

**Performance Review**

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**Board of Examiners  
in Counseling**

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**The Board of Examiners in Counseling  
Is Necessary to Protect the Public  
Interest of West Virginians**

**The Board Needs to Improve Compliance  
With Some General Provisions of  
Chapter 30 and Other Applicable Laws**



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John Sylvia  
Director

January 7, 2008

The Honorable Edwin J. Bowman  
State Senate  
129 West Circle Drive  
Weirton, West Virginia 26062

The Honorable Jim Morgan  
House of Delegates  
Building 1, Room E-213  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Performance Review Act, we are transmitting a Regulatory Board Review of the *Board of Examiners in Counseling*, which will be presented to the Joint Committee on Government Operations and Joint Committee on Government Organization on Monday, January 7, 2008. The issues covered herein are "*The Board of Examiners in Counseling Is Necessary to Protect the Public Interest of West Virginians*" and "*The Board Needs to Improve Compliance With Some General Provisions of Chapter 30 and Other Applicable Laws.*"

We transmitted a draft copy of the report to the Board of Examiners in Counseling on December 21, 2007. The Board of Examiners in Counseling opted not to have an exit conference. We received the agency response on December 28, 2007.

Let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

JS/tlc

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*Joint Committee on Government and Finance*

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# Executive Summary

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## **Issue 1: The Board of Examiners in Counseling Is Necessary to Protect the Public Interest of West Virginians.**

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*The Board protects the public from the unqualified, unauthorized and unprofessional practice of counseling.*

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The Legislative Auditor finds that the Board of Examiners in Counseling is necessary. The Board protects the public from the unqualified, unauthorized and unprofessional practice of counseling. Without licensing, the state is unable to identify and stop damaging and harmful practices that counselors might otherwise impose on vulnerable clients. Since 2005, seven counselors acted in violation of the American Counseling Association's Code of Ethics or the West Virginia Board of Examiners in Counseling's standards. The Board has taken the necessary steps in these cases with disciplinary action. The Legislative Auditor finds the Board of Examiners in Counseling necessary to protect the interest of the public and should be continued.

## **Issue 2: The Board Needs to Improve Compliance With Some General Provisions of Chapter 30 and Other Applicable Laws.**

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*The Legislative Auditor is concerned about the Board continuing to operate out of the Executive Director's home and continuing to store important documents in a nearby storage facility.*

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The Legislative Auditor finds that the Board of Examiners in Counseling is in compliance with some of the provisions of Chapter 30. The Board restricts public access by continuing to operate out of the Executive Director's home. The Legislative Auditor is concerned about the Board continuing to operate out of the Executive Director's home and continuing to store important documents in a nearby storage facility. The Board does not maintain an address in the Charleston telephone directory.

In addition, the Board maintains an incomplete register of counselors. The Legislative Auditor believes that the Board should require State Police and FBI background checks. The Board is financially self-sufficient. The Board does require continuing education. The Board has a clearly defined process for resolving and investigating complaints. Other concerns of the Legislative Auditor are the Board has a vacancy and an expired term on the Board which has not been filled by gubernatorial appointment. The Board does not send status letters to individuals filing complaints against practitioners.

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## **Recommendations:**

1. *The Legislative Auditor recommends that the Board of Examiners in Counseling be continued.*
2. *The Legislative Auditor recommends that the Board of Examiners in Counseling establish office space at a location where the public has access.*
3. *The Legislative Auditor recommends that the Board of Examiners in Counseling complete the register of applicants as required by WVC §30-1-12(a).*
4. *The Legislative Auditor recommends that the Board of Examiners in Counseling consider requiring State Police background checks for current practitioners and new applicants.*
5. *The Legislative Auditor recommends that the Legislature consider amending Chapter 30 and allow licensing boards to request FBI background checks on applicants and current licensees.*
6. *The Legislative Auditor recommends that the Board of Examiners in Counseling notify the Governor's Office of vacancies in a timely manner.*
7. *The Legislative Auditor recommends that the Board of Examiners in Counseling send status letters to individuals filing complaints against practitioners as required by WVC §30-1-5c.*



# Review Objective, Scope and Methodology

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## **Objective:**

This Performance Review of the Board of Examiners in Counseling is authorized by West Virginia Code §4-10-10. The Code authorizes a performance review to determine if the Board complies with Chapter 30 of the West Virginia Code, follows proper disciplinary procedures and is necessary to protect the public interest. The performance review also determines whether change is necessary to improve the Board, and makes a recommendation on the need to continue, consolidate or terminate the Board.

