reserve;
- 4 B. "Adverse action" means any administrative, civil, equitable, or criminal action
5 permitted by a state's laws which is imposed by any state authority with
6 regulatory authority over respiratory therapists, such as license denial, censure,
7 revocation, suspension, probation, monitoring of the licensee, or restriction on
8 the licensee's practice, not including participation in an alternative program;
- 9 C. "Alternative program" means a nondisciplinary monitoring or practice
10 remediation process applicable to a respiratory therapist approved by any state
11 authority with regulatory authority over respiratory therapists. This includes but
12 is not limited to programs to which licensees with substance abuse or addiction
13 issues are referred in lieu of adverse action;
- 14 D. "Charter member states" means those member states who were the first seven (7)
15 states to enact the compact into the laws of their state;
- 16 E. "Commission" or "Respiratory Care Interstate Compact Commission" means the
17 government instrumentality and body politic whose membership consists of all
18 member states that have enacted the compact;
- 19 F. "Commissioner" means the individual appointed by a member state to serve as
20 the member of the commission for that member state;
- 21 G. "Compact" means the Respiratory Care Interstate Compact;
- 22 H. "Compact privilege" means the authorization granted by a remote state to allow a
23 licensee from another member state to practice as a respiratory therapist in the
24 remote state under the remote state's laws and rules. The practice of respiratory
25 therapy occurs in the member state where the patient is located at the time of the
26 patient encounter;
- 27 I. "Criminal background check" means the submission by the member state of

1 fingerprints or other biometric-based information on license applicants at the
2 time of initial licensing for the purpose of obtaining that applicant's criminal
3 history record information, as defined in 28 C.F.R. sec. 20.3(d) or successor
4 provision, from the Federal Bureau of Investigation and the state's criminal
5 history record repository, as defined in 28 C.F.R. sec. 20.3(f) or successor
6 provision;

7 J. "Data system" means the commission's repository of information about licensees
8 as further set forth in Section 8 of this compact;

9 K. "Domicile" means the jurisdiction which is the licensee's principal home for
10 legal purposes;

11 L. "Encumbered license" means a license that a state's respiratory therapy
12 licensing authority has limited in any way;

13 M. "Executive committee" means a group of directors elected or appointed to act on
14 behalf of, and within the powers granted to them by, the commission;

15 N. "Home state" except as set forth in Section 5 of this compact, means the member
16 state that is the licensee's primary domicile;

17 O. "Home state license" means an active license to practice respiratory therapy in a
18 home state that is not an encumbered license;

19 P. "Jurisprudence requirement" means an assessment of an individual's knowledge
20 of the state laws and regulations governing the practice of respiratory therapy in
21 such state;

22 Q. "Licensee" means an individual who currently holds an authorization from the
23 state to practice as a respiratory therapist;

24 R. "Member state" means a state that has enacted the compact and been admitted to
25 the commission in accordance with the provisions herein and commission rules;

26 S. "Model compact" means the model for the Respiratory Care Interstate Compact
27 on file with the Council of State Governments or other entity as designated by the

1 commission;

2 T. "Remote state" means a member state where a licensee is exercising or seeking to
3 exercise the compact privilege;

4 U. "Respiratory therapist" or "respiratory care practitioner" means an individual
5 who holds a credential issued by the National Board for Respiratory Care, or its
6 successor, and holds a license in a state to practice respiratory therapy. For
7 purposes of this compact, any other title or status adopted by a state to replace the
8 term "respiratory therapist" or "respiratory care practitioner" shall be deemed
9 synonymous with "respiratory therapist" and shall confer the same rights and
10 responsibilities to the licensee under the provisions of this compact at the time of
11 its enactment;

12 V. "Respiratory therapy," "respiratory therapy practice," "respiratory care," "the
13 practice of respiratory care," and "the practice of respiratory therapy" means the
14 care and services provided by or under the direction and supervision of a
15 respiratory therapist or respiratory care practitioner;

16 W. "Respiratory therapy licensing authority" means the agency, board, or other
17 body of a state that is responsible for licensing and regulation of respiratory
18 therapists;

19 X. "Rule" means a regulation promulgated by the commission that has the force
20 and effect of law;

21 Y. "Scope of practice" means the procedures, actions, and processes a respiratory
22 therapist licensed in a state or practicing under a compact privilege in a state is
23 permitted to undertake in that state and the circumstances under which the
24 respiratory therapist is permitted to undertake those procedures, actions, and
25 processes. Such procedures, actions, and processes, and the circumstances under
26 which they may be undertaken, may be established through means, including but
27 not limited to statutes, regulations, case law, and other processes available to the

1 state respiratory therapy licensing authority or other government agency;

2 Z. "Significant investigative information" means information, records, and
3 documents received or generated by a state respiratory therapy licensing authority
4 pursuant to an investigation for which a determination has been made that there
5 is probable cause to believe that the licensee has violated a statute or regulation
6 that is considered more than a minor infraction for which the state respiratory
7 therapy licensing authority could pursue adverse action against the licensee; and
8 AA. "State" means any state, commonwealth, district, or territory of the United States.

