

Regulatory Board Evaluation

Board of Dental Examiners

**The Board of Dental Examiners Is Necessary
to Protect the Public**

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

**Update on the Status of the Board's Payment of
Retroactive Service Credit for Its
Executive Secretary**



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John Sylvia
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November 13, 2005

The Honorable Edwin J. Bowman
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The Honorable J.D. Beane
House of Delegates
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Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Regulatory Board Evaluation on the *Board of Dental Examiners*, which will be presented to the Joint Committee on Government Operations on Sunday, November 13, 2005. The issues covered herein are "The Board of Dental Examiners Is Necessary to Protect the Public;" "The Board Needs to Improve Its Compliance With Some Provisions of Chapter 30 and Other Applicable Laws;" and "Update on the Status of the Board's Payment of Retroactive Service Credit for Its Executive Secretary."

We transmitted a draft copy of the report to the Board of Dental Examiners on October 31, 2005. We held an exit conference with the Board on November 4, 2005. We received the agency response on November 9, 2005.

Let me know if you have any questions.

Sincerely,

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

John Sylvia

JS/wsc

Joint Committee on Government and Finance

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Executive Summary

Issue 1: The Board of Dental Examiners Is Necessary to Protect the Public.

Without regulation, the public could be harmed or suffer death through the failure to competently execute any areas of modern dentistry.

The Legislative Auditor has determined that there is a need for the Board of Dental Examiners. Modern dentistry encompasses diagnosis of serious oral illnesses and conditions, drug prescriptions, surgery and the administration of anesthesia in the dental office, the fabrication of prosthetic devices and the use of advanced technological devices such as lasers. Without regulation, the public could be harmed or suffer death through the failure to competently execute any of these areas of modern dentistry.

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

It is important that all licensing boards receive training on what constitutes immediate danger and what procedures should be followed in the immediate suspension of a license.

The Board is in compliance with most general provisions of Chapter 30, however in a September 2005 *Regulatory Board Evaluation* the Legislative Auditor reported that during the suspension of a dental license in 2004 the Board violated the due process rights of the licensee. In another incident when a patient died under general anesthesia during a dental procedure, the Board did not respond and initiate an investigation. The Legislative Auditor recommends that the Board receive training in responding to serious incidents that come to its attention. Changes to Chapter 30 during the 2005 Regular Legislative Session allow licensing boards to suspend a license prior to a hearing if a licensee constitutes an immediate threat to the public. These changes make it important that all licensing boards receive training on what constitutes immediate danger and what procedures should be followed in the immediate suspension of a license.

The Board has licensed individuals who are in default with the Unemployment Compensation Law and Workers' Compensation. This is in violation of state law.

Improvements have been made by the Board since a 2002 *Regulatory Board Evaluation*. The Board established an expanded register of all license applicants, and changed the time limit for submission of continuing education credits to conform with its rule. However, with respect to other applicable laws, the Board has licensed individuals who are in default with the Unemployment Compensation Law and Workers' Compensation. This is in violation of state law. The Board also receives many complaints that may be appropriate for referral to the newly established Fraud Unit of the Insurance Commission.

Issue 3: Update on the Status of the Board’s Payment of Retroactive Service Credit for Its Executive Secretary.

The CPRB upheld its decision to accept the retroactive service payment made by the Board of Dental Examiners.

The third issue of the 2002 *Regulatory Board Evaluation* stated that the Board of Dental Examiners exceeded its authority when it used licensure fees to pay for retroactive service credit for its executive secretary. In January 2002, the Board transferred \$28,120 to the Consolidated Public Retirement Board (CPRB) to purchase the employer portion of retirement benefits because the Board had failed to provide for participation of this employee prior to 1983. The report also noted that West Virginia state law allows employers funded by general revenue to purchase the employer share of retroactive benefits for its employees. However, Chapter 30 boards and other entities funded by special revenue are prohibited by law from taking the same action, except in two one-time opportunities provided by the Legislature in 1973 and 1988.