## **Scope:**

The review of the Board Examiners in Counseling covers the period from fiscal year 2005 through fiscal year 2007. In addition to examining whether the Board meets the requirements of the 2007 Performance Review Act, the Legislative Auditor also evaluated the Board's public accessibility and the Board's complaint process.

## **Methodology:**

The information compiled by the Legislative Auditor was collected from the West Virginia Code, correspondence and communication with the Executive Director of the Board of Examiners in Counseling, the Budget Division of Legislative Services for the Board's financial information, information from surrounding states, complaint files, the Board's register and information from the Board's website. In addition the Legislative Auditor obtained information from the Secretary of State. This report complied with the Generally Accepted Government Auditing Standards (GAGAS).



# Issue 1

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## **The Board of Examiners in Counseling Is Necessary to Protect the Public Interest of West Virginians.**

### **Issue Summary**

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*The Legislative Auditor finds that the Board of Examiners in Counseling is needed to protect the public interest and should be continued.*

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The West Virginia Board of Examiners in Counseling is a regulatory Board that licenses counseling practitioners. Every state, with the exception of California, licenses professional counselors. West Virginia Code declares the practice of counseling necessary in order to protect the public interest of West Virginians by licensing counselors on the basis of good moral character, education and experience. The public can be harmed by the unauthorized, unqualified and unprofessional practice of counseling. The Legislative Auditor finds that the Board of Examiners in Counseling is needed to protect the public interest and should be continued.

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*The State is unable, without the licensing of counselors, to identify and address damaging and harmful counseling practices.*

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### **Regulation of Counseling is Necessary**

The West Virginia Legislature has found the practice of counseling should be regulated on the basis of education, good character and experience in order to protect the citizens of West Virginia. West Virginia Code (WVC) defines counseling as the rendering, offering to render or supervising those who render any service for compensation or other personal gain involving the application of mental health counseling procedures to help in learning how to solve problems or make decisions related to careers, personal growth, marriage, family or other interpersonal or intrapersonal concerns.

The licensing of counselors is necessary to protect the public interest. The State is unable, without the licensing of counselors, to identify and address damaging and harmful counseling practices. Unlicensed individuals can cause danger to the public by not recognizing or offering proper support to clients with mental health conditions. Clients in need of counseling may be more vulnerable to financial or emotional exploitation and may be harmed. Since 2005, seven licensed counselors have been subject to disciplinary action due to failure to follow the American Counseling Association's Code of Ethics and the West Virginia Board of Examiners in Counseling's standards.

In 2007, the American Counseling Association (ACA) reported

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that 103,865 counseling practitioners were licensed in the United States. There are currently 1,024 counseling practitioners in the state. West Virginia first licensed counselors in 1986 under WVC §30-31-1. Today, 49 states license practitioners in counseling either through licensing boards or state agencies. California is the only state that does not currently license counselors.

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*There are currently 1,024 counseling practitioners in the state.*

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The West Virginia Board of Examiners in Counseling (the Board) was created to protect the public interest and protect the citizens of West Virginia from unauthorized, unqualified and unprofessional practice in the field of counseling within the state. The Board is responsible for renewing, issuing, denying, suspending and licensing counseling practitioners in West Virginia.

The Board consists of seven members who are appointed by the Governor. Presently, the Board is operating with only six members. The composition of the Board is as follows:

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*The Board is responsible for licensing and renewing licenses of counseling practitioners in the state of West Virginia.*

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- two counseling educators;
- three practicing counselors; and
- one lay person. The second lay person position is currently vacant.