9 SECTION 3.

10 STATE PARTICIPATION IN THIS COMPACT

11 A. In order to participate in this compact and thereafter continue as a member state,
12 a member state shall:
13 1. Enact a compact that is not materially different from the model compact;
14 2. License respiratory therapists;
15 3. Participate in the commission's data system;
16 4. Have a mechanism in place for receiving and investigating complaints
17 against licensees and compact privilege holders;
18 5. Notify the commission, in compliance with the terms of this compact and
19 commission rules, of any adverse action against a licensee, a compact
20 privilege holder, or a license applicant;
21 6. Notify the commission, in compliance with the terms of this compact and
22 commission rules, of the existence of significant investigative information;
23 7. Comply with the rules of the commission;
24 8. Grant the compact privilege to a holder of an active home state license and
25 otherwise meet the applicable requirements of Section 4 of this compact in a
26 member state; and
27 9. a. Complete a criminal background check for each new licensee at the

1 time of initial licensure.

2 b. Where expressly authorized or permitted by federal law, whether such
3 federal law is in effect prior to, at, or after the time of a member state's
4 enactment of this compact, a member state's enactment of this
5 compact shall hereby authorize the member state's respiratory therapy
6 licensing authority to perform criminal background checks as defined
7 in Section 2 of this compact. The absence of such a federal law as
8 described in this subsection shall not prevent or preclude such
9 authorization where it may be derived or granted through means other
10 than the enactment of this compact.

11 B. Nothing in this compact prohibits a member state from charging a fee for
12 granting and renewing the compact privilege.

13 SECTION 4.

14 COMPACT PRIVILEGE

15 A. To exercise the compact privilege under the terms and provisions of the compact,
16 the licensee shall:

17 1. Hold and maintain an active home state license as a respiratory therapist;

18 2. Hold and maintain an active credential from the National Board for
19 Respiratory Care, or its successor, that would qualify them for licensure in
20 the remote state in which they are seeking the compact privilege;

21 3. Have not had any adverse action against a license within the previous two
22 (2) years;

23 4. Notify the commission that the licensee is seeking the compact privilege
24 within a remote states;

25 5. Pay any applicable fees, including any state and commission fees and
26 renewal fees, for the compact privilege;

27 6. Meet any jurisprudence requirements established by the remote state in

1 which the licensee is seeking a compact privilege;

2 7. Report to the commission adverse action taken by any nonmember state
3 within thirty (30) days from the date the adverse action is taken;

4 8. Report to the commission, when applying for a compact privilege, the
5 address of the licensee's domicile and thereafter promptly report to the
6 commission any change in the address of the licensee's domicile within
7 thirty (30) days of the effective date of the change in address; and

8 9. Consent to accept service of process by mail at the licensee's domicile on
9 record with the commission with respect to any action brought against the
10 licensee by the commission or a member state, and consent to accept service
11 of a subpoena by mail at the licensee's domicile on record with the
12 commission with respect any action brought or investigation conducted by
13 the commission or a member state.

14 B. The compact privilege is valid until the expiration date or revocation of the home
15 state license unless terminated pursuant to adverse action. The licensee must
16 comply with all of the requirements of subsection A. of this section to maintain
17 the compact privilege in a remote state. If those requirements are met, no adverse
18 actions are taken, and the licensee has paid any applicable compact privilege
19 renewal fees, then the licensee will maintain the licensee's compact privilege.

20 C. A licensee providing respiratory therapy in a remote state under the compact
21 privilege shall function within the scope of practice authorized by the remote state
22 for the type of respiratory therapist license the licensee holds. Such procedures,
23 actions, processes, and the circumstances under which they may be undertaken
24 may be established through means, including but not limited to statutes,
25 regulations, case law, and other processes available to the state respiratory
26 therapy licensing authority or other government agency.

27 D. If a licensee's compact privilege in a remote state is removed by the remote state,

1 the individual shall lose or be ineligible for the compact privilege in that remote
2 state until the compact privilege is no longer limited or restricted by that state.

3 E. If a home state license is encumbered, the licensee shall lose the compact
4 privilege in all remote states until the following occur:

5 1. The home state license is no longer encumbered; and

6 2. Two (2) years have elapsed from the date on which the license is no longer
7 encumbered due to the adverse action.

8 F. Once a licensee with a restricted or limited license meets the requirements of
9 subsection E. of this section, the licensee must also meet the requirements of
10 subsection A. of this section to obtain a compact privilege in a remote state.

11 SECTION 5.

12 ACTIVE MILITARY MEMBER OR THEIR SPOUSE

13 A. An active military member, or their spouse, shall designate a home state where
14 the individual has a current license in good standing. The individual may retain
15 the home state designation during the period the service member is on active
16 duty.

17 B. An active military member and their spouse shall not be required to pay to the
18 commission for a compact privilege any fee that may otherwise be charged by the
19 commission. If a remote state chooses to charge a fee for a compact privilege, it
20 may choose to charge a reduced fee or no fee to an active military member and
21 their spouse for a compact privilege.

22 SECTION 6.

23 ADVERSE ACTIONS

24 A. A member state in which a licensee is licensed shall have authority to impose
25 adverse action against the license issued by that member state.

