

Massachusetts Department
of Public Health



IMLC licensure contrasted with Massachusetts physician licensure

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Topics

- Eligibility requirements (Credentials)
- Eligibility requirements (Adverse History)
- Processing time and relation to eligibility requirements
- Disciplinary process
 - Complaints arising in MA
 - Based on actions taken by other states
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Eligibility requirements (Credentials) - IMLC

IMLC licensure requires all of the following credentials:

- Medical school accredited by the LCME, the COCA, or a medical school listed in the IMED or its equivalent;
- Pass each component of USMLE or COMLEX-USA within 3 attempts, or any predecessor examination accepted by a state medical board;
- Successfully complete graduate medical education approved by the ACGME or the AOA
- Specialty certification or a time-unlimited specialty certificate recognized by the ABMS or the AOA;
- Full and unrestricted license to engage in the practice of medicine issued by a member board

Eligibility requirements (Credentials) - MA

General Rules:

- Medical School:
 - accredited by LCME or COCA, or “substantially equivalent”
 - IMGs must hold an ECFMG certificate
- USMLE:
 - must pass all 3 steps within 4 attempts within 7 years
 - Board also accepts completion of MCCQE
- Post-graduate training
 - Completion of 2 years ACGME, AOA or Canadian accredited GME
- Specialty Certification – not required, but may support waiver
- Pre-existing license – not required, but may support waiver

Eligibility requirements (Credentials) - MA

The “general rule” eligibility requirements for Massachusetts physician licensure set in G.L. c. 112, § 2 and 243 CMR 2.02 (for graduates of medical schools in U.S., Canada and P.R.) and 243 CMR 2.03 (for graduates of international medical schools)

There are alternatives set in statute, applicable to IMGs:

- “5th Pathway” (G.L. c. 112, § 2, par. 1)
- “Sluzki amendment” (G.L. c. 112, § 2, par. 5)
- “International Pathway” (G.L. c. 112, § 9(b)-(c))

BORIM also grants waivers of specific eligibility requirements where applicants possess acceptable alternative combinations of credentials.

Eligibility requirements (Adverse History)

- IMLC takes a stringent disqualification approach to certain adverse history.
- BORIM reviews applications for traditional MA licenses as to a broader range of adverse history and makes a case by case recommendation by the Board's Licensing Committee as to whether the license should be approved or denied.
- Denial is recommended if the adverse history rises to the level of
 - Denial based on lack of good moral character, or
 - Denial based on conduct that would warrant discipline of a MA licensed physician.

Eligibility requirements (Adverse History)

Adverse History Category that subjects a MA license applicant to Licensing Committee review	Adverse History Category that has a corresponding impact on IMLC eligibility
Criminal charges, inclusive of convictions	Applicants must never have been convicted, received adjudication, deferred adjudication, community supervision or deferred disposition for any offense (felony, gross misdemeanor or crime of moral turpitude).
Discipline by another licensing board	Applicants must never have held a license subjected to discipline (except for non-payment of fees)
Suspension or revocation of a DEA or state controlled substance registration or permit	Applicants must never have held a DEA or state controlled substance registration or permit that was suspended or revoked
Active investigation by a licensing board or law enforcement	Applicants must not be under active investigation by a licensing agency or law enforcement authority in any state, federal or foreign jurisdiction

Eligibility requirements (Adverse History)

Adverse History Category that subjects a MA license applicant to Licensing Committee review with no corresponding impact on IMLC licensure

A single paid malpractice claim of \$1 million or more, or 3 or more paid claims of any amount over lifetime

Disciplinary action by medical school, post-graduate program or as to facility privileges

Supervisory Evaluation includes a below average or poor rating on , or the physician is not recommended for licensure, or recommended for licensure with reservations

No clinical practice in more than 2 years (applicant is subject to Board's Physician Re-Entry Policy)

Processing time and relation to eligibility requirements

IMLC License Processing Time:

- Average 57 days, with 51% at 37 days or less

BORIM Processing Time:

- All approved applications: average 37 days, median 20 days
- Applications not referred to Licensing Committee: average 20 days, median 12 days

Disciplinary Process: Complaints arising in MA

Section 1 of the IMLC Model Act provides that:

“The Compact also adopts the prevailing standard for licensure and affirms that the practice of medicine occurs where the patient is located at the time of the physician-patient encounter, and therefore, requires the physician to be under the jurisdiction of the state medical board where the patient is located. State medical boards that participate in the Compact retain the jurisdiction to impose an adverse action against a license to practice medicine in that state issued to a physician through the procedures in the Compact.”

Other than provisions relating to sharing of information, the IMLC Model Act does not contain any provision directing how a member state approaches the investigation of a complaint against a compact license, nor the prosecution of a disciplinary action.