Each year the Board elects a Secretary and Chair within its members. The Board holds quarterly, public meetings in January, March, July and October of each year. An Executive Director, who serves fulltime, and an assistant, who serves part-time, are both employed by the Board.

The Board is responsible for licensing and renewing licenses of counseling practitioners in the state of West Virginia. The standards for licensing individuals are outlined in West Virginia Code §30-31-7 and are as follows:

- The applicant must be a legal resident of West Virginia.
- The applicant must be of good moral character.
- The applicant must be free of alcohol and drug use.
- The applicant must meet educational standards set by the Board.
- The applicant must pass a national licensing examination.
- The applicant must submit recommendation letters.

Twenty-four complaints were received by the Board from FY 2005 through FY 2007. Seven of these complaints required disciplinary action by the Board because they were substantiated complaints about either violations of the American Counseling Association's Code of Ethics or violations of West Virginia Code. Table 1 below shows the types of disciplinary action taken by the Board.

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*Twenty-four complaints were received by the Board from FY 2005 through FY 2007.*

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<b>Table 1</b>			
<b>FY 2005 – FY 2007 Board of Examiners in Counseling Disciplinary Actions ACA Ethics Code and West Virginia Code Violations</b>			
	<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007*</b>
<b>Probation</b>	1	0	0
<b>License Revocation</b>	1	0	0
<b>License Suspension</b>	0	1	1
<b>Other Disciplinary Action</b>	2	1	0

*\*Information for FY 2007 is incomplete due to pending cases.*

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*Since FY 2005 the Board has taken disciplinary actions against counselors who breached standards set by the Board and the American Counseling Association.*

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The Board is necessary to regulate the occupation of counselors in the state. The Board protects the public interest of West Virginians by setting standards that ensure that unqualified individuals are prevented from practicing counseling in the state. The Board effectively regulates counseling practitioners by setting standards for education and experience of applicants and current licensees. **The Legislative Auditor recommends that the Board of Examiners in Counseling be continued.**

## **Conclusion**

The Board of Examiners in Counseling is necessary to regulate the profession of counseling in West Virginia. The Board protects the public from the risk of the unregulated, unauthorized and unqualified practice of counseling in the state. The Board licenses counselors on the basis of education, training and experience to ensure the protection of public interest. Since FY 2005 the Board has taken disciplinary actions against counselors who breached standards set by the Board and the American Counseling Association. The Legislative Auditor finds that the Board of Examiners in Counseling is necessary to protect the public interest of West Virginians.

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## Recommendation

1. *The Legislative Auditor recommends that the Board of Examiners in Counseling be continued.*

# Issue 2

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## **The Board Needs to Improve Compliance With Some General Provisions of Chapter 30 and Other Applicable Laws.**

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*The Legislative Auditor is concerned about the Board's storage of important records because the Board continues to operate out of the Executive Director's home and important files are stored in a storage facility.*

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### **Issue Summary**

The Board of Examiners in Counseling remains out of compliance with WVC §30-1-5d by continuing to operate out of the Executive Director's home and thereby restricting public access to its records. The Board has operated from this location since 2002. The Legislative Auditor is concerned about the Board's storage of important records because the Board continues to operate out of the Executive Director's home and important files are stored in a storage facility. In addition, the Board does not send status letters, which are required by Code, to individuals filing complaints against practitioners.

The Board is in compliance with most other provisions of Chapter 30 of the West Virginia Code. The Board has a process for resolving complaints, is financially self-sufficient and requires licensees to document continuing education. Finally, the Legislative Auditor continues to have concerns regarding licensed practitioners not being required to have criminal background checks.

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*The Board is in compliance with most other provisions of Chapter 30 of the West Virginia Code.*

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### **The Board Complies with Most General Provisions of Chapter 30**

The Board is in compliance with the most of the following West Virginia Code standards:

- The Executive Director of the Board has attended the State Auditor's required training sessions (§30-1-2(b)).
- An official seal has been adopted by the Board (§30-1-4).
- The Board meets at least once annually (§30-1-5(a)).
- The Board has established continuing education standards (§30-1-7(a)).
- Specific rules have been created for investigating and resolving complaints (§30-1-5).
- The Board has two lay representatives (§30-1-4(a)).