26 B. A member state may take adverse action based on significant investigative
27 information of a remote state or the home state, so long as the member state

1 follows its own procedures for imposing adverse action.

2 C. Nothing in this compact shall override a member state's decision that
3 participation in an alternative program may be used in lieu of adverse action and
4 that such participation shall remain nonpublic if required by the member state's
5 laws.

6 D. A remote state shall have the authority to:

7 1. Take adverse actions as set forth herein against a licensee's compact
8 privilege in that state;

9 2. Issue subpoenas for both hearings and investigations that require the
10 attendance and testimony of witnesses, and the production of evidence.

11 a. Subpoenas may be issued by a respiratory therapy licensing authority
12 in a member state for the attendance and testimony of witnesses and
13 the production of evidence.

14 b. Subpoenas issued by a respiratory therapy licensing authority in a
15 member state for the attendance and testimony of witnesses shall be
16 enforced in the latter state by any court of competent jurisdiction in
17 the latter state, according to the practice and procedure of that court
18 applicable to subpoenas issued in proceedings pending before it.

19 c. Subpoenas issued by a respiratory therapy licensing authority in a
20 member state for production of evidence from another member state
21 shall be enforced in the latter state, according to the practice and
22 procedure of that court applicable to subpoenas issued in the
23 proceedings pending before it.

24 d. The issuing authority shall pay any witness fees, travel expenses,
25 mileage, and other fees required by the service statutes of the state
26 where the witnesses or evidence are located;

27 3. Unless otherwise prohibited by state law, recover from the licensee the costs

1 of investigations and disposition of cases resulting from any adverse action
2 taken against that licensee;

3 4. Notwithstanding paragraph 2. of this subsection, a member state may not
4 issue a subpoena to gather evidence of conduct in another member state
5 that is lawful in such other member state for the purpose of taking adverse
6 action against a licensee's compact privilege or application for a compact
7 privilege in that member state; and

8 5. Nothing in this compact authorizes a member state to impose discipline
9 against a respiratory therapist's compact privilege in that member state for
10 the individual's otherwise lawful practice in another state.

11 E. Joint investigations.

12 1. In addition to the authority granted to a member state by its respective
13 respiratory therapy practice act or other applicable state law, a member state
14 may participate with other member states in joint investigations of licensees,
15 provided, however, that a member state receiving such a request has no
16 obligation to respond to any subpoena issued regarding an investigation of
17 conduct or practice that was lawful in a member state at the time it was
18 undertaken.

19 2. Member states shall share any significant investigative information,
20 litigation, or compliance materials in furtherance of any joint or individual
21 investigation initiated under the compact. In sharing such information
22 between member state respiratory therapy licensing authorities, all
23 information obtained shall be kept confidential, except as otherwise
24 mutually agreed upon by the sharing and receiving member state or states.

25 F. Nothing in this compact may permit a member state to take any adverse action
26 against a licensee or holder of a compact privilege for conduct or practice that
27 was legal in the member state at the time it was undertaken.

1 G. Nothing in this compact may permit a member state to take disciplinary action
2 against a licensee or holder of a compact privilege for conduct or practice that
3 was legal in the member state at the time it was undertaken.

4 SECTION 7.

5 ESTABLISHMENT OF THE RESPIRATORY CARE INTERSTATE COMPACT

6 COMMISSION

7 A. The compact member states hereby create and establish a joint government
8 agency whose membership consists of all member states that have enacted the
9 compact known as the Respiratory Care Interstate Compact Commission. The
10 commission is an instrumentality of the compact member states acting jointly and
11 not an instrumentality of any one (1) state. The commission shall come into
12 existence on or after the effective date of the compact, as set forth in Section 11 of
13 this compact.

14 B. Membership, Voting, and Meetings.

- 15 1. Each member state shall have and be limited to one (1) commissioner
16 selected by that member state's respiratory therapy licensing authority.
- 17 2. The commissioner shall be an administrator or their designated staff
18 member of the member state's respiratory therapy licensing authority.
- 19 3. The commission shall by rule or bylaw establish a term of office for
20 commissioners and may by rule or bylaw establish term limits.
- 21 4. The commission may recommend to a member state the removal or
22 suspension any commissioner from office.
- 23 5. A member state's respiratory therapy licensing authority shall fill any
24 vacancy of its commissioner occurring on the commission within sixty (60)
25 days of the vacancy.
- 26 6. Each commissioner shall be entitled to one (1) vote on all matters before the
27 commission requiring a vote by commissioners.

1 7. A commissioner shall vote in person or by such other means as provided in
2 the bylaws. The bylaws may provide for commissioners to meet by
3 telecommunication, videoconference, or other means of communication.

4 8. The commission shall meet at least once during each calendar year.
5 Additional meetings may be held as set forth in the bylaws.

