



MINNESOTA BOARD OF MEDICAL PRACTICE

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August 3, 2016

Christopher B. Chaney, Unit Chief
Criminal Justice Information Law Unit
Office of the General Counsel
U.S. Department of Justice
Federal Bureau of Investigation
Clarksburg, WV 26306

Regarding your July 7, 2016 letter to Julie A. LeTourneau Lackner

Dear Mr. Chaney,

As the Executive Director of the Minnesota Board of Medical Practice and an appointed Commissioner to the Interstate Medical Licensure Compact (IMLC) Commission representing the State of Minnesota, I am in receipt of a copy of your July 7, 2016 letter to Ms. LeTourneau Lackner. Your letter responds to a requested review of Minnesota Statutes Section 147.38 to determine if it meets the standards of Public Law (Pub. L.) 92.544 for access to FBI criminal history record information and states your determination that the Minnesota statute does not meet the requirements of Pub. L. 92-544.

Upon review of your determination, my fellow Minnesota IMLC Commissioner, Jon V. Thomas, M.D., and I consulted with Sean McCarthy, J.D., director of the Criminal Background Check Program for Minnesota's health licensing boards, Rick Masters, J.D., Special Counsel for the National Center for Interstate Compacts, and the Executive Committee of the IMLC Commission. Based on our collective concern that erroneous conclusions have been drawn in making your determination, I respectfully request that you reconsider your determination. I refer you to Mr. Masters' August 2, 2016 letter to me, enclosed, which summarizes our discussion with the IMLC Commission Executive Committee and outlines the basis for this request.

Mr. Masters and I are available to speak with you by telephone to further clarify this request for reconsideration. Please let me know how you wish to proceed.

Thank you for your consideration. I look forward to your reply.

Sincerely,

Ruth M. Martinez, M.A.
Executive Director
Telephone: (612) 548-2150
E-mail: ruth.martinez@state.mn.us

Enclosures

cc: Julie A. LeTourneau Lackner

Minnesota Justice Information Services, Bureau of Criminal Apprehension

Rick Masters, J.D., Special Counsel
National Center for Interstate Compacts [(502) 262-5881; rmasters@csg.org]

Sean McCarthy, J.D., Director
Minnesota Criminal Background Check Program

Executive Committee, Interstate Medical Licensure Compact Commission
Commissioner Mr. Ian Marquand, Chairman
Commissioner Dr. Jon Thomas, Vice-Chairman
Commissioner Dr. Brian Zacchariah, Treasurer
Commissioner Ms. Diana Shepherd, Secretary



The Council of State Governments
Headquarters Office

August 2, 2016

Ruth M. Martinez, MA
Executive Director
MN Board of Medical Practice
2829 University Avenue SE, Ste 500
Minneapolis, MN 55414-3246

Re: F.B.I. Criminal Background Check Letter – July 7, 2016

Dear Ruth:

This letter is a follow up to our discussions late last week, involving Sean McCarthy with the Criminal Background Check Program for Health Licensing Boards of the State of Minnesota, concerning the above referenced letter analyzing the provisions of the Minnesota statute enacting the Interstate Medical Licensure Compact. As stated in our conference call, the letter from the F.B.I dated July 7, 2016 includes a number of erroneous factual and legal assertions, not the least of which is the conclusion that the Interstate Medical Licensure Compact Commission is a 'private entity' despite the explicit statutory language in Section 11 of the IMLC Compact statute providing that the interstate commission *"shall be a body corporate and **joint agency of the member states** and have all the responsibilities, powers, and duties set forth in the compact . . . "*

In addition, after careful review, I fail to understand which of the criteria referenced in Pub. L. 92-544, as set forth in the F.B.I.'s letter is not met by the provisions of the compact including Section 5 of this obviously 'legislative enactment' requiring the fingerprinting of the applicant/physician who is obligated to submit to a criminal background check which includes the results of fingerprint or other biometric checks compliant with the requirements of the F.B.I. See Pub. L. 92-544 (a) through (f). My belief is that the paralegal who apparently 'researched' and 'prepared' the rough draft signed by Chris Chaney, whom I'm told is in fact a lawyer, either didn't read the entire compact statute or has major misunderstandings about both the legal status of the compact commission and how the expedited licensure process is intended to operate under the IMLC, or both.

The FBI letter also mischaracterizes how the Interstate Commission interacts with the individual state licensing boards and the process of licensure. Section 5(b)(ii) states *"The member board within the state selected as the state of principal license shall, in the course of verifying eligibility, perform a criminal background check of an applicant, including the use of the results of fingerprint or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation, with the exception of federal employees who have suitability determination in accordance with U.S. C.F.R. §731.202."* It is not the Commission which is using the FBI data, it is the member states who are using it in the course of verifying eligibility. The results of that search are not transmitted, as best I understand, in any manner other than a **yes/no verification**. This use is expressly what is allowed under PL 92-544. Second, the FBI contends the use is for determination of an expedited license, which falls within the purposes of MN Statute 214.075. I do not read that statute as a listing of the exclusive types of licensing, but more as an illustration of the licensure activities for which the information can be used. The non-exclusivity and

Ruth M. Martinez, MA
August 2, 2016
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broad interpretation is supported by the reference "as defined by the individual health related boards." Finally, I would argue that the IMLC compact statute's unique status as an interstate compact protected from impairment under the Contract Clause of the U.S. Constitution statute trumps a conflicting state statute or regulation and must be 'harmonized' with any applicable federal regulation.

Per our discussions I am directing this letter to you containing the above clarifications etc. which I understand that you will use to request that the issue be reconsidered, based upon these legal and factual clarifications concerning the compact, by the FBI official(s) who initially reviewed the matter resulting in the letter of 7-7-16.

This would seem to be the most direct and expedient manner in which to proceed, and as a subject matter expert in the law and use of interstate compacts, with the Council of State Governments, who has been working directly with the Commission, as well as previously with the Federation of State Medical Boards, I welcome the opportunity to participate in any further discussions which may be necessary to secure such a reconsideration either at the level of the Office of General Counsel or the Office of the F.B.I. Director.

Best Regards,



Rick Masters
Special Counsel
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(502) 262-5881- Phone
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CV/Introduction:

Rick Masters, J.D., Special Counsel

National Center for Interstate Compacts

Council of State Governments

Rick Masters is Special Counsel to the National Center for Interstate Compacts ('NCIC'), which is affiliated with the Council of State Governments ('CSG'), providing legal guidance concerning the law and use of interstate compacts, including application and enforcement as well legislative drafting of proposed compact statutes in conjunction with the various projects in which the NCIC is involved. Rick is also a recognized subject matter expert in the field of interstate compacts and provides legal advice to several other compact governing boards and agencies many of which are affiliated with CSG. He has testified frequently before state legislative committees concerning a wide variety of compact legislation and has also provided testimony to the U.S. Congress concerning compact consent legislation and related interstate compact legal issues. Rick has also been counsel of record in a number of federal and state cases involving important interstate compact issues including a recent published decision of the U.S. Court of Appeals for the Tenth (10th) Circuit upholding the validity of the regional low-level radioactive waste compacts to which most of the states are members.

*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.