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- The Board is financially self-sufficient (§30-1-6(c)).
  - The Board submits an annual report to both the Governor and the Legislature (30-1-12(b)).
  - The Board maintains a roster of all counseling practitioners licensed in West Virginia (§30-1-13).

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*The 2005 regulatory board review of the Board of Examiners in Counseling found that it had maintained its office in the Executive Director's home since February 2002 and recommended the Board maintain its office in a public location.*

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## **Operating Out of a Residential Home Restricts Public Access**

West Virginia Code §30-1-5(d) requires all licensing boards to maintain public access to their records. The 2005 regulatory board review of the Board of Examiners in Counseling found that it had maintained its office in the Executive Director's home since February 2002 and recommended the Board maintain its office in a public location. However, in 2007 the Board still operates out of the Executive Director's home. The Board maintains files in a storage facility with two anti-pick locks which is fenced with an automatic gate that is closed. The automatic gate can only be entered with a six digit code. The Executive Director has noted that upon request she will make an appointment to meet with any member of the public at either the Marshall University Graduate College in South Charleston, or on the Marshall University main campus in Huntington. The Executive Director states that the Board is planning to move its office to a public location by summer 2008. **The Board needs to move its office to a location which is accessible by the public.**

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*In addition, the 2005 review stated that the Board only had a toll free telephone number without a physical address of the Board listed in the Charleston telephone directory, as required by WVC §30-1-12(c).*

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In addition, the 2005 review stated that the Board only had a toll free telephone number without a physical address of the Board listed in the Charleston telephone directory, as required by WVC §30-1-12(c). As of 2007, the Board does not have an address listed in the telephone directory and lists only a toll free number. The Board's planned move to a public location should rectify this situation.

## **Register of Applicants Is Incomplete**

West Virginia Code §30-1-12(a) requires all boards to keep a register of all applicants for licensure or registration. The following information is required to be included in the Board's register:

- date of application;
- name;



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- age;
  - education or other qualifications;
  - whether an examination is required;
  - whether the application was rejected or accepted, and license granted;
  - the date of the license;
  - the registration number of the license;
  - all renewals of the license; and
  - any suspensions or revocations of the license.

The Board complies with West Virginia Code §30-1-12(a) by including the following information:

- date of application;
- name;
- age;
- education or other qualifications;
- whether an examination is required;
- whether the application was rejected or accepted, and license granted;
- the date of the license; and
- the registration number of the license.

The register provided to the Legislative Auditor by the Board was missing the following items:

- all renewals of the license; and
- any suspensions or revocations of the license.

**The Board needs to improve its register and provide all information on all licensees as required by WVC §30-1-12(a).**

## **The Complaint Process**

The Board's procedure for processing complaints is outlined in the Code of State Rules §27-5-5 and is as follows:

- The Board receives a complaint that is logged in the Board's complaint log.
- The Board reviews the complaint and determines if it (the Board) has jurisdiction.
- A copy of the complaint is sent to the licensed professional

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*The 2005 report by the Legislative Auditor found that the Board was requiring individuals who filed complaints against practitioners to have their complaints notarized.*

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- counselor (LPC) against whom the complaint is logged.
- The LPC is given 30 days to respond in writing to the complaint.
  - Once the LPC responds, a copy of the response is sent to the complainant.
  - The report and all other information is then returned to the Board at which time the Board forwards the information to the complainant.
  - The Board authorizes any inquiry or investigation into the complaint if found necessary.
  - If necessary, the Board may assign the investigation to a committee of the Board. At any point the Board may assign the investigation to an ethics investigator for review and investigation.
  - If an ethics investigator is necessary, the investigator has 60 days to review and investigate the complaint and provide the Board with a report.
  - The Board may request any person to attend a meeting of the Board or a special conference of the Board.
  - The Board must give notice of conference and give notice of topics which will be discussed. Statements made at the conference are informally discussed and may not be introduced at other hearings without the consent of all parties.
  - The Board may issue subpoenas to continue the investigation, if necessary.
  - During this process the Board may determine there is not sufficient evidence to continue further proceedings. If there is sufficient evidence, the committee or the ethics investigator must issue their findings to the Board.
  - If action is necessary by the Board, appropriate action will be taken by the Board. The Board may refuse renewal or suspend a practitioner's license if the Board believes there is immediate danger to the public.