The 2002 *Regulatory Board Evaluation* made two recommendations: 1) The Board of Dental Examiners request a refund from the Consolidated Public Retirement Board of the \$28,120 that had been paid to purchase the executive secretary’s previous service credit; and 2) The Code be amended to allow Chapter 30 boards and other agencies funded by special revenue the continuous provision to purchase the employer share of retroactive benefits for employees. The Board of Dental Examiners did not request a refund, stating that the Board had been waiting for some directive from the Joint Committee on Government Operations. However, the CPRB did propose changes to the Code in 2003 and 2004, and the changes were passed during the 2005 Regular Legislative Session. The CPRB also upheld its decision to accept the retroactive service payment made by the Board of Dental Examiners.

Recommendations

1. *The Legislative Auditor recommends that the Legislature continue the Board of Dental Examiners, either as an independent board or as part of a centralized regulatory agency.*
2. *The State Auditor’s training program for licensing boards should include training on what constitutes an immediate threat to the public with respect to the suspension of a license prior to a hearing, and what procedures should be followed in the immediate suspension of a license.*

3. *With respect to the September 2005 Regulatory Board Evaluation, the Board of Dental Examiners and the Board staff need to obtain appropriate training regarding incidents that present a threat to the public.*

4. *The Board of Dental Examiners should document in its Board meeting minutes all instances in which a member of the Board is recused from voting.*

5. *The Board of Dental Examiners should comply with the Worker's Compensation and Unemployment Compensation laws by not issuing licenses or renewals to licensees who are in default in payments to the Commissioner for either worker's compensation or unemployment compensation taxes. The Legislative Auditor will inform the Bureau for Employment Programs of the need to upgrade its employer default database in order to facilitate the compliance of licensing agencies to deny the renewal of licensees who are in default.*

6. *The Board of Dental Examiners should consider referring appropriate complaint cases to the Insurance Commission for investigation by the newly established Fraud Unit.*

Review Objective, Scope and Methodology

Objective

This Regulatory Board Evaluation of the Board of Dental Examiners was conducted in accordance with the West Virginia Sunset Law, Chapter 4, Article 10 of the West Virginia Code. As stated in the Code, a regulatory board evaluation is to determine whether a Board: 1) complies with the general policies and provisions of Chapter 30, Article 1 of the West Virginia Code and other applicable laws and rules; 2) follows disciplinary procedures which observe due process rights and protect the public interest; and 3) whether public health and safety require that the Board be continued.

Scope

This evaluation covers the period from fiscal year 2002 through fiscal year 2005.

Methodology

Information compiled in this evaluation was acquired from the West Virginia Code, interviews with the Board's staff, examination of annual reports, meeting minutes, expenditure schedules, complaint files, information from other states' licensing boards and web sites, license applications and renewal files, and continuing education files. Information was also obtained from the Bureau of Employment Programs, the Insurance Commission and the Consolidated Public Retirement Board. Every aspect of this evaluation complied with Generally Accepted Government Auditing Standards (GAGAS).

Issue 1

The Board of Dental Examiners is Necessary to Protect the Public.

Issue Summary

In West Virginia, a nine-member appointed Board of Dental Examiners is the regulatory agency that licenses dentists and dental hygienists, and approves dental assistants for the performance of certain procedures.

The profession of dentistry is regulated in all 50 states, the District of Columbia, Puerto Rico and the Virgin Islands. In West Virginia, a nine-member appointed Board of Dental Examiners is the regulatory agency that licenses dentists and dental hygienists, and approves dental assistants for the performance of certain procedures. Modern dentistry encompasses diagnosis of serious oral illnesses and conditions, surgery, drug prescriptions, administration of anesthesia in the dental office, making prosthetic devices such as crowns, dentures or retainers and the use of advanced technological devices such as lasers. Without regulation, the public could be harmed or suffer death through the failure to competently execute any of these areas of modern dentistry. The Legislative Auditor finds that the Board of Dental Examiners is necessary to protect the public and should be continued.

Regulation of Dentistry is Necessary

The scope of modern dentistry requires careful regulation to protect the public because modern dentistry includes diagnosing and treating oral diseases and disorders; making dental prostheses; administering anesthesia and prescribing drugs.

