



Janet T. Mills
Governor

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
OFFICE OF PROFESSIONAL AND OCCUPATIONAL
REGULATION
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AUGUSTA, MAINE
04333-0035

Anne L. Head
Commissioner, DPFR
Director, OPOR

TESTIMONY OF JOAN COHEN
DEPUTY, DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
NEITHER FOR NOR LD 1749

An Act to Establish the Physical Therapy Licensure Compact

Sponsored by Senator Stacy Brenner

BEFORE THE JOINT STANDING COMMITTEE ON

Health Care Insurance and Financial Service

Public Hearing: May 4, 2023, 1:00 PM

Senator Bailey, Representative Perry, and honorable members of the Committee, my name is Joan Cohen and I am the Deputy at the Department of Professional and Financial Regulation and I am here today to testify on behalf of the Office of Professional and Occupational Regulation (OPOR), one of the five regulatory agencies within the Department. I am here to testify Neither For Nor Against LD 1749 on behalf of OPOR and to share additional information for your deliberations on this bill.

In general, OPOR is supportive of expanding licensing flexibilities so long as the Maine licensing board can continue to protect the public as the Maine Legislature intends. Licensing compacts are becoming increasingly popular as a means of enhancing interstate licensure. Maine is currently a member state of several interstate compacts related to the OPOR licensing boards, including psychology, occupational therapy and counseling compacts. This committee also just heard and voted in support of LD 717, An Act to Adopt the Audiology and Speech-Language Pathology Interstate.

However, while compacts can be an effective means of facilitating interstate licensure, they do result in a loss of a state's autonomy over some aspects of its licensing laws. This Committee's challenge is to balance the benefit of the compact to facilitating interstate licensure to the loss of Maine's control over its licensing laws and any additional burdens related to instituting and complying with the compact.

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Here are considerations the Committee may want to discuss with respect to this proposed compact:

- Unlike the other compacts Maine recently approved, the PT compact is already up and running. This means there is no built-in buffer time to undertake any required steps.

If the Committee approves this compact, OPOR requests that the Committee set an effective date two (2) years in the future in light of several action items that must be completed before Maine will be eligible and ready to issue privileges. Those action items include:

- **Member states are required to use FBI fingerprint-based criminal background checks as part of initial license applications.** OPOR currently only has authority to require a Maine State Bureau of Identification (SBI) criminal history record check. I have attached a memo from Commissioner Head explaining the history and process of seeking FBI background checks. In brief, OPOR must obtain US Department of Justice pre-approval prior to implementing an FBI background check.

While OPOR is committed to seeking DOJ pre-approval, it is a process we understand takes a minimum of five months. Once the proposed statutory language receives DOJ approval, OPOR will submit a second session bill enabling FBI background checks for this compact and the other recently adopted OPOR compacts.

- **A member state must have continuing education requirements as a condition of license renewal.** Maine PT licensees currently do not have continuing education requirements. Continuing education requirements are established through the APA rulemaking process which could take at least one year, if not longer.
- Other impacts the Committee may wish to consider include:
 - **OPOR may need to hire additional staff to comply with the requirements of this compact.** It is important to note that OPOR boards and programs do not have dedicated full-time staff and each staff person is also responsible for 6-8 other boards. Additional responsibilities, without hiring additional staff, will necessarily impact the administrative functioning of not only this board but of all boards for which the staff is responsible.

Since this Compact is in effect, some of the additional administrative responsibilities are more evident than during the discussions related to other compacts. For example:

- Pursuant to Chapter 6 of the PT Compact Commission Rules, Maine will be required to submit a uniform data set on all individuals applying for, or currently holding, a physical therapist or physical therapist assistant

license of any status, including expired status, *on a weekly basis*. Data systems will need to be reconfigured and staff will need to be available to respond to undertake this *weekly* requirement.

