

The North Carolina State Board of Dental Examiners

Position Statement

On

Selection of a Dentist and Dental Hygienist Compact

Currently two different Dentist and Dental Hygienist licensing compacts are being presented to state legislatures throughout the country. One compact was developed by the Council of State Governments, the other by the American Association of Dental Boards. Both agencies seek to create an interstate compact that will enhance licensing portability for dentists and dental hygienists; especially for those serving in the military and their spouses. Both also believe that receiving a compact license or privilege to practice relieves licensees of the burdens of maintaining multiple state licenses.

While the North Carolina State Board of Dental Examiners (NCSBDE) supports these goals it is uncertain as to the necessity of entering a compact to reach them. Neither proposed compact produces documentary or survey evidence of the number of dentists and dental hygienists who wish to pursue licensing in multiple states. It is difficult to recommend support of sweeping, long-term, and binding compact legislation without some idea of the demand for such a process. Also, the General Assembly's passage of NCGS 93B-15.1 allowing for military personnel and their spouses to be licensed by military endorsement, along with amendments to the Servicemember Civil Relief Act (SCRA), now allow for members of the military and their spouses to be licensed or to practice pursuant to military orders within a matter of days at no cost. It is hard to imagine a compact with less cost and greater efficiency than procedures that are already in place at the NCSBDE. North Carolina has also experienced a significant increase in mobility and the number of non-military dentists and hygienists admitted from other states after the General Assembly removed restrictions previously found in the Credentialing Statute. [NCGS 90-36]. This license mobility has occurred under current law and without the need for a compact. Notwithstanding these issues, the Dental Board has reviewed both proposed compacts very carefully and offers the following observations.

The proposed compact developed by the Council of State Governments (CSG), generally follows the language of previous compacts developed for various professions and North Carolina has joined six (6) of these: Nursing, Physical Therapy, Audiology and Speech-Language, Occupational Therapy, Emergency Medical Services, and Psychology. The other proposed compact has been developed by the American Association of Dental Boards (AADB) and purports to follow compact language developed and implemented by the Federation of State Medical Boards. Both have as their purpose a means to facilitate the interstate practice of dentistry and dental

hygiene, to improve access to care, and to protect public health and safety “...through the state’s authority to regulate the practice of dentistry and dental hygiene in the state.” (CSG Compact. Section 1) However, there are significant differences as to how the compacts are structured to achieve these goals. After careful, thorough, and thoughtful reading and analysis of the two compacts, ***the North Carolina State Board of Dental Examiners (NCSBDE) takes the position of favoring passage of the AADB Compact for the following reasons.***

First, the NCSBDE believes that the authority to regulate the practice of dentistry and dental hygiene rightfully belongs to the elected members of the NC General Assembly as enforced through a properly authorized Dental Board subject to legislative oversight. The AADB compact supports this position by clearly stating that it is the State Dental Board in Compact member states that determines if a dentist or dental hygienist is eligible for a compact license. (AADB Compact Sec. 6.d)

By contrast, the CSG compact creates a government agency made up of one (1) appointed commissioner from each state. This commission has the authority to pass rules with the effect of state law in each member state and is not subject to oversight by the NC General Assembly, any elected North Carolina official, the North Carolina Dental Board, or the North Carolina Courts. Should the unelected commission pass a rule that to which North Carolina objects, the rule can only be overturned by a majority of member state legislatures enacting “...a statute or resolution in the same manner used to adopt the Compact, within four (4) years...” (CSG Compact Sec. 9.D.) A court of competent jurisdiction may invalidate a rule only on certain grounds defined by the compact, and the only courts where legal challenges may be raised are “... the U.S. District Court of the District of Columbia or where the Commission has its principal offices...” (CSG Compact Sec. 10.J.3)

In addition to enacting rules with the effect of state law without oversight from any North Carolina agencies or officials and without any state-based legal remedies, the Commission also has unlimited and unchecked taxing and fee making authority. The CSG Compact Commission may levy and collect an annual assessment from each member state and impose fees on individual dentists and dental hygienists in amounts sufficient to cover its annual budget (CSG Compact. Sec. 7.E.3) Despite repeated inquiries, the CSG has not been able to provide any estimate of what the cost of its annual budget may be. **The NCSBDE simply thinks it is fiscally irresponsible to join an organization without having some idea of the initial and on-going costs.**

In contrast, the AADB Compact lacks taxing authority and does not levy an annual assessment on member states. All costs are to be borne by fees dentists and dental hygienists pay for the privilege of obtaining a Compact License. These fees are collected only from dentists and dental hygienists who voluntarily seek to obtain such a license. In addition, the AADB has for years maintained a nationwide database of disciplinary actions which could be expanded to include

other administrative actions necessary to support a compact. The NCSBDE believes this could result in considerable savings over the CSG Compact that faces the prospect of building such a system from the ground up.