The Board does follow the Code of State Rules §27-5-5. Furthermore, the Board has discontinued an unnecessary practice that was in place in 2005 and may have restricted individuals from filing a complaint. The 2005 report by the Legislative Auditor found that the Board was requiring individuals who filed complaints against practitioners to have their complaints notarized. **The Board no longer requires complaints to be notarized.**

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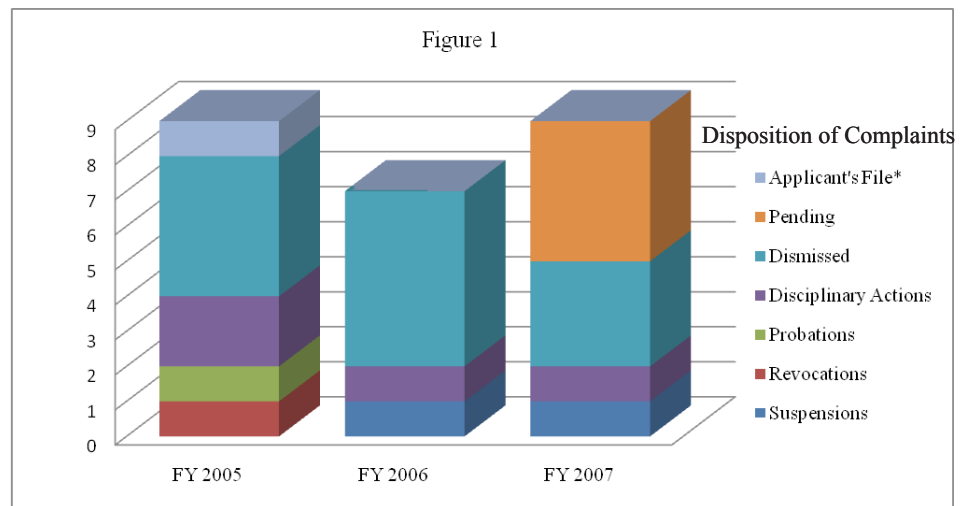
## The Board Receives Relatively Few Complaints Each Year

From FY 2005 through FY 2007 the number of complaints against licensed counselors received by the Board was relatively low in relation to the total number of counselors licensed to practice in the state. In 2007 the West Virginia Board of Examiners in Counseling licensed 1,024 practitioners. There were eight complaints made against individual counselors in 2007, while in 2006 there were seven complaints against counselors. In 2005 there were nine complaints made against counselors, the highest in the three year period. Figure 1 below gives an overview of the complaints and their disposition.

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*From FY 2005 through FY 2007 the number of complaints against licensed counselors received by the Board was relatively low in relation to the total number of counselors licensed to practice in the state.*

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*From FY 2005 through FY 2007 the Board averaged eight complaints a year filed against counseling practitioners.*

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*\*The Applicant's File was a complaint made against an individual who wished to be licensed by the Board. This complaint was filed before the individual completed the application process and he or she has not been licensed by the Board.*

## Resolution Time of Complaints

From FY 2005 through FY 2007 the Board averaged eight complaints a year filed against counseling practitioners. During this period the Board received a total number of 24 complaints. The Board received one complaint during this period which is still pending, and is now beyond the mandatory one year time frame for resolution. The Board has contacted the complainant who has agreed to the continuation of the investigation. Of the complaints that are finished, the shortest complaint to resolve took 24 days and the longest complaint took 318 days for the

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investigation and Board review process. Many of the complaints received by the Board took fewer than eight months to process.

