

## Clarifications & Discussions on Restricting the Privilege to Practice

Position Paper 2024-01

*Adopted by the Commission on 14 May 2024*

This position paper provides a comprehensive overview and guidance for Commissioners concerning a scenario that has implications for the Privilege to Practice under the Recognition of EMS Personnel Licensure Interstate Compact (REPLICA). It includes background information, a detailed discussion, foundational insights, and specific recommendations from the Executive Director. The central goal of this document is to foster a consistent and unified interpretation and application of key terms and provisions across all member states. Such consistency is crucial for preserving the integrity of multistate collaboration and ensuring effective regulation within the EMS framework. By harmonizing these interpretations, the memorandum equips Commissioners with the necessary insights to apply these provisions judiciously and uniformly, thereby enhancing public health and safety through the regulated practice of EMS professionals across member states. Additionally, this memo may prompt the Commission to consider whether further Administrative Rules, policy adjustments, or the development of position papers on this topic are necessary.

### Scenario at Question

The Executive Committee recently reviewed a situation concerning an EMS Practitioner licensed in two Member States, Kansas and Missouri. The practitioner voluntarily requested an inactive license status in Kansas. According to guidance from the Kansas EMS Authority, EMS practitioners with such status are prohibited from identifying as or working as an EMS practitioner in Kansas. Consequently, Kansas designated the practitioner's Privilege to Practice status as "No Privilege to Practice." Meanwhile, the practitioner maintained an active, unrestricted license in Missouri, which was in good standing and had a Privilege to Practice status listed as "Yes/Active." The National EMS Coordinated Database confirmed that no discipline was reported against the Missouri license, thus the overall Privilege to Practice status was considered "Active." Despite the inactive status in Kansas, the practitioner wished to utilize the EMS Compact's Privilege to Practice, by virtue of their active Missouri license, to continue working in Kansas. Additionally, this case prompted further consideration of Section 8.B.2 of the model legislation, which addresses the restoration of an individual's Privilege to Practice under specific conditions.

This scenario highlighted four important areas for clarification:

1. Can an EMS Practitioner utilize a Privilege to Practice, granted by a second Home State, to practice in a Home State where their license status is inactive?
2. Is a voluntary change of license status to inactive in a Home State, which restricts or limits practice in that Home State, considered an Adverse Action?
3. Should this voluntary, non-disciplinary related action globally restrict a Privilege to Practice status in the same manner as disciplinary-related Adverse Actions?
4. Can an individual with a restricted license in a Home State, practice in a Remote State?

## Definitions

Key definitions in the Model Legislation pertinent to this discussion include:

- **Adverse Action** (Section 2[B]): is defined as “any administrative, civil, equitable or criminal action permitted by a state’s laws which may be imposed against licensed EMS personnel by a state EMS authority or state court, including, but not limited to, actions against an individual’s license such as revocation, suspension, probation, consent agreement, monitoring or other limitation or encumbrance on the individual’s practice, letters of reprimand or admonition, fines, criminal convictions and state court judgments enforcing adverse actions by the state EMS authority.”
- **Home State** (Section 2[G]): is defined as “a member state where an individual is licensed to practice emergency medical services.”
- **Remote State** (Section 2[M]): is defined as “a member state in which an individual is not licensed.”
- **Restricted** (Section 2[N]): is defined as “the outcome of an adverse action that limits a license or the Privilege to Practice.”

## Model Legislation

The pertinent sections of REPLICA that provide a framework for understanding and managing the Privilege to Practice include:

- **Section 4.A** mandates Member States *shall* recognize the Privilege to Practice of individuals licensed in another Member State. However, this recognition is subject to certain conditions and limitations aimed at safeguarding public health and safety.
- **Section 4.E** clarifies that a Home State license which is “restricted or suspended” renders the individual ineligible to practice in remote states under the Privilege to Practice until the Home State license is restored.
- **Section 8.B** outlines the procedures for addressing Adverse Actions and limitations imposed by a Home State on an individual’s license, providing a mechanism for the exercise of the Privilege to Practice, subject to authorization by both the Home State and Remote State authorities.

**Question 1:**

**Can an EMS Practitioner utilize a Privilege to Practice, granted by a second Home State, to practice in a Home State where their license status is inactive?**

To address this question, it is crucial to understand the definitions of a Home State and a Remote State as outlined in the Model Legislation. The EMS Compact provides a qualified EMS practitioner with a Privilege to Practice in Remote States. Remote States are defined as “Member States in which the individual is *not licensed...*”

In this scenario, although the EMS practitioner holds an inactive license from Kansas, the state is still considered a Home State, since the individual holds a license there, rather than a Remote State. The EMS Compact uniquely allows an individual to have multiple Home States, which are not defined by residency or workplace affiliations.

Consequently, the Privilege to Practice is only authorized in Remote States, provided the EMS Practitioner meets the provisions outlined by the EMS Compact. As Kansas is not a Remote State for this practitioner, the Privilege to Practice does not apply here.