Regulation of dentistry started in the early part of the last century in response to the variation in education and training of dental practitioners. The scope of modern dentistry requires careful regulation to protect the public because modern dentistry includes diagnosing and treating oral diseases and disorders; making dental prostheses; administering anesthesia and prescribing drugs. Surgical procedures are also part of the treatment necessary for certain dental conditions. Advanced treatment techniques, such as those requiring the use of anesthesia or lasers, make the necessity for regulation even more imperative. During the 2005 Regular Legislative Session, the Board of Dental Examiners was successful in changing the West Virginia Dental Practice Act to ensure that the use of anesthesia on dental patients is performed safely and by competent dentists. The revisions to WVC §30-4A include:

- defining levels of consciousness and the types of anesthesia to be used;
- limiting the number of patients under sedation in a dental office;

-
- requiring defined anesthesia permits with three classes of permits;
 - establishing the detailed qualifications necessary for the recipient of each class of permit (including facility equipment, professional training and patient standards of care);
 - defining the Board's legal authority to inspect/re-inspect permit holders and investigate any alleged anesthesia mortalities or other adverse occurrences; and
 - requiring the reporting of such events with time-frames and clear direction of who is to report, and what is to be included in the report.

In addition to making changes when necessary to the laws regulating the practice of dentistry, the Board provides direction on the use of modern technology and instrumentation in the dental office.

The revisions to the anesthesia portion of the Dental Practice Act were the result of several years of effort on the part of the Board's anesthesia committee. In addition to making changes when necessary to the laws regulating the practice of dentistry, the Board provides direction on the use of modern technology and instrumentation in the dental office. In March, 2004 the Board issued a position statement on the use of lasers in dental offices:

“The Board regards the use of any laser which can cut tissue to be practicing dentistry, and therefore limits its use to dentists. This includes the so-called “low power” lasers used for periodontal treatments, such as pocket debridement, scaling, polishing, planing and the removal of calculus deposits.”

The majority of states regulate the practice of dentistry through a centralized agency.

The Board also addressed the use of lasers by dental hygienists and dental assistants, and allowed these auxiliary dental staff members to use lasers in two processes that do not involve the possibility of patients receiving cuts from the lasers.

Most States Do Not Use Independent Boards to Regulate Dentistry

The profession of dentistry is regulated in all 50 states, the District of Columbia, Puerto Rico and the Virgin Islands. **The majority of states regulate the practice of dentistry through a centralized agency. West Virginia is**

Of the 32 states that utilize a centralized agency, 21 have an omnibus agency for occupational licensing or professional regulation of all regulated professions and occupations, seven states issue health-related professional licenses through a specialized health licensing division and four states issue dental practitioner licenses through their health departments.

one of 18 states that regulate dentistry through an independent board. West Virginia’s stand-alone board consists of nine appointed members, and three paid staff. The Board is composed of six dentists, one dental hygienist, one dental assistant and one member of the public. The paid staff consists of the part-time executive secretary, with two full-time support staff members.

States that utilize a centralized agency for licensing, structure their licensing agencies in several different ways. Of the 32 states that utilize a centralized agency, 21 have an omnibus agency for occupational licensing or professional regulation of all regulated professions and occupations, seven states issue health-related professional licenses through a specialized health licensing division and four states issue dental practitioner licenses through their health departments. The five states surrounding West Virginia vary in their approach to licensing dentists and dental hygienists, with two maintaining independent boards and three issuing licenses through a centralized agency (see Table 1).

Table 1 Types of Dental Boards in Five Surrounding States	
State	Regulatory Board Type
Kentucky	Independent
Ohio	Independent
Pennsylvania	State Agency: Bureau of Professional and Occupational Affairs
Maryland	State Agency: Department of Health and Mental Hygiene
Virginia	State Agency: Department of Health Professions
<i>Data Source: Analysis developed from Performance Evaluation and Research Division review of 50 state web sites.</i>	

The states that utilize a centralized agency for regulation take advantage of economies of scale.

The states that utilize a centralized agency for regulation take advantage of economies of scale by consolidating administrative functions such as human resources, purchasing and accounting. Additional efficiency and expertise are gained through the consolidation of the agency’s regulatory functions such as licensing, complaint investigations and enforcement.

West Virginia Issues About 2,500 Licenses Annually

Dental licensure is a necessary part of regulation and is intended to ensure that only qualified individuals provide dental treatment to the public according to the American Dental Association. Qualifications that are deemed

In West Virginia, approximately 800 dentists are in active practice each year, while the number of dental hygienists has risen to about 700.

essential are satisfactory theoretical knowledge of basic biomedical and dental sciences and satisfactory clinical skills. In West Virginia, approximately 800 dentists are in active practice each year, while the number of dental hygienists has risen to about 700. The Board licenses an average of about 500 dentists, and about 486 dental hygienists who practice outside the state. Since the 2002 *Regulatory Board Evaluation*, the Board has annually issued a total of about 2,500 licenses for dentists and dental hygienists (see Table 2).