### **The Board Should Require Background Checks and Legislature Should Amend Chapter 30**

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*The Board of Examiners in Counseling can suspend, revoke or deny a license to practice counseling in the state based on good moral character, as defined in Code, but the Board is unable to obtain federal criminal background information without consent of the Legislature.*

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In 2005, the Legislative Auditor recommended that the Board require criminal background checks for licensees and applicants. West Virginia Code §30-31-7 defines qualifications of applicants that wish to be licensed by the Board. The Code requires that licensees must be of good moral character. Currently, Chapter 30 of the Code does not require licensing boards to obtain criminal background checks on applicants or licensees. Without criminal background checks, licensing boards are unable to determine if applicants and current licensees meet standards set by Chapter 30. The Board of Examiners in Counseling can suspend, revoke or deny a license to practice counseling in the state based on good moral character, as defined in Code, but the Board is unable to obtain federal criminal background information without consent of the Legislature.

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*The Board may obtain background checks from the West Virginia State Police for individuals in West Virginia through WVSP-39, a Fingerprint Authorization Form and completion of the FBI's FD-258 form.*

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In the 2005 report by the Legislative Auditor it was recommended that the Board should seek criminal background checks from the Federal Bureau of Investigation (FBI) and the West Virginia State Police. Public Law 92-544 allows for agencies which license individuals to obtain background checks for noncriminal purposes if state code makes this a requirement. FBI background checks cost \$18 and can be added to the Board's current fees.

The Board may obtain background checks from the West Virginia State Police for individuals in West Virginia through WVSP-39, a Fingerprint Authorization Form and completion of the FBI's FD-258 form. State licensing boards are allowed to utilize this background check without a change in Chapter 30 Code. State Police background checks only show violations within West Virginia. The State Police background check is attainable at a cost of \$20, which could be added to the Board's current licensing fee. **The Board should consider requiring State Police background checks for current practitioners and new applicants.**

The Legislature should enable licensing boards to obtain criminal background reports from the FBI on potential practitioners and current licensees to protect the safety of the public. The public could be harmed by individuals transferring from other states who have a criminal

background or felony charges. At present, such individuals are able to relocate to West Virginia and practice counseling or other professions. Without an FBI background check, the public may be exposed to negligent and harmful individuals. **The Legislature should consider amending Chapter 30 statutes to allow for FBI background checks for applicants and current licensees in order to protect the public interest of West Virginians.**

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*The public could be harmed by individuals transferring from other states who have a criminal background or felony charges.*

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### **The Board is Financially Self-Sufficient**

It is necessary that licensing boards, in accordance with West Virginia Code §30-1-6(c), be financially self sufficient. The Board's current fees for licensing or renewal of a license are \$150 biannually. Table 2 shows the annual financial information for the Board from FY 2005 through FY 2007.

<b>Annual Financial Data for the Board</b>				
<b>Fiscal Year</b>	<b>Beginning Balance</b>	<b>Receipts</b>	<b>Disbursements</b>	<b>Ending Balance</b>
FY 2005	\$65,062	\$115,023	\$85,008	\$94,996*
FY 2006	\$94,996	\$88,406	\$98,020	\$85,382
FY 2007	\$85,382	\$140,152	\$99,617	\$125,917

*\*The difference of \$81 in the ending balance by the Board in FY 2005 can be accounted for due to some transactions clearing after June 30, 2005.*

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*Since the funds are confirmed to be available, the Board should be able to maintain a public office.*

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The Board has shown a positive ending balance for the last three years without financial loss. The current funds allow the Board to employ an executive director and part time staff member. Since the funds are confirmed to be available, **the Board should be able to obtain and maintain an accessible public office.**

### **The Board Requires Continuing Education for Practitioners**

West Virginia Code §30-1-7(a) states that licensing boards require continuing education for practitioners. During each license renewal period the Board requires documentation of 40 hours of completed continuing education by licensees. The Board only allows 20 of the hours to be in-home study. Three hours of the licensees'

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continuing education must be in ethical standards based on ACA code.