- The PT Compact provides for joint investigations and requires member states to share any investigative, litigation or compliance materials. This Board does not have an assigned investigator and this Board does not receive many complaints. However, the addition of privilege members could increase the number of complaints handled by the Maine Board and may require adding an investigator and related board staff should another member state initiate a joint investigation.
- **There may be challenges related to staffing and supporting the licensing board member serving on the PT Compact Commission.** The Compact requires a board member or board administrator serve on the Commission. PT board members are volunteers, and it may be difficult to add this responsibility to their existing board duties and the demand of their PT practice. Since board managers already have a full slate of responsibilities and serve 6-8 other boards, they are not able to serve as the representative on the Commission or provide much staff support to the person serving as the commission member.
- **There will be costs associated with the compact that will need to be supported by the licensees through their license fees and/or the compact privilege fee.** For example:
 - The PT Compact Commission may collect an annual assessment from each member state to cover its operational costs and activities. Any additional cost increases to the Board will be passed on to its licensees in their licensing fees.
 - Maine-related costs will include staff time to assist with compact participation and related rulemaking, additional data reconfiguration and data entry to supply information to the Compact's data system and to accommodate the inclusion of compact privilege holders and other costs related to a board member serving as a Commission delegate such as travel and lodging.

Again, we stress that we are supportive of efforts to facilitate interstate licensing – including compacts. We set forth the information above so that you have a complete picture of the associated time, effort and costs. Thank you for your attention. I am happy to answer questions now or at the work session.



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Anne L. Head
Commissioner

MEMORANDUM

To: Senator Donna Bailey, Senate Chair
Representative Anne Perry, House Chair
Honorable Members of the Joint Standing Committee on Health Coverage,
Insurance, and Financial Services

From: Anne L. Head, Commissioner

Subject: FBI Fingerprint Background Checks for Professional and Occupational Licensing
Boards (LD 1453)

Date: April 28, 2023

At the Public Hearing on LD 1453, *An Act to Amend the Physical Therapist Practice Laws*, committee members raised questions about why the Office of Professional and Occupational Regulation (OPOR) does not currently include an FBI background check as part of its application review. Below is information that may be helpful to the Committee.

OPOR does not have statutory authority to require FBI fingerprinting for applicants of its licensing boards and programs because prior administrations rejected those requests. OPOR has not consulted with the current administration. We have one board (Board of Real Estate Appraisers) that currently requires FBI fingerprinting and background checks in compliance with a federal requirement.

To require an FBI fingerprint-based background check, a statute (not a rule) must be enacted to specifically authorize a board to require it as part of licensure. The U.S. Department of Justice needs to pre-approve the statutory language *before* the authorizing law is enacted, and it is our understanding that the statutory authorization needs to be specific to each board (*i.e.*, could not be a broad authorization for any applicant to an OPOR regulatory agency).

If applicants are required to submit to fingerprint-based background checks rather than the SBI checks currently performed for all applicants, there will be a difference in cost and application processing time.

- The cost to run an SBI check is \$21, and agency staff can run that report on the basis of the applicant's full name and DOB. Other than the applicant signing the application

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acknowledging consent to the SBI check, no further action is required by the applicant. Staff receives the resulting report in an attachment in an email, usually in less than 24 hours.

- The cost to run an FBI background check is \$52. It may take weeks before an applicant makes an appointment, and then additional time to receive the results of the fingerprinting background check.

The individual applicant must sign an acknowledgment and consent to the check and schedule an appointment (through an online portal) at one of the sites in the state that provides this service. The applicant must go in person to complete the fingerprinting (out- of-state applicants go through a slightly different process that involves submitting fingerprints through the mail).

There are strict privacy laws that apply to the fingerprint-based background check results and staff will need additional training. The results of fingerprint-based background checks may not be disseminated further. All staff viewing and using these reports will need to first obtain security awareness training, which must be completed again periodically. The results are provided through a third-party vendor engaged by the SBI. To access the results, staff must first have a special firewall installed on their computer device. There is an additional obligation to maintain a record that the background report was completed and reviewed, and whether there was a “hit” (without retaining any of the substance of the report) that needs to be maintained in the event the agency is audited by the FBI. Completed security awareness training certificates must also be maintained for auditing purposes.

Thank you and I would be happy to answer any Committee questions.

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