Fiscal Year	Total Active Dental Licenses	Dentists Practicing In-State	Dentists Practicing Out-of-State	Total Active Dental Hygienist Licenses	Dental Hygienists Practicing In-State	Dental Hygienists Practicing Out-of-State
2003	1,398	813	585	1,169	656	513
2004	1,396	823	573	1,213	681	532
2005	1,242	841	401	1,117	705	412

Data Source: Board of Dental Examiners Annual Newsletters

The Board approves dental assistants performing specific procedures upon completion of Board-approved training.

Dental Assistants Have Expanded Duties

The Board also regulates the expanded duties of dental assistants in the dental office. Under CSR §5-1-8, the Board specifies the work that the dental assistant can undertake. The Board approves dental assistants performing specific procedures upon completion of Board-approved training for procedures such as applying substances to teeth to retard the development of cavities. Dental assistants can also receive approval for the expanded duties of monitoring sedation by nitrous oxide.

Conclusion

The complexity and scope of modern dentistry requires that the public be protected through the regulation of the profession. The Board of Dental Examiners serves this function through licensure, position statements in regard to the use of modern treatment techniques, and the revision of state code to qualify practitioners and maintain the standard of patient care while recognizing modern advancements and current practices in dental offices. The Board also

approves dental assistants for expanded duties in dental offices. The Legislative Auditor concludes that the Board of Dental Examiners is necessary to protect the public.

Recommendation

1. *The Legislative Auditor recommends that the Legislature continue the Board of Dental Examiners, either as an independent board or as part of a centralized regulatory agency.*

Issue 2

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

Improvements have been made by the Board since a 2002 Regulatory Board Evaluation.

Issue Summary

The Board is in compliance with most general provisions of Chapter 30. Improvements have been made by the Board since a 2002 *Regulatory Board Evaluation*. The Board established an expanded register of all license applicants, and changed the time limit for submission of continuing education credits to conform with its rule. However, with respect to other applicable laws, the Board has licensed individuals who are in default with the Unemployment Compensation Law and Workers' Compensation. This is in violation of state law.

However, with respect to other applicable laws, the Board has licensed individuals who are in default with the Unemployment Compensation Law and Workers' Compensation. This is in violation of state law.

The Board Complies With Most General Provisions of Chapter 30

During the current evaluation, the Board was found to be in compliance with the following general provisions of Chapter 30:

- The president of the Board and staff members attended the State Auditor's training within the required two-year time frame (§30-1-2(a));
- An official seal has been adopted (§30-1-4);
- The Board has one lay member to represent the interests of the public (§30-1-4a);
- The Board meets at least once annually (§30-1-5(a));
- The Board has established continuing education requirements (§30-1-7a);
- Rules have been promulgated specifying the investigation and resolution procedure of all complaints (§30-1-8(h));
- The Board is financially self-sufficient in carrying out its responsibilities (§30-1-6(c));
- The Board has deposited money received as fines into the state general revenue fund (30-1-10);
- The Board maintains a record of its proceedings (§30-1-12(a));
- The Board submits an annual report to the Governor and Legislature describing budget data and transactions for the preceding two years (§30-1-12(b));

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- The Board has complied with public access requirements (§30-1-12(c));
 - The Board maintains a complete roster of the names and addresses of all persons licensed and practicing in this state, arranged alphabetically by name and also by the cities or counties in which their offices are located (§30-1-13).

The Board Made Improvements Since the 2002 Regulatory Board Evaluation

Following the 2002 evaluation, the Board changed its reporting date to conform to the rule. The Board is now requiring that all continuing education hours be reported with license renewal applications and the last date that the renewal can be accepted is February 1.

Continuing Education Credits

In the 2002 *Regulatory Board Evaluation*, the Board was found to have a practice which was not consistent with its rules in regard to the date on which licensees were required to report continuing education hours to the Board. At that time, licensees were allowed an extra 43 days to report such hours to the Board. Following the evaluation, the Board changed its reporting date to conform to the rule and published the date change in its 2002 newsletter, with a reminder in the 2003 newsletter and a statement in the 2004 newsletter. The Board is now requiring that all continuing education hours be reported with license renewal applications and the last date that the renewal can be accepted is February 1.