6 C. The commission shall have the following powers:

7 1. Establish and amend the fiscal year of the commission;

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

10 3. Establish and amend rules, which shall be binding in all member states;

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

12 5. Meet and take such actions as are consistent with the provisions of this
13 compact, the commission's rules, and the bylaws;

14 6. Initiate and conduct legal proceedings or actions in the name of the
15 commission, provided that the standing of any respiratory therapy licensing
16 authority to sue or be sued under applicable law shall not be affected;

17 7. Maintain and certify records and information provided to a member state as
18 the authenticated business records of the commission, and designate an
19 agent to do so on the commission's behalf;

20 8. Purchase and maintain insurance and bonds;

21 9. Accept or contract for services of personnel, including but not limited to
22 employees of a member state;

23 10. Conduct an annual financial review;

24 11. Hire employees, elect or appoint officers, fix compensation, define duties,
25 grant such individuals appropriate authority to carry out the purposes of the
26 compact, and establish the commission's personnel policies and programs
27 relating to conflicts of interest, qualifications of personnel, and other

1 related personnel matters;

2 12. Assess and collect fees;

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

6 a. The commission shall avoid any appearance of impropriety; and

7 b. The commission shall avoid any appearance of conflict of interest;

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

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

12 16. Establish a budget and make expenditures;

13 17. Borrow money in a fiscally responsible manner;

14 18. Appoint committees, including standing committees, composed of
15 commissioners, state regulators, state legislators or their representatives,
16 and consumer representatives, and such other interested persons as may be
17 designated in this compact and the bylaws;

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

20 20. Establish and elect an executive committee, including a chair, vice-chair,
21 secretary, treasurer, and such other offices as the commission shall
22 establish by rule or bylaw;

23 21. Enter into contracts or arrangements for the management of the affairs of
24 the commission;

25 22. Determine whether a state's adopted language is materially different from
26 the model compact language such that the state would not qualify for
27 participation in the compact; and

1 23. Perform such other functions as may be necessary or appropriate to achieve
2 the purposes of this compact.

3 D. The Executive Committee.

4 1. The executive committee shall have the power to act on behalf of the
5 commission according to the terms of this compact. The powers, duties, and
6 responsibilities of the executive committee shall include:

7 a. Overseeing the day-to-day activities of the administration of the
8 compact, including enforcement and compliance with the provisions
9 of the compact, its rules and bylaws, and other such duties as deemed
10 necessary;

11 b. Recommending to the commission changes to the rules or bylaws,
12 changes to this compact legislation, fees charged to compact member
13 states, fees charged to licensees, and other fees;

14 c. Ensuring compact administration services are appropriately provided,
15 including by contract;

16 d. Preparing and recommending the budget;

17 e. Maintaining financial records on behalf of the commission;

18 f. Monitoring compact compliance of member states and providing
19 compliance reports to the commission;

20 g. Establishing additional committees as necessary;

21 h. Exercising the powers and duties of the commission during the
22 interim between commission meetings, except for adopting or
23 amending rules, adopting or amending bylaws, and exercising any
24 other powers and duties expressly reserved to the commission by rule
25 or bylaw; and

26 i. Performing other duties as provided in the rules or bylaws of the
27 commission.

- 1 2. The executive committee shall be composed of up to nine (9) members, as
2 further set forth in the bylaws of the commission:
3 a. Seven (7) voting members who are elected by the commission from the
4 current membership of the commission; and
5 b. Two (2) ex-officio, nonvoting members;
6 3. The commission may remove any member of the executive committee as
7 provided in the commission's bylaws.
8 4. The executive committee shall meet at least annually.
9 a. Executive committee meetings shall be open to the public, except that
10 the executive committee may meet in a closed, non-public meeting as
11 provided in subsection F.4. of this section;
12 b. The executive committee shall give advance notice of its meetings,
13 posted on its website and as determined to provide notice to persons
14 with an interest in the business of the commission; and
15 c. The executive committee may hold a special meeting in accordance
16 with subsection F.2. of this section.
17 E. The commission shall adopt and provide to the member states an annual report.
18 F. Meetings of the Compact Commission.
19 1. All meetings of the commission that are not closed pursuant to paragraph 4.
20 of this subsection shall be open to the public. Notice of public meetings
21 shall be posted on the commission's website at least thirty (30) days prior to
22 the public meeting.
23 2. Notwithstanding paragraph 1. of this subsection, the commission may
24 convene an emergency public meeting by providing at least twenty-four (24)
25 hours prior notice on the commission's website, and any other means as
26 provided in the commission's rules, for any of the reasons it may dispense
27 with notice of proposed rulemaking under subsection G. of Section 9 of this

1 compact. The commission's legal counsel shall certify that one (1) of the
2 reasons justifying an emergency public meeting has been met.

3 3. Notice of all commission meetings shall provide the time, date, and location
4 of the meeting, and if the meeting is to be held or accessible via
5 telecommunication, video conference, or other electronic means, the notice
6 shall include the mechanism for access to the meeting.

7 4. The commission or the executive committee may convene in a closed,
8 nonpublic meeting for the commission or executive committee to receive or
9 solicit legal advice or to discuss:

10 a. Noncompliance of a member state with its obligations under the
11 compact;

12 b. The employment, compensation, discipline or other matters, practices
13 or procedures related to specific employees;

14 c. Current or threatened discipline of a licensee or compact privilege
15 holder by the commission or by a member state's respiratory therapy
16 licensing authority;

17 d. Current, threatened, or reasonably anticipated litigation;

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

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

21 g. Trade secrets or commercial or financial information that is privileged
22 or confidential;

23 h. Information of a personal nature where disclosure would constitute a
24 clearly unwarranted invasion of personal privacy;

25 i. Investigative records compiled for law enforcement purposes;

26 j. Information related to any investigative reports prepared by or on
27 behalf of or for use of the commission or other committee charged

1 with responsibility of investigation or determination of compliance
2 issues pursuant to the compact;

3 k. Legal advice;

4 l. Matters specifically exempted from disclosure by federal or member
5 state law; or

6 m. Other matters as promulgated by the commission by rule.