Disciplinary Process: Complaints arising in MA

In disciplinary proceedings involving allegations that a physician provided substandard care, BORIM applies the following definition, derived from civil proceedings in state courts:

Physicians generally must meet the standard of care, which is "the degree of care and skill of the average qualified practitioner, taking into account the advances in the profession." *Brune v. Belinkoff*, 354 Mass. 102, 109, 235 N.E.2d 793,798 (1968). For medical specialists, one looks additionally to the level of care and skill that others in the same specialty possess, *Palandjian v. Foster*, 446 Mass. 100, 105 (2006); *McCarthy v. Boston City Hospital*, 358 Mass, 639,643 (1971). Evidence that other physicians may have treated a patient differently does not prove negligence on its own unless such treatment does not coincide with accepted medical practice. *Grassis v. Retik*, 25 Mass. App. Ct. 595, 602 (1988).

Disciplinary Process: Complaints arising in MA

- In such disciplinary proceedings, BORIM's Enforcement Unit bears the burden of proof.
- Absent a clear law or regulation governing a particular aspect of physician practice, or a prior determination in a court of competent jurisdiction, BORIM's Enforcement Unit would introduce the testimony of an expert to describe the standard of care applicable to the specific circumstances and facts presented with respect to the medical care that is the subject of the allegations.
- It is unlikely that law or experts would make a distinction as to the standard of care required based on whether a physician holds a traditional MA license or an IMLC license.

Disciplinary Process: Based on actions taken by other states

BORIM action options without entering IMLC on learning that another state licensing board has imposed a disciplinary action against a physician licensed by BORIM:

No automated actions;

BORIM can act with the physician's consent: VANP, Resignation, Consent Order

BORIM can act without the physician's consent through a disciplinary proceeding

- Impose adverse action after a hearing
- Impose a summary suspension if there is an immediate threat to public health, safety and welfare, subject to hearing within 7 days

BORIM can choose not to act

Disciplinary Process: Based on actions taken by other states

BORIM options would be vastly different if MA adopted IMLC, at least as to IMLC licenses, although language in IMLC Model Act is somewhat ambiguous about impact on traditional licenses.

IMLC Model Act includes these definitions

- “License” - authorization by a member state for a physician to engage in the practice of medicine, which would be unlawful without authorization.
- “Expedited License” - a full and unrestricted medical license granted by a member state to an eligible physician through the process set forth in the compact.

Disciplinary Process: Based on actions taken by other states

- Section 3(a) of the IMLC Model Act states that “a physician must meet the eligibility requirements as defined in subsection (k) of section (2) to receive an expedited license under the terms and provisions of the compact.”
- Section 3(b) states that “a physician who does not meet the requirements of subsection (k) of section 2 may obtain a license to practice medicine in a member state if the individual complies with all laws and requirements, other than the compact, relating to the issuance of a license to practice medicine in that state.”

Disciplinary Process: Based on actions taken by other states

BORIM action options after adopting IMLC on learning that the license of a physician licensed by BORIM has been revoked, surrendered, or suspended:

By the Home state: "all licenses issued to the physician by member boards shall be automatically placed, without further action necessary by any member board, on the same status. (Member board may subsequently reinstate.)

By another member state: "any licenses issued to the physician by any other members board or boards shall be suspended, automatically and immediately without further action necessary by the other member boards, for 90 days" (Member board may terminate suspension prior to completion of 90 days.)

Disciplinary Process: Investigations conducted across state lines

BORIM currently shares information about physicians with other licensing boards only to the extent that it is public record.

Laws and regulations which pre-existed Shield Law apply as to all physicians and protect the confidentiality of:

- Personal data inclusive of certain identifiers (DOB, SSN) and medical information of physicians and patients
- Complaints and investigations prior to resolution or initiating a disciplinary proceeding

Disciplinary Process: Investigations conducted across state lines

Shield Law protections for providers of protected health care services include but are not limited to:

- BORIM will not deny licensure or impose adverse actions based on actions in other states for protected health care services
- Expanded public record exemption for providers
- Prohibition on state employees from cooperating or providing information to other jurisdictions investigating protected health care services
- Prohibition on state courts and law enforcement from cooperating or providing information to other jurisdictions investigating protected health care services, including not honoring out of state subpoenas

Disciplinary Process: Investigations conducted across state lines

IMLC Model Act includes language that provides other state licensing boards with rights to information held by BORIM.

- Section 8(e) states that “member boards shall share complaints or disciplinary information about a physician upon request of another member board.”
- Section 9(c) states that “a subpoena issued by a member board shall be enforceable in other member states”
- Section 24(b) states “all laws in a member state in conflict with the Compact are superseded to the extent of the conflict.”