The Board audits 100 licensees each year (50 dentists and 50 dental hygienists) to determine if the licensee has met the continuing education requirements. The Board requires that audited licensees, who have reported completion of the required hours of training during their license renewal application, submit certificates of completion to verify that the required training was received. During the present legislative evaluation period, no licensees have been cited for failure to comply.

In response to the 2002 evaluation, the Board has established and expanded the register to include all of the information required in WVC §30-1-12 (a).

New Applicant Register

An incomplete register for applicants was the second area in which the Board was not in compliance with general provisions of Chapter 30. In response to the 2002 evaluation, the Board has established and expanded the register to include all of the information required in WVC §30-1-12 (a). However, in order to print all of the information required for each applicant, the Board must print individual pages for each applicant. In July, 2005 the Board provided the Legislative Auditor with a list of 427 applicants. The list began with applicants

in May, 2002. The information includes:

- Numbering system for each year;
- Name of applicant;
- Date application received;
- Type of license;
- Whether the license was issued or rejected;
- License number;
- Date of action;
- Applicant's age;
- Applicant's education;
- Applicant's place of residence;
- Whether an examination was required;
- Renewals;
- Suspensions or revocations.

The Legislative Auditor concludes that the Board has adequately resolved the partial compliance problems with the general provisions of Chapter 30 cited in the 2002 *Regulatory Board Evaluation*.

Since the passage of Senate Bill 737 during the 2005 Regular Legislative Session allows licensing boards to suspend a license prior to a hearing if a licensee constitutes an immediate threat to the public, it is important that all licensing boards receive training on what constitutes immediate danger and what procedures should be followed in the immediate suspension of a license.

The Legislative Auditor Has Concerns With the Complaint Process

The Board is required to resolve each complaint while protecting the due process rights of the licensee and conducting a thorough review of the events that brought the complaint to the attention of the Board (WVC §30-1-5(b)); (WVC §30-1-8). In a September 2005 *Regulatory Board Evaluation*, the Legislative Auditor reported a 2004 complaint regarding an impaired dentist in which the Board suspended the dentist's license prior to a hearing, which was a violation of due process at the time. Another incident was cited in which the Board became aware of the death of a patient under general anesthesia during a dental procedure. The Board did not respond when the dentist informed the Board on the day of the incident. The Legislative Auditor recommends that the Board receive training in the area of responding to serious incidents that come to its attention. Furthermore, since the passage of Senate Bill 737 during the 2005 Regular Legislative Session allows licensing boards to suspend a license prior to a hearing if a licensee constitutes an immediate threat to the public, it is important that all licensing boards receive training on what constitutes immediate danger and what procedures should be followed in the immediate suspension of a license. **Therefore the Legislative Auditor recommends that the State Auditor's training program for licensing boards should include**

training on what constitutes an immediate threat to the public with respect to the suspension of a license prior to a hearing, and what procedures should be followed in the immediate suspension of a license.

Since 2002 the Board has received an average of 46 complaints a year.

Since 2002 the Board has received an average of 46 complaints a year. The volume and diversity of complaints present an ongoing challenge to the Board. In comments on the role of the Board, printed in the Board's 2002 newsletter, the Board president noted that there had been a 35% increase in written complaints received during the past year, and stated:

“Our most serious concern and deliberation arises out of written complaints from patients... . The Board diligently strives to be fair not only to the patient but also to the licensees... . Our most difficult task is taking disciplinary action on our fellow colleagues.”

The entire Board makes the final decisions on the resolution of a complaint. This is consistent with a legal opinion¹ that indicates when a subcommittee is used to investigate complaints and recommend actions, the actions should be decided by the full board, not by the subcommittee.