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

10 6. The commission shall keep minutes in accordance with commission rules
11 and bylaws. All documents considered in connection with an action shall be
12 identified in such minutes. All minutes and documents of a closed meeting
13 shall remain under seal, subject to release only by a majority vote of the
14 commission or order of a court of competent jurisdiction.

15 G. Financing of the Compact Commission.

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

18 2. The commission may accept any and all appropriate revenue sources as
19 provided herein.

20 3. The commission may levy on and collect an annual assessment from each
21 member state and impose fees on licensees of member states to whom it
22 grants a compact privilege to cover the cost of the operations and activities
23 of the commission and its staff. The aggregate annual assessment amount
24 for member states, if any, shall be allocated based upon a formula that the
25 commission shall promulgate by rule.

26 4. The commission shall not incur obligations of any kind prior to securing
27 the funds or a loan adequate to meet the same; nor shall the commission

1 pledge the credit of any of the member states, except by and with the
2 authority of the member state.

3 5. The commission shall keep accurate accounts of all receipts and
4 disbursements. The receipts and disbursements of the commission shall be
5 subject to the financial review and accounting procedures established under
6 its bylaws. However, all receipts and disbursements of funds handled by the
7 commission shall be subject to an annual financial review by a certified or
8 licensed public accountant, and the report of the financial review shall be
9 included in and become part of the annual report of the commission.

10 H. Qualified Immunity, Defense, and Indemnification.

11 1. Nothing herein shall be construed as a limitation on the liability of any
12 licensee for professional malpractice or misconduct, which shall be
13 governed solely by any other applicable state laws.

14 2. The member states, commissioners, officers, executive directors, employees,
15 and agents of the commission shall be immune from suit and liability, both
16 personally and in their official capacity, for any claim for damage to or loss
17 of property or personal injury or other civil liability caused by or arising out
18 of any actual or alleged act, error, or omission that occurred, or that the
19 person against whom the claim is made had a reasonable basis for believing
20 occurred within the scope of commission employment, duties or
21 responsibilities, provided that nothing in this subsection shall be construed
22 to protect any such person from suit or liability for any damage, loss, injury,
23 or liability caused by the intentional or willful or wanton misconduct of that
24 person. The procurement of insurance of any type by the commission shall
25 not in any way compromise or limit the immunity granted hereunder.

26 3. The commission shall defend any commissioner, officer, executive director,
27 employee, and agent of the commission in any civil action seeking to impose

1 liability arising out of any actual or alleged act, error, or omission that
2 occurred within the scope of commission employment, duties, or
3 responsibilities, or as determined by the commission that the person against
4 whom the claim is made had a reasonable basis for believing occurred
5 within the scope of commission employment, duties, or responsibilities,
6 provided that nothing herein shall be construed to prohibit that person from
7 retaining their own counsel at their own expense, and provided further, that
8 the actual or alleged act, error, or omission did not result from that person's
9 intentional or willful or wanton misconduct.

10 4. The commission shall indemnify and hold harmless any commissioner,
11 member, officer, executive director, employee, and agent of the commission
12 for the amount of any settlement or judgment obtained against that person
13 arising out of any actual or alleged act, error, or omission that occurred
14 within the scope of commission employment, duties, or responsibilities, or
15 that such person had a reasonable basis for believing occurred within the
16 scope of commission employment, duties, or responsibilities, provided that
17 the actual or alleged act, error, or omission did not result from the
18 intentional or willful or wanton misconduct of that person.

19 5. Nothing in this compact shall be interpreted to waive or otherwise abrogate
20 a member state's state action immunity or state action affirmative defense
21 with respect to antitrust claims under the Sherman Act, Clayton Act, or any
22 other state or federal antitrust or anticompetitive law or regulation.

23 6. Nothing in this compact shall be construed to be a waiver of sovereign
24 immunity by the member states or by the commission.

25 SECTION 8.

26 DATA SYSTEM

27 A. The commission shall provide for the development, maintenance, operation, and

1 utilization of a coordinated database and reporting system containing licensure,
2 adverse action, and the presence of significant investigative information.

3 B. Notwithstanding any other provision of state law to the contrary, a member state
4 shall submit a uniform data set to the data system as required by the rules of the
5 commission, including but not limited to:

6 1. Identifying information;

7 2. Licensure data;

8 3. Adverse actions against a licensee, license applicant, or compact privilege
9 holder and information related thereto;

10 4. Nonconfidential information related to alternative program participation,
11 the beginning and ending dates of such participation, and other information
12 related to such participation not made confidential under member state law;

13 5. Any denial of application for licensure, and the reasons for such denial;

14 6. The presence of current significant investigative information; and

15 7. Other information that may facilitate the administration of this compact or
16 the protection of the public, as determined by the rules of the commission.