Second, the AADB Compact continues to uphold the long-standing North Carolina statute that requires dental and dental hygiene graduates to pass a hand-skills examination conducted by a competent third-party before a license is issued. It is the Board's belief that testing critical thinking and analytical skills is not enough for the new licensee. The practice of dentistry and dental hygiene involves surgically precise movement within the narrow confines of the oral cavity often while doing so in a mirror image. It is not enough to diagnose and know what must be done, rather one must have the practiced and precise motor skills to heal without harm. The Board believes allowing newly graduated dentists and dental hygienists to perform procedures on patients without undergoing a hand-skills test is akin to allowing the new pilot to attempt landing a fully loaded passenger plane based solely on a written examination without ever having taken a check-ride with a certified flight examiner.

The CSG Compact does not require hand-skills testing. This allows dentists and dental hygienists from the minority of states that do not require hand-skills testing to practice in states that do. If the CSG compact was adopted here, North Carolina citizens would for the first time in history be subject to treatment by practitioners whose hand skills have never been evaluated by a competent third-party. This is a risk the NCSBDE is unwilling to support voluntarily.

Additionally, this aspect of the CSG compact would put North Carolina dental and dental hygiene graduates in an unequal and unfair position. Those who graduate from NC dental and dental hygiene schools and plan to practice in our state would continue to be subject to hand-skills testing required by the North Carolina statute as applied through the NC State Board of Dental Examiners. On the other hand, those entering NC through the CSG Compact could escape such testing. In fact, the CSG Compact incentivizes students with poor clinical hand-skills to seek initial licensure in a compact member state that does not require hand-skills testing. Once licensed without such testing, the licensee could then move freely across the border to North Carolina to practice on our residents. The North Carolina State Board of Dental Examiners opposes exposing the citizens of our state to such a risk and applying unequal treatment to NC graduates who would continue to be required to meet higher testing standards.

On the other hand, the AADB Compact requires all licensee who apply for licensure through the Compact to have successfully completed the American Board of Dental Examiners (ADEX) examination – an examination that tests the hand-skills of dentists and dental hygienists. Those who have not taken the ADEX examination have an alternative pathway that requires the applicant to have practiced at least five (5) years and have passed a similar state or regional licensure examination that tests hand skills. In either case, those who obtain a compact license through the AADB Compact must have undergone hand-skills testing.

Third, the NCSBDE supports a pathway for qualified out-of-state dentists and dental hygienists to receive an expedited “license” in North Carolina as opposed to merely being granted a “privilege” to practice. Those who qualify and meet the requirements of the AADB Compact are awarded an expedited **license** to practice in another Compact member state. In short, this means that the Dental and Dental Hygiene Practice Acts and other statutes as currently written would apply to any person practicing in North Carolina by virtue of a the AADB “compact license.” No legislative or statutory changes to these Practice Acts would be necessary since they apply to all who are licensed to practice dentistry or dental hygiene in our state. While it is true that both the AADB and CSG Compacts provide a pathway for dentists and dental hygienists to practice in other member states without the need to complete cumbersome duplicative application procedures, the CSG compact issues a **privilege** to practice rather than a **license**.

This raises a very important question: is the “privilege” to practice legally equivalent to being “licensed” to practice? The CSG Compact is silent on this point and current NC statutes do not address the rights and responsibilities of those practicing by virtue of a privilege. However, there are several important state and federal statutes that require a practitioner to be licensed in order to fully practice a profession within a state. For example, in North Carolina state statutes require an individual to have a **dental license** to write a prescription to be filled by a NC Pharmacist (NCGS 90-46), to form a Professional Corporation or Professional Limited Liability Company (NCGS 90-55), or to own a dental practice (NCGS 90-29(c)(11)). **The NCSBDE supports the granting of an expedited license, as is the case with the AADB Compact, in order to avoid legal questions or the need for additional legislation to address the differences between a privilege and a license.**

For the above primary reasons, the NCSBDE supports adoption of the AADB Compact rather than the CSG Compact to the extent that the North Carolina General Assembly deems it warranted, necessary, and appropriate to join a dental licensing compact. The AADB Compact would facilitate the interstate practice of dentistry and dental hygiene and improve access to care while maintaining existing authority within North Carolina – including legislative oversight – to protect the public health and safety of the citizens of our state.