The Board has established a general complaint procedure that begins once a complaint is filed with the Board. The procedure is specified in the Code of State Rules §5-1, §5-4, §5-5 and proceeds as follows: The Board receives a complaint that is logged in the Board's complaint log, and a letter of receipt is sent to the complainant. Copies of the complaint are sent to the dentist/or dental hygienist (respondent) against whom the complaint has been lodged. Copies of the complaint are also sent to the two-member complaint committee of the Board. The respondent is given 30 days to respond in writing to the complaint. Once the respondent replies to the Board, a copy of the reply is sent to the complainant who is also notified of the month of the meeting when the matter will be considered by the Board. The complaint committee also receives a copy of the response. Finally, the complaint committee delivers an oral report to the Board during an executive session of the Board meeting, and recommends actions to the Board. The entire Board makes the final decisions on the resolution of a complaint. This is consistent with a legal opinion¹ that indicates when a subcommittee is used to investigate complaints and recommend actions, the actions should be decided by the full board, not by the subcommittee.

¹Legislative Auditor's Office, Legislative Services Division, Legal Opinion, Counsel, April 8, 2003.

All Recusals Should be Documented

The Legislative Auditor found a complaint in 2002 in which a Board member’s partner in practice was the subject of a complaint, but there is no indication in the meeting minutes that the Board member recused himself from deliberations concerning the complaint.

Due to the volume of complaints, it is inevitable that a complaint will be made against a dentist or dental hygienist who is in practice with a Board member, or a practitioner with personal ties to a Board member. In such situations, the Board member should recuse him or herself in order not to influence the decisions made by the rest of the Board. While the Board’s executive secretary notes that on numerous occasions Board members have recused themselves, the Legislative Auditor found no documentation of any recusals during a review of the Board minutes for FY 2002-2005. The Legislative Auditor found a complaint in 2002 in which a Board member’s partner in practice was the subject of a complaint, but there is no indication in the meeting minutes that the Board member recused himself from deliberations concerning the complaint. **In order to ensure an appropriate resolution of a complaint that is above reproach, the Board should have all recusals documented.**

The complaint activity since the 2002 *Regulatory Board Evaluation* is seen in Table 3.

Table 3				
Complaints Resolved by the Board of Dental Examiners FY 2002-2005				
Complaint Activity	FY 2002	FY 2003	FY 2004*	FY 2005*
Complaints Received	46	45	54	39
Complainant Records and Licensee Statements Reviewed	46	45	54	39
Investigations by an Investigator	7	3	3	0
Informal Hearings	3	1	10	1
Formal Hearings	2	3	2	3
Peer Reviews	0	1	1 (WVU)	0
Complaints Withdrawn	1	1	0	1
No Disciplinary Action Considered Necessary by Board	44	35	42	17
<i>Data Source: Board of Dental Examiners Complaint Log and complaint files for FY 2002-2005. *Asterisks denote open cases. For FY 2004, 1 open case and FY 2005, 18 open cases are not resolved.</i>				

An analysis by the Legislative Auditor of 186 complaints received by the Board indicates that complaints are made for many different reasons, with the leading types of complaints being:

- Poor work or poor care (19.79%);
- Disputes with providers over the cost or fees charged (13.9%);
- Problems with dentures (12.3%);
- Allegations of billing for work not received or completed (10.6%);
- General concerns about personal treatment such as statements by the dentist (6.95%);
- Unnecessary work being performed (4.28%); and
- Miscellaneous (32.59%).

In the miscellaneous category are a number of different types of complaints including the following: Refusal to release records (3.21%); illegal advertising (3.74%); sanitation concerns (3.21%); allowing staff to perform inappropriate procedures (3.74%); complaints of nerve damage (3.74%); illegal denturists (2.14%); practicing without a license (.53%); ordering excess nitrous oxide (.53%); impairment of the dentist (.53%); dental hygienists practicing dentistry in a training clinic (4.81%); excessive prescription writing (1.07%); inappropriate physical contact (2.14%); out-of-state disciplinary actions (1.07%) and death of a patient while under anesthesia (.53%).

The description of the type of complaint reflects the problem identified by the complainant. Frequently, the initial complaint results in a different problem being identified. In some instances, dentists have received disciplinary action against their licenses for practice violations that were not apparent to the complainant, and not mentioned in the complaint.

These complaint designations are entered by the Board when the complaint is initially received. The description of the type of complaint reflects the problem identified by the complainant. Frequently, the initial complaint results in a different problem being identified. In some instances, dentists have received disciplinary action against their licenses for practice violations that were not apparent to the complainant, and not mentioned in the complaint. However, upon investigation the Board determined a practice violation that needed to be addressed through disciplinary action.