17 C. No member state shall submit any information which constitutes criminal history
18 record information, as defined by applicable federal law, to the data system
19 established hereunder.

20 D. The records and information provided to a member state pursuant to this compact
21 or through the data system, when certified by the commission or an agent thereof,
22 shall constitute the authenticated business records of the commission, and shall
23 be entitled to any associated hearsay exception in any relevant judicial, quasi-
24 judicial, or administrative proceedings in a member state.

25 E. Significant investigative information pertaining to a licensee in any member state
26 will only be available to other member states.

27 F. It is the responsibility of the member states to report any adverse action against a

1 licensee and to monitor the database to determine whether adverse action has
2 been taken against a licensee. adverse action information pertaining to a licensee
3 in any member state will be available to any other member state.

4 G. Member states contributing information to the data system may designate
5 information that may not be shared with the public without the express
6 permission of the contributing state.

7 H. Any information submitted to the data system that is subsequently expunged
8 pursuant to federal law or the laws of the member state contributing the
9 information shall be removed from the data system.

10 SECTION 9.

11 RULEMAKING

12 A. The commission shall promulgate reasonable rules in order to effectively and
13 efficiently implement and administer the purposes and provisions of the compact.
14 A rule shall be invalid and have no force or effect only if a court of competent
15 jurisdiction holds that the rule is invalid because the commission exercised its
16 rulemaking authority in a manner that is beyond the scope and purposes of the
17 compact, or the powers granted hereunder, or based upon another applicable
18 standard of review.

19 B. For purposes of the compact, the rules of the commission shall have the force of
20 law in each member state.

21 C. The commission shall exercise its rulemaking powers pursuant to the criteria set
22 forth in this section and the rules adopted thereunder. Rules shall become
23 binding as of the date specified in each rule.

24 D. If a majority of the legislatures of the member states rejects a rule or portion of a
25 rule, by enactment of a statute or resolution in the same manner used to adopt the
26 compact within four (4) years of the date of adoption of the rule, then such rule
27 shall have no further force and effect in any member state.

1 E. Rules shall be adopted at a regular or special meeting of the commission.

2 F. Prior to adoption of a proposed rule, the commission shall hold a public hearing
3 and allow persons to provide oral and written comments, data, facts, opinions,
4 and arguments.

5 G. Prior to adoption of a proposed rule by the commission, and at least thirty (30)
6 days in advance of the meeting at which the commission will hold a public
7 hearing on the proposed rule, the commission shall provide a notice of proposed
8 rulemaking:

9 1. On the website of the commission or other publicly accessible platform;

10 2. To persons who have requested notice of the commission's notices of
11 proposed rulemaking, and

12 3. In such other ways as the commission may by rule specify.

13 H. The notice of proposed rulemaking shall include:

14 1. The time, date, and location of the public hearing at which the commission
15 will hear public comments on the proposed rule and, if different, the time,
16 date, and location of the meeting where the commission will consider and
17 vote on the proposed rule;

18 2. If the hearing is held via telecommunication, video conference, or other
19 electronic means, the mechanism for access to the hearing in the notice of
20 proposed rulemaking;

21 3. The text of the proposed rule and the reason therefor;

22 4. A request for comments on the proposed rule from any interested person;
23 and

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

25 I. All hearings will be recorded. A copy of the recording and all written comments
26 and documents received by the commission in response to the proposed rule shall
27 be available to the public.

1 J. Nothing in this section shall be construed as requiring a separate hearing on
2 each rule. Rules may be grouped for the convenience of the commission at
3 hearings required by this section.

4 K. The commission shall, by majority vote of all commissioners, take final action on
5 the proposed rule based on the rulemaking record and the full text of the rule.

6 1. The commission may adopt changes to the proposed rule provided the
7 changes are consistent with the original purpose of the proposed rule.

8 2. The commission shall provide an explanation of the reasons for substantive
9 changes made to the proposed rule as well as reasons for substantive
10 changes not made that were recommended by commenters.

11 3. The commission shall determine a reasonable effective date for the rule.
12 Except for an emergency as provided in subsection L. of this section, the
13 effective date of the rule shall be no sooner than thirty (30) days after
14 issuing the notice that it adopted or amended the rule.

15 L. Upon determination that an emergency exists, the commission may consider and
16 adopt an emergency rule with twenty-four (24) hours' notice, and with
17 opportunity to comment, provided that the usual rulemaking procedures provided
18 in the compact and in this section shall be retroactively applied to the rule as soon
19 as reasonably possible, in no event later than ninety (90) days after the effective
20 date of the rule. For the purposes of this provision, an emergency rule is one that
21 must be adopted immediately in order to:

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

23 2. Prevent a loss of commission or member state funds;

24 3. Meet a deadline for the promulgation of a rule that is established by federal
25 law or rule; or

26 4. Protect public health and safety.