**Question 2:**

**Is a voluntary license restriction (like a status change to inactive, which restricts or limits practice) considered an Adverse Action?**

Adverse Actions, as defined in the Compact and imposed by Member States, can significantly impact an EMS practitioner’s Privilege to Practice in Remote States under REPLICA. It is mandatory for any limitations that affect the Privilege to Practice status to be communicated across all Member States via the National EMS Coordinated Database, ensuring integrity in national EMS practice.

**Voluntary vs. Imposed Restrictions**

The scenario detailed in this memo raised concerns in which an EMS practitioner’s license is limited due to voluntary reclassification of that license by the practitioner to inactive status, which is an option expressly afforded to EMS practitioners in that state through duly-enacted regulations.<sup>1</sup> For instance, an EMS practitioner electing an ‘inactive’ license status in a jurisdiction that prohibits practice under this status prompts the question: Does such a voluntary, non-disciplinary action qualify as a “restricted” license under the EMS Compact, and consequently, should this impact the Privilege to Practice in Remote States?

**Definition of Adverse Action**

The determination of whether a license restriction qualifies as an Adverse Action under the Model Legislation is a critical issue for Member States. Adverse Actions are described as “any administrative, civil, equitable, or criminal action permitted by a state’s laws which may be imposed against licensed EMS personnel...” The phrase “*imposed against*” implies that Adverse Actions are compulsory, distinguishing them from voluntary decisions by the EMS practitioner, such as self-selecting an inactive license status when that option is afforded the practitioner under state law or regulations. While Adverse Actions include disciplinary license restrictions and may extend to negotiated license statuses following an inquiry (e.g., consent agreements), voluntary changes to license status by the practitioner are generally not considered “imposed” and, therefore, should not be categorized as Adverse Actions under the EMS Compact.

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<sup>1</sup> Kan. Admin. Regs. §109-6-4 provide as follows: “[b]efore expiration of an active certificate, any emergency medical service provider may apply for an inactive certificate on a form provided by the board. The application shall be accompanied by the inactive certificate fee...”

### Consideration of Section 4.E.

Section 4.E of the Model Legislation clearly states,

"If an individual's license in any home state is restricted or suspended, the individual shall not be eligible to practice in a remote state under the privilege to practice until the individual's home state license is restored."

While this provision might initially suggest that any form of restriction, such as the inactive status of the Kansas license, would disqualify an individual from practicing in a remote state, it is essential to consider the specific definition of 'restricted' within the context of the EMS Compact legislation. 'Restricted' is precisely defined as "the outcome of an adverse action that limits a license or the Privilege to Practice." Since the restriction in this scenario was not the outcome of an Adverse Action, Section 4.E does not apply.

### Adverse Action Consequences & Reporting Requirements

State EMS Authorities must ascertain whether an Adverse Action affects the Privilege to Practice and report this to the Commission per Section 8.B.1 of the Model Legislation. This section mandates that "All Home State Adverse Action orders *shall* include a statement that the individual's compact privileges are inactive. The order may allow the individual to practice in remote states with prior written authorization from both the home state and remote state's EMS authority." This underscores the responsibility of Home State EMS Authorities to determine the impact of Adverse Actions and emphasizes the necessity for clear and consistent communication. All Adverse Actions and limitations on the Privilege to Practice must be documented in writing to the affected EMS Practitioner *and* reported to the Commission via the National EMS Coordinated Database.

### Question 3

Should this voluntary, non-disciplinary related action globally restrict a Privilege to Practice status in the same manner as disciplinary-related Adverse Actions?

### Determination of an Adverse Action

The responsibility for determining whether licensure statuses and actions by the State EMS Authority qualify as Adverse Actions, as defined in the REPLICA model legislation and enacted in state regulations, rests with the State EMS Authority itself. While the Commission may offer guidance to promote consistency across states, the ultimate discretion to make and communicate these determinations lies with the State EMS Authority. This approach is communicated to both the EMS practitioner involved and the Commission, affirming the autonomy of State EMS Authorities in these critical regulatory decisions.

While the determination of a reportable "Adverse Action" is, by necessity, the responsibility of each Member State, the definition of "Adverse Action" is a Compact term. Accordingly, it benefits the administration of the Compact for the Commission to offer guidance so that each state can apply consistent criteria regarding a practitioner's voluntary election of "inactive" license status in a state where that is permitted.

While each state's process for voluntary reclassification of license status must be reviewed individually to determine whether the result is a "restriction" as defined in the Compact and thus constituting a basis for an "Adverse Action," it is the Commission's position that laws and regulations such as the Kansas provision cited above do *not* constitute Adverse Actions for purposes of the Compact. No practitioner who voluntarily elects transfer to inactive status would reasonably anticipate or expect that they would also be voluntarily causing the state to use the Compact to report a disciplinary type "Adverse Action" to a national database that could have significant implications for that practitioner in the future, if they apply for other

professional licenses, security clearances, etc.