The Board relies on an investigator for some complaints, and employed an investigator as a full-time employee until April, 2005. Since April, the Board has been without an official investigator. Presently, the Board is in the process of arranging for investigative services when complaints warrant an investigation.

The Legislative Auditor reviewed 163 completed complaints and determined that complaints took an average of 118 days, or 3.9 months to resolve. The median length of time to resolve a case is 73 days. In addition, of the 163 complaints resolved by the Board between FY 2002 and FY 2005, 8% or 13 complaints, resulted in disciplinary action against licensees (see Table 4).

Action	FY 2002	FY 2003	FY2004*	FY 2005*
License Suspensions	0	1 (90 days)	1* (2 weeks)	0
License Revocations	1	1	0	0
Consent Decrees	1	3	1	1
Settlement Agreements	0	0	1	1
Letters of Reprimand	0	1	0	0
Fines	\$8,750	0	\$2,000	0
<small>Data Source: Board of Dental Examiners, Complaint Log and Newsletters. *Denotes open cases. For FY 2004, 1 open case and FY 2005, 18 open cases are not resolved.</small>				

The October balance that follows each fiscal year indicates that the Board experiences cash-flow problems prior to receiving license renewal revenues in the following year.

Although the Board Is Currently Financially Self-Sufficient There Are Some Budgetary Concerns

All Chapter 30 boards are required by WVC §30-1-6(c) to set fees that are sufficient to enable them to effectively carry out their responsibilities. The Board of Dental Examiners sets its fees by rule, and is presently self-sufficient. However, the October balance that follows each fiscal year indicates that the Board experiences cash-flow problems prior to receiving license renewal revenues in the following year. Also, this may indicate that revenues are approaching a point where they are becoming insufficient for prudent operations. Furthermore, the Board anticipates higher expenditures in upcoming fiscal years to respond to some of the recommendations of the Legislative Auditor (criminal background checks and training), a larger number of hearings that will require hearing examiners in FY 2006, and an increase in office rent. The revenue, expenditures and ending balances for the past four fiscal years are seen in Table 5.

Table 5					
Revenues, Expenditures, Ending FY Balance and October Balance of the Next Fiscal Year					
	Beginning Balance	Revenues	Expenditures	Ending FY Balance	October Balance
FY 2002	\$87,890	\$248,122	(\$265,720)	\$70,291	\$36,139
FY 2003	\$70,291	\$259,230	(\$250,631)	\$78,890	\$15,563
FY 2004	\$78,890	\$246,535	(\$252,516)	\$72,909	\$40,449
FY 2005	\$72,909	\$255,641	(\$252,250)	\$76,300	\$15,826

Data Source: West Virginia State Auditor's Office

In the proposal, the Board stated concerns about continuing to effectively carry out its responsibility for licensure and discipline of licensed practitioners.

In August 2004, the Board of Dental Examiners filed a proposed Legislative Rule to increase application and renewal fees as well as to start charging for services supplied by the Board and charged by other state boards. In the proposal, the Board stated concerns about continuing to effectively carry out its responsibility for licensure and discipline of licensed practitioners. It also noted increased costs due to the expansion of the Board in 2002 from seven to nine members, anticipated legal fees, anticipated rent/relocation costs, and anticipated costs of hiring a hearing examiner, in addition to rising insurance premiums and considerations for future salary increases for employees. The fee increases would have generated about \$100,000 for the Board in revenue. However, the Board withdrew its application for fee increases in February, 2005 following a recommendation from the Legislative Rule Making Review Committee to withdraw the proposed fee increase.

Improvement is Needed in Complying With Other Applicable Laws

Open Governmental Proceedings Act

In the 2002 *Regulatory Board Evaluation*, the Board of Dental Examiners was not in compliance with the Open Governmental Proceedings Act (WVC §6-9A). A review of the filings for the current evaluation period indicates that the Board was in compliance for all regular meetings, and filed notice for two emergency meetings held in 2004. **The Board is in compliance with the Open Governmental Proceedings Act.**

Unemployment Compensation and Worker's Compensation

The Board of Dental Examiners has licensed some dentists who are in default in payments of either worker's compensation premiums or unemployment compensation taxes.