27 M. The commission or an authorized committee of the commission may direct

1 revisions to a previously adopted rule for purposes of correcting typographical
2 errors, errors in format, errors in consistency, or grammatical errors. Public
3 notice of any revisions shall be posted on the website of the commission. The
4 revision shall be subject to challenge by any person for a period of thirty (30)
5 days after posting. The revision may be challenged only on grounds that the
6 revision results in a material change to a rule. A challenge shall be made in
7 writing and delivered to the commission prior to the end of the notice period. If
8 no challenge is made, the revision will take effect without further action. If the
9 revision is challenged, the revision may not take effect without the approval of the
10 commission.

11 N. No member state's rulemaking process or procedural requirements shall apply to
12 the commission. The commission shall have no authority over any member state's
13 rulemaking process or procedural requirements that do not pertain to the
14 compact.

15 O. Nothing in this compact, nor any rule or regulation of the commission, shall be
16 construed to limit, restrict, or in any way reduce the ability of a member state to
17 enact and enforce laws, regulations, or other rules related to the practice of
18 respiratory therapy in that state, where those laws, regulations, or other rules are
19 not inconsistent with the provisions of this compact.

20 SECTION 10.

21 OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

22 A. Oversight.

23 1. The executive and judicial branches of state government in each member
24 state shall enforce this compact and take all actions necessary and
25 appropriate to implement the compact.

26 2. Venue is proper and judicial proceedings by or against the commission shall
27 be brought solely and exclusively in a court of competent jurisdiction where

1 the principal office of the commission is located. The commission may
2 waive venue and jurisdictional defenses to the extent it adopts or consents to
3 participate in alternative dispute resolution proceedings. Nothing herein
4 shall affect or limit the selection or propriety of venue in any action against
5 a licensee for professional malpractice, misconduct or any such similar
6 matter.

7 3. The commission shall be entitled to receive service of process in any
8 proceeding regarding the enforcement or interpretation of the compact and
9 shall have standing to intervene in such a proceeding for all purposes.
10 Failure to provide the commission service of process shall render a
11 judgment or order void as to the commission, this compact, or promulgated
12 rules.

13 B. Default, Technical Assistance, and Termination.

14 1. If the commission determines that a member state has defaulted in the
15 performance of its obligations or responsibilities under this compact or the
16 promulgated rules, the commission shall provide written notice to the
17 defaulting state. The notice of default shall describe the default, the
18 proposed means of curing the default, and any other action that the
19 commission may take, and shall offer training and specific technical
20 assistance regarding the default.

21 2. The commission shall provide a copy of the notice of default to the other
22 member states.

23 C. If a state in default fails to cure the default, the defaulting state may be
24 terminated from the compact upon an affirmative vote of a majority of the
25 commissioners of the member states, and all rights, privileges, and benefits
26 conferred on that state by this compact may be terminated on the effective date of
27 termination. A cure of the default does not relieve the offending state of

1 obligations or liabilities incurred during the period of default.

2 D. Termination of membership in the compact shall be imposed only after all other
3 means of securing compliance have been exhausted. Notice of intent to suspend
4 or terminate shall be given by the commission to the governor, the majority and
5 minority leaders of the defaulting state's legislature, the defaulting state's
6 respiratory therapy licensing authority and each of the member states' respiratory
7 therapy licensing authorities.

8 E. A state that has been terminated is responsible for all assessments, obligations,
9 and liabilities incurred through the effective date of termination, including
10 obligations that extend beyond the effective date of termination, if necessary.

11 F. Upon the termination of a state's membership from this compact, that state shall
12 immediately provide notice to all licensees and compact privilege holders, of
13 which the commission has a record, within that state of such termination. The
14 terminated state shall continue to recognize all licenses granted pursuant to this
15 compact for a minimum of one hundred eighty (180) days after the date of said
16 notice of termination.

17 G. The commission shall not bear any costs related to a state that is found to be in
18 default or that has been terminated from the compact, unless agreed upon in
19 writing between the commission and the defaulting state.

20 H. The defaulting state may appeal the action of the commission by petitioning the
21 United States District Court for the District of Columbia or the federal district
22 where the commission has its principal offices. The prevailing party shall be
23 awarded all costs of such litigation, including reasonable attorney's fees.

24 I. Dispute Resolution.

25 1. Upon request by a member state, the commission shall attempt to resolve
26 disputes related to the compact that arise among member states and between
27 member and nonmember states.

1 2. The commission shall promulgate a rule providing for both mediation and
2 binding dispute resolution for disputes, as appropriate.

3 J. Enforcement.

4 1. By majority vote, as may be further provided by rule, the commission may
5 initiate legal action against a member state in default in the United States
6 District Court for the District of Columbia or the federal district where the
7 commission has its principal offices to enforce compliance with the
8 provisions of the compact and its promulgated rules. A member state by
9 enactment of this compact consents to venue and jurisdiction in such court
10 for the purposes set forth herein. The relief sought may include both
11 injunctive relief and damages. In the event judicial enforcement is
12 necessary, the prevailing party shall be awarded all costs of such litigation,
13 including reasonable attorney's fees. The remedies herein shall not be the
14 exclusive remedies of the commission. The commission may pursue any
15 other remedies available under federal or the defaulting member state's law.

