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Opponent Testimony in Opposition of SB 40 and Amendment AM_135_1833

Ohio House Health Provider Services Committee

May 14, 2024

Chairman Cutrona, Vice Chair Gross, Ranking Member Somani and all members of the House Health Provider Services Committee, thank you for the opportunity to speak with you again today reaffirming my concerns and my opposition to the current version of Senate Bill 40 and proposed amendment AM_135_1833.

My name is Dr. Mark Armstrong and I live and practice in Troy, Ohio. I was a gubernatorial appointment in 2004 to the Ohio State Dental Board and served two consecutive terms on the Board before leaving due to term limits. I served on multiple committees while on the Board, and also served as Vice Chair in 2007 and 2008, and as Chairman in 2009. When I took the oath of office in 2004, I swore to protect the citizens of Ohio. I have continued to do that since finishing my two terms on the Board.

I invite your attention to the testimony I gave at the last hearing on SB 40 by this Committee on February 6, 2024. I have attached a copy of that testimony, which I will not repeat here.

The purpose of my testimony today is NOT to oppose licensure compacts in general, but to address the critical flaws of SB 40. Texas, Oklahoma, and Indiana have all seen the same flaws that I am presenting to you. All of those states have refused to advance this compact legislation out of committee. Another five states

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(Oklahoma, North Carolina, Mississippi, Louisiana and Montana) support the Dental/Dental Hygiene compact developed by the American Association of Dental Boards (AADBCompact.org) because it mirrors the Medical and Nursing compacts that Ohio is already a participant in. If SB-40 is passed, Ohio will enter into the CSG compact, which instead of being modeled after Medicine and Nursing, is instead modeled after the Cosmetology compact.

First and foremost, I am opposed to proposed amendment AM_135_1833 as the amendment has distinctly different objectives from the bill, licensing vs. insurance reimbursement. While H.B. 160 has support, there are serious flaws in S.B. 40 that need to be addressed before it is passed.

I wish to address three critical flaws in SB 40 that have not yet received the attention they deserve. They all deal with the same problem: if S.B. 40 is passed, the Ohio Legislature will have handed over its authority, granted to it by the state and the citizens of Ohio, to a non-governmental commission of which Ohio will have just one vote out many.

First, S.B. 40 allows the Commission it creates to impose unlimited financial obligations on the State of Ohio, without any accountability to this Legislature. I will now quote directly from the CSG compact:

The Commission shall have the following powers:

- ***Borrow, accept, or contract for services of personnel...(line 369)***
- ***Hire employees, elect or appoint officers, fix compensation...(line 374)***
- ***Lease, purchase, retain, own, hold, improve, or use any property...(line 393)***
- ***Borrow money...(line 401)***

There are no limits to this power of financial appropriation. Our neighbor to our west, Indiana, recently declined to pass this compact legislation, in part, for exactly this reason. It did not want to pass a bill with an unknown financial impact. Does Ohio want to pass a bill with an unknown financial impact?

More critically, this Commission has virtually unlimited rulemaking authority over the practice of dentistry. **The Commission's rules have the force of law and override Ohio law.** The State of Ohio can only overturn those rules by suing the Commission in federal court in Washington, D.C.

Under SB 40, the Commission would have the authority to:

- Require continuing education for cultural competency/DEI (addressed in SB 48 in 2021, which was not voted out of committee);
- Establish rules about sexual contact between licensees and their patients (addressed in SB 166 in 2020, which was not voted out of committee); and
- Regulate which pain medications dentists may prescribe (addressed by HB 275, which is currently pending.)

The Legislature has considered all of these issues in the past three sessions, and SB 40 would give the Commission the ability to override this Committee's actions on these issues. Does this Committee wish to give its lawmaking authority to an independent body that is not accountable to the Ohio legislature on matters such as these? For that reason alone, we urge the Committee to preserve its legislative authority and reject SB 40 as drafted.

Finally, if SB 40 is passed, compact privilege holders, while they are required to follow the dental practice act, they will not be subject to the discipline of the Ohio State Dental Board to the same degree that an Ohio license holder will be. While I was serving on the board, the Ohio Attorney General issued a directive to the Ohio State Dental Board, prohibiting the board from disciplining anyone who did not hold a dental/dental hygiene license. The only recourse Ohio has, no matter how serious the infraction, including a felony, is to remove the compact privilege.