The Board, via its website, maintains pre-approved and reviewed continuing education options for licensees. Licensees are allowed to attend events that are not pre-approved by the Board, but must have documentation of attendance. The courses which are not preapproved by the Board are alternatives to the continuing education courses set by the Board. Most licensees attend preapproved education courses. Each year, the Board reviews 10 or fewer continuing education courses which are not preapproved. **The Board complies with the West Virginia Code requirement that continuing education standards be established by licensing boards.**

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*The Board, via its website, maintains pre-approved and reviewed continuing education options for licensees.*

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## **The Board Needs to Comply With Other Applicable Laws**

### **The Board Should Be More Efficient in Notifying the Governor's Office of Vacancies**

On June 30, 2007 two positions on the Board expired. The vacancies, according to West Virginia Code §30-31-4a, must be filled by gubernatorial appointment. Licensing boards are allowed to submit applications of qualified individuals to the Governor's office for possible appointments to the board.

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*On June 30, 2007 two positions on the Board expired. The vacancies, according to West Virginia Code §30-31-4a, must be filled by gubernatorial appointment.*

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However, there was no discussion by the Board to fill the expired positions during the April 2007 meeting which preceded the June 30 deadline for expired terms, or during the meeting that followed the vacancies in July 2007. The two individuals whose terms had expired in June attended the July 2007 meeting of the Board. One of these two Board members resigned from the Board at the July meeting, leaving a vacant seat on the Board for the October 2007 meeting. Further, during the July meeting, the other member whose term expired in June was elected Chair of the Board without being reappointed by the Governor.

At the October 2007 Board meeting, the positions had not been filled and there were no recommendations made by the Board to the Governor's office for replacements and reappointments. According to a representative for the Board, during the October 2007 Board meeting the vacancies were discussed by the Board members attending the meeting.

West Virginia Code §30-1-3(a) allows Board members who act as Chair or Secretary to remain in their respective positions until they

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are filled but does not make provisions if the term has expired. Despite the provisions in the Code for expired terms, the Board must make an effort to get these positions filled as soon as possible. **The Board should notify the Governor's office of vacancies on the Board in a timely manner.**

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*In accordance with §30-1-5c, licensing agencies are required to send a status report to the individual filing a complaint within six months of the initial filing date.*

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### **Status Reports Required by West Virginia Code**

In accordance with §30-1-5c, licensing agencies are required to send a status report to the individual filing a complaint within six months of the initial filing date. Furthermore, a year after the return receipt is signed for the status report, the licensing agency must resolve the complaint by issuing a final ruling. If the complaint takes over a year, the person filing and the Board must agree to extend the time of the final ruling.

The Board has not sent status letters within the first six months to parties that have filed complaints from 2005 through 2007. West Virginia Code §30-1-5c states that status letters must be sent to individuals who file complaints, regardless of if the complaint process takes less than six months. **The Board should comply with WV Code §30-1-5c and send status letters to individuals filing complaints against counseling practitioners.**

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*The Board has not sent status letters within the first six months to parties that have filed complaints from 2005 through 2007.*

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### **Conclusion**

The Board of Examiners in Counseling complies with most of the Chapter 30 provisions. The Legislative Auditor continues to be concerned that the Board operates out of the Executive Director's house and reiterates that the Board must maintain a public office space so that the Board is accessible to the public. The Legislative Auditor recommends that Board have a complete and current register of practitioners. The Legislative Auditor recommends that the Board consider requiring background checks conducted through the State Police for current counseling practitioners and current and future applicants. The Legislative Auditor recommends that the Legislature consider amending Chapter 30 regulations to allow licensing boards to perform criminal background checks. Such amendment would enable boards to obtain background checks from the Federal Bureau of Investigation. The Board should anticipate vacancies and maintain a list of persons recommended for Board terms to be submitted to the Governor prior to vacancies occurring on the Board. The Legislative Auditor observed that the Board is not

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complying with West Virginia Code Chapter 30 by not sending status letters to individuals. The Legislative Auditor recommends that the Board comply with all provisions of WVC §30.