16 2. A member state may initiate legal action against the commission in the
17 United States District Court for the District of Columbia or the federal
18 district where the commission has its principal offices to enforce
19 compliance with the provisions of the compact and its promulgated rules.
20 The relief sought may include both injunctive relief and damages. In the
21 event judicial enforcement is necessary, the prevailing party shall be
22 awarded all costs of such litigation, including reasonable attorney's fees.

23 3. No person other than a member state shall enforce this compact against the
24 commission.

25 SECTION 11.

26 EFFECTIVE DATE, WITHDRAWAL, AND AMENDMENT

27 A. The compact shall come into effect on the date on which the compact statute is

1 enacted into law in the seventh member state.

2 1. On or after the effective date of the compact, the commission shall convene
3 and review the enactment of each of the first seven (7) member states to
4 determine if the statute enacted by each such charter member state is
5 materially different than the model compact.

6 a. A charter member state whose enactment is found to be materially
7 different from the model compact shall be entitled to the default
8 process set forth in Section 10 of this compact.

9 b. If any member state is later found to be in default, or is terminated or
10 withdraws from the compact, the commission shall remain in
11 existence and the compact shall remain in effect even if the number of
12 member states should be less than seven (7).

13 2. Member states enacting the compact subsequent to the seven (7) initial
14 charter member states shall be subject to the process set forth herein and
15 commission rule to determine if their enactments are materially different
16 from the model compact and whether they qualify for participation in the
17 compact.

18 3. All actions taken for the benefit of the commission or in furtherance of the
19 purposes of the administration of the compact prior to the effective date of
20 the compact or the commission coming into existence shall be considered to
21 be actions of the commission unless specifically repudiated by the
22 commission. The commission shall own and have all rights to any
23 intellectual property developed on behalf or in furtherance of the
24 commission by individuals or entities involved in organizing or establishing
25 the commission, as may be further set forth in rules of the commission.

26 4. Any state that joins the compact subsequent to the commission's initial
27 adoption of the rules and bylaws shall be subject to the rules and bylaws as

1 they exist on the date on which the compact becomes law in that state. Any
2 rule that has been previously adopted by the commission shall have the full
3 force and effect of law on the date the compact becomes law in that state.

4 B. Any member state may withdraw from this compact by enacting a statute
5 repealing the same.

6 1. A member state's withdrawal shall not take effect until one hundred eighty
7 (180) days after enactment of the repealing statute.

8 2. Withdrawal shall not affect the continuing requirement of the withdrawing
9 state's respiratory therapy licensing authority to comply with the
10 investigative and adverse action reporting requirements of this compact
11 prior to the effective date of withdrawal.

12 3. Upon the enactment of a statute withdrawing from this compact, a state
13 shall immediately provide notice of such withdrawal to all licensees and
14 compact privilege holders, of which the commission has a record, within
15 that state. Notwithstanding any subsequent statutory enactment to the
16 contrary, such withdrawing state shall continue to recognize all licenses
17 granted pursuant to this compact for a minimum of one hundred eighty
18 (180) days after the date of such notice of withdrawal.

19 C. Nothing contained in this compact shall be construed to invalidate or prevent any
20 licensure agreement or other cooperative arrangement between a member state
21 and a nonmember state that does not conflict with the provisions of this compact.

22 D. This compact may be amended by the member states. No amendment to this
23 compact shall become effective and binding upon any member state until it is
24 enacted into the laws of all member states.

25 SECTION 12.

26 CONSTRUCTION AND SEVERABILITY

27 A. This compact and the commission's rulemaking authority shall be liberally

1 construed so as to effectuate the purposes and the implementation and
2 administration of the compact. Provisions of the compact expressly authorizing or
3 requiring the promulgation of rules shall not be construed to limit the
4 commission's rulemaking authority solely for those purposes.

5 B. The provisions of this compact shall be severable, and if any phrase, clause,
6 sentence or provision of this compact is held by a court of competent jurisdiction
7 to be contrary to the constitution of any member state, a state seeking
8 participation in the compact, or of the United States, or the applicability thereof
9 to any government, agency, person, or circumstance is held to be unconstitutional
10 by a court of competent jurisdiction, the validity of the remainder of this compact
11 and the applicability thereof to any other government, agency, person, or
12 circumstance shall not be affected thereby.

13 C. Notwithstanding subsection B. of this section, the commission may deny a state's
14 participation in the compact or, in accordance with the requirements of Section
15 10 of this compact, terminate a member state's participation in the compact, if it
16 determines that a constitutional requirement of a member state is a material
17 departure from the compact. Otherwise, if this compact shall be held to be
18 contrary to the constitution of any member state, the compact shall remain in full
19 force and effect as to the remaining member states and in full force and effect as
20 to the member state affected as to all severable matters.

21 SECTION 13.

22 CONSISTENT EFFECT AND CONFLICT WITH OTHER STATE LAWS

23 A. Nothing herein shall prevent or inhibit the enforcement of any other law of a
24 member state that is not inconsistent with the compact.

25 B. Any laws, statutes, regulations, or other legal requirements in a member state in
26 conflict with the compact are superseded to the extent of the conflict, including
27 any subsequently enacted state laws.

- 1 C. All permissible agreements between the commission and the member states are
2 binding in accordance with their terms.
- 3 D. Other than as expressly set forth herein, nothing in this compact will impact
4 initial licensure.