As demonstrated above, Senate Bill 40 will weaken enforcement of the Ohio State Dental Board, strip lawmakers of their authority granted by state of Ohio and transfer those authorities to a non-governmental commission, and endanger the citizens of Ohio. For those reasons, I urge you to either amend Senate Bill 40 as described below, or defeat Senate Bill 40. Once again, I want to thank the members of the committee for your time and attention to a critical matter that will change the practice of dentistry and greatly reduce the standards of patient care in Ohio.

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Proposed Amendments to SB 40

The following amendments are necessary to address the major issues posed by SB 40. The amendments would:

1. Specify that a compact privilege holder must have passed either: (a) the American Board of Dental Examiners (“ADEX”) initial licensing examinations or (b) a psychomotor examination adopted by the Compact Commission that is an independent, clinical hand-skills test of the candidate’s performance in performing the following dental procedures: restorative, endodontics, prosthodontics, and periodontal diagnosis and treatment and the following dental hygiene procedure: periodontal diagnosis and treatment.

This amendment continues the 100-year old requirement by 47 states of completion of a hand-skills examination as a condition for licensure, and continues a national standard of surgical competence.

2. Clarify that a compact privilege holder is subject to (a) the jurisdiction of the state dental board and (b) all laws governing the practice of dentistry.

While the bill’s supporters claim that compact privilege holders are already subject to the state’s laws and to the jurisdiction of the Ohio Dental Board, the law is unclear. This amendment removes any ambiguity on those points.

3. Require out-of-state licensees to register with the Ohio Dental Board, so the Board knows who is practicing in the state and may review their ability to practice under Ohio’s laws.

This amendment establishes the mechanism necessary to allow the Dental Board to exercise its legal obligations. If the Dental Board does not know who is practicing in the state, it cannot enforce the state’s laws and regulations, especially those regarding criminal convictions and prior disciplinary history.

4. Limit the Compact Commission’s rulemaking authority to: (a) matters concerning the implementation and administration of the Compact, and (b) matters that do not override or conflict with current state laws and regulations.

This amendment helps preserve the state’s legislative authority and prevents regulatory overreach

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 statues 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.

Testimony from 2-6-24

Chairman Cutrona, Vice Chair Gross, Ranking Member Somani and all members of the House Health Provider Services Committee, thank you for the opportunity to speak today regarding my concerns and my opposition to the current version of Senate Bill 40. My name is Dr. Mark Armstrong and I live and practice in Troy, Ohio. I am currently a general dentist in family practice in Troy for the past 34 years, and in Versailles for the past 20 years. I am also the current Chairman of the CDCA-WREB-CITA, an international 3rd party independent dental testing organization that administers dental board exams in every dental school and over 80% of all hygiene schools in the United States. I was a gubernatorial appointment in 2004 and served two consecutive terms on the Ohio State Dental Board before leaving due to term limits. I served on many different committees while on the Board, and also served as Vice Chair in 2007 and 2008, and as Chairman in 2009. When I took the oath of office in 2004, I swore to protect the citizens of Ohio. I have continued to do that since leaving the Board.

The purpose of my testimony is NOT to oppose licensure compacts in general, but to address the critical flaws of this particular compact, that, if enacted as written, would put Ohio citizens at risk. Here are a few examples of cases I adjudicated while on the OSDB.

Dr. Champagne referred in his testimony to the fact that the Board would have no way to enforce compliance with Ohio's laws about dentists prescribing controlled substances. This is a very serious issue. For example, when I was on the Board, a licensee was charged and disciplined by the Board for giving an underage teenage boy cocaine and having inappropriate sexual contact with him.

In another case, a licensee was charged and disciplined by the Board for standard of care violation for a patient who had teeth extracted, and then bled to death because of inadequate follow-up care.

A third case that was adjudicated while I was on the Board, a licensee was charged and disciplined by the board for standard of care violation for overdosing a 5 year old child on anesthetic. The child subsequently died of the overdose.

If that dentist had been practicing in Ohio under a compact privilege, the Board would have been powerless to address any of the above violations. Had any of these cases happened in another state, the Board may not even be informed that they had happened for a practitioner coming into the state under SB-40 Compact Privilege.

I am not alone in my concerns. I have spoken with several former members of the Ohio State Dental Board and they agree with the deficiencies of Senate Bill 40. I am happy to provide you with a list of those individuals.

Once again, I want to thank the members of the committee for your time and attention to a critical matter that could change the face of dentistry and lower the standards of dentistry in Ohio.

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