### **Recommendations:**

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*The Board should anticipate vacancies and maintain a list of persons recommended for Board terms to be submitted to the Governor prior to vacancies occurring on the Board.*

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2. *The Legislative Auditor recommends that the Board of Examiners in Counseling establish office space at a location where the public has access.*
3. *The Legislative Auditor recommends that the Board of Examiners in Counseling complete the register of applicants as required by WVC §30-1-12(a).*
4. *The Legislative Auditor recommends that the Board of Examiners in Counseling consider requiring State Police background checks for current practitioners and new applicants.*
5. *The Legislative Auditor recommends that the Legislature consider amending Chapter 30 and allow licensing boards to request FBI background checks on applicants and current licensees.*
6. *The Legislative Auditor recommends that the Board of Examiners in Counseling notify the Governor's office of vacancies in a timely manner.*
7. *The Legislative Auditor recommends that the Board of Examiners in Counseling send status letters to individuals filing complaints against practitioners as required by WVC §30-1-5c.*



# Appendix A: Transmittal Letter

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## WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0610  
(304) 347-4890  
(304) 347-4939 FAX



John Sylvia  
Director

December 21, 2007

Jean Anne Johnson  
Board of Examiners in Counseling  
Post Office Box 129  
Ona, West Virginia 25545

Dear Ms. Johnson:

This is to transmit a draft copy of the Performance Review of the Board of Examiners in Counseling. This Review is scheduled to be presented during the January 6<sup>th</sup> - 8<sup>th</sup> interim meetings of the Joint Committee on Government Operations. We will inform you of the location once the information becomes available.

We would like to schedule an exit conference to discuss any concerns you may have with the report on January 2, 2008. In addition, we need your written response by noon on Wednesday, January 2<sup>nd</sup> in order for it to be included in the final report. If your organization intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your organization. Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Midkiff".

Michael Midkiff  
Research Manager

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*Joint Committee on Government and Finance*

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# Appendix B: Agency Response

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## West Virginia Board of Examiners in Counseling

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Post Office Box 129  
Ona, West Virginia 25545  
800-520-3852  
[www.wvbec.org](http://www.wvbec.org)  
[counselingboard@msn.com](mailto:counselingboard@msn.com)

RECEIVED  
DEC 28 2007

Friday, December 28, 2007

PERFORMANCE EVALUATION AND  
RESEARCH DIVISION

Dear Mr. Midkiff;

The draft report for the Board of Counseling received December 21, 2007 has been reviewed and discussed with John J. Charonko, Chair. Our response to the report is below.

### Recommendations:

1. *The Legislative Auditor recommends that the Board of Examiners in Counseling be continued.*
2. *The Legislative Auditor recommends that the Board of Examiners in Counseling establish office space at a location where the public has access.*
  - The Board has plans to be in public location by summer 2008.
3. *The Legislative Auditor recommends that the Board of Examiners in Counseling complete the register of applicants as required by WVC 30-1-12(a).*
  - The Board will complete the register of applicants as requested by the auditor.
4. *The Legislative Auditor recommends that the Board of Examiners in Counseling consider requiring State Police background checks for current practitioners and new applicants.*
  - This topic will be placed on the April 2008 board agenda for discussion.
5. *The Legislative Auditor recommends that the Legislature consider amending Chapter 30 and allow licensing boards to request FBI background checks on applicants and current licensees.*
  - The Legislature would need to address this matter.
6. *The Legislative Auditor recommends that the Board of Examiners in Counseling notify the Governor's office of vacancies in a timely manner.*
  - The Board will be addressing this matter at the January 2008 board meeting and will be more vigilant in the future.
7. *The Legislative Auditor recommends that the Board of Examiners in Counseling comply with Code and send status letters to individuals filing complaints against practitioners as required by WVC 30-1-5c.*
  - The Board has handled this situation and is following the Code.

Respectfully submitted,

*Jean Ann Johnson*

Jean Ann Johnson  
Executive Director

cc: John J. Charonko, Chair