Note that, in the specific scenario presented to the Commission at its May 1, 2024 Executive Committee meeting, the practitioner in question possessed a Home State license in another state (Missouri), which maintains the practitioner's eligibility for a Privilege to Practice (since the voluntary transfer to inactive status in Kansas did not constitute an Adverse Action). However, if the practitioner held only one Home State license, and voluntarily elected transfer of that license to inactive status, the practitioner would be ineligible for a Privilege to Practice in *any* Remote State.

### Rights of EMS Practitioners

It is important to note that EMS practitioners generally have the right to appeal the State's determination or implementation of what constitutes an Adverse Action, as allowed under applicable state law. This ensures that EMS practitioners can seek recourse in situations where they disagree with the state's decisions.

### Role of the EMS Compact Commission

The Commission does not adjudicate or evaluate the correctness of decisions made by state EMS authorities regarding the imposition of license restrictions or the associated Privileges to Practice. Rather, the Commission's role is to report on, and implement the license status and privilege to practice as communicated by the state authorities.

### Question 4

**Can an individual with a restricted license in a Home State, practice in a Remote State?**

In the specific scenario discussed earlier, involving a practitioner with licenses in Kansas and Missouri, this question does not directly apply, as the inactive status of the Kansas license was not classified as an Adverse Action. However, this issue was brought up tangentially during the Executive Committee discussion, leading to a broader examination of the related legal provisions and their implications.

Section 8.B.2 of the Model Legislation introduces a significant relief mechanism that is distinct within the framework of the EMS Compact. This provision allows for a Home State, which took an Adverse Action against the license and also restricted the associated Privilege to Practice, to authorize the practitioner to exercise an authorization to Practice in a Remote State, if the Remote State also authorizes the exercise of the privilege. The purpose of this dual-authorization process is to *potentially restore* the Privilege to Practice specifically in a Remote State, under defined circumstances.

According to Section 8.B.2, "An individual currently subject to adverse action in the Home State shall not practice in any Remote State without prior written authorization from both the Home State and Remote State's EMS authority." This clause sets up a controlled and regulated process where both the Home and Remote States must provide written authorization before a practitioner can practice in a Remote State, despite restrictions in their Home State.

It is crucial to understand that this provision neither compels nor requires Member States to utilize this mechanism. The core principle underlying the EMS Compact is the respect for State sovereignty in making licensure decisions. This respect is preserved, as the mechanism does not force any state to engage in this practice but rather offers it as an optional tool. Moreover, this provision does not prevent an individual from seeking licensure directly in any Remote State, nor does it stop a Remote State from requiring an individual—who does not have a Privilege to Practice due to restrictions in their Home State—to make a

formal application for licensure should they wish to practice in that state.

This unique provision may serve as a beneficial tool for State EMS Authorities under specific, non-standard circumstances. For instance, it may be applicable in cases where an individual is subject to mandatory administrative actions or other non-criminal or non-public threat situations that necessitate a Home State to restrict a license. By facilitating such a process, the provision underscores the importance of mutual actions among states, which are crucial for maintaining inter-state operational harmony among EMS personnel.

By way of example, this mechanism could be employed in a scenario where an EMS practitioner's license is temporarily restricted in their Home State due to administrative oversights or minor non-criminal infractions that do not necessarily compromise public safety. For example, a state licensing authority may be compelled by their state's law to restrict a license because a licensee is delinquent on child support or student loan obligations. These underlying actions have no bearing on the practitioner's ability to practice safely and in a manner which protects the public. In such cases, if the individual seeks to practice in a Remote State, both states can choose to authorize the individual to practice in the Remote State under specific conditions, thereby ensuring continuity of service and adherence to professional standards.

Section 8.B.2 represents a thoughtful inclusion in REPLICA, providing flexibility and respect for state decisions while upholding the overall integrity of EMS practice across state lines. This provision, while optional, exemplifies the compact's commitment to adaptability and cooperative federalism in the regulation of EMS personnel.

### **Conclusion**

This position paper has outlined the critical aspects of the Privilege to Practice within the framework of the Recognition of EMS Personnel Licensure Interstate Compact (REPLICA), focusing specifically on the nuances of "Adverse Actions" and licensing "Restrictions." Uniformity in interpreting and applying these concepts across all Member States is essential to maintain the integrity and foundational trust that are central to such compacts.

A unique provision of the EMS Compact is Section 8.B.2, which introduces a significant mechanism for restoring a Privilege to Practice authorization under specific conditions, thereby reinforcing respect for state sovereignty and promoting robust interstate cooperation. It is vital for each state to meticulously evaluate whether certain actions constitute Adverse Actions and to assess their impact on the Privilege to Practice. All such evaluations must be promptly and clearly communicated to the affected EMS practitioners and reported to the National EMS Coordinated Database to enhance transparency and consistency across states.

To further ensure uniformity, the Executive Director recommends the adoption of standardized language concerning the Compact and Privilege to Practice statuses in all State EMS Authority Adverse Action orders. This step is crucial for safeguarding public health and safety by effectively regulating EMS practices.