The Board of Dental Examiners has licensed some dentists who are in default in payments of either worker's compensation premiums or unemployment compensation taxes. The State requires agencies to refuse to issue or renew a license to practice a profession if the licensee, as an employer, is in default under either the unemployment compensation law or the worker's compensation law. This authority is granted in WVC §21A-2-6(17) of the unemployment compensation law, and procedures for implementation are found in CSR §96-1-8. The authority for worker's compensation is granted under WVC §23-1-1b(g)(16) and WVC §23-2C-15(e). Procedures for implementation are found in CSR §85-32.

The inadequacies of the Unemployment Compensation database impose an administrative burden on many licensing boards to comply with the mandate.

In order to facilitate this mandate, the Unemployment Compensation Division and the Worker's Compensation Commission have created a joint default database which is available on the internet and searchable by the general public. However, the database is difficult to query for licensees of a board who may be in default. Consequently, the inadequacies of the database impose an administrative burden on many licensing boards to comply with the mandate. Alternatives to querying the database to determine compliance include:

- Sending a database (including individual FEIN² numbers) of accounts for renewal to the Management Information Systems Division of the Bureau of Employment Programs; or
- Requiring license holders to contact the Bureau of Employment Programs Unemployment Compensation Division to obtain an annual compliance letter to be submitted with the license or renewal application.

The Legislative Auditor identified two dentists who are behind in the payment of unemployment compensation taxes by more than 20 quarters each and owe a combined total of \$152,880, but the Board has renewed their licenses each year.

The Legislative Auditor identified two dentists who are behind in the payment of unemployment compensation taxes by more than 20 quarters each and owe a combined total of \$152,880, but the Board has renewed their licenses each year. The Legislative Auditor also identified other dentists who owe small amounts but it is not clear that these dentists were in default at the time of their license renewals. Also, since the defaulted amounts were relatively small, these dentists may have come into compliance prior to the writing of this report.

² Federal Employer Identification Number.

The Board needs to improve its compliance with WVC §21A-2-6(17) and WVC §23-1-1b(g)(16) and WVC §23-2C-15(e). The Board should stop renewing licenses for licensees who are in default for payments of worker's compensation or unemployment compensation taxes. In order to do this, the Board may need to review its procedures to identify practitioners who are in default so that they may be brought into compliance.

The Board should stop renewing licenses for licensees who are in default for payments of worker's compensation or unemployment compensation taxes.

West Virginia Insurance Fraud Prevention Act

In 2004 the Legislature created an insurance fraud unit within the office of the Insurance Commissioner under WVC §33-41 of the West Virginia Insurance Fraud Prevention Act. By this act the Legislature created penalties for fraudulent insurance claims and established a unit to investigate suspected fraud. In WVC §33-41-8(2) the Code states that the fraud unit may:

“Review reports or complaints of alleged fraud related to the business of insurance activities from federal, state and local law-enforcement and regulatory agencies, persons engaged in the business of insurance and the general public to determine whether the reports require further investigation... .”

The Legislative Auditor has determined that almost 30% of the complaints lodged with the Board of Dental Examiners are disputes with providers over the cost or fees charged, allegations of billing for work not received or completed and unnecessary work being performed. The Board should consider referring appropriate cases to the Insurance Commission Fraud Unit to facilitate the Board's investigation.

The establishment of the Fraud Unit is relatively recent. Consequently, the Board had not referred any complaints to the unit as of July, 2005. However, the Legislative Auditor has determined that almost 30% of the complaints lodged with the Board of Dental Examiners are disputes with providers over the cost or fees charged, allegations of billing for work not received or completed and unnecessary work being performed. In order to protect the public, the Board should consider referring appropriate cases to the Insurance Commission Fraud Unit to facilitate the Board's investigation. A response by the Insurance Commission to a brief inquiry by the Legislative Auditor indicated that complaints alleging insurance fraud for work not done, and complaints alleging unethical business practices such as telling patients that more work is needed than is actually required would also be appropriate to refer to the Insurance Commission. Referring such cases to the Insurance Commission could prove beneficial. The Board should consider entering into communication with the Insurance Commission to develop a procedure for referring appropriate complaints to the Fraud Unit of the Insurance Commission.

Conclusion

The Legislative Auditor notes that the Board of Dental Examiners made some improvements since the 2002 Regulatory Board Evaluation. Furthermore, the Board is in compliance with most general provisions of Chapter 30.

The Legislative Auditor notes that the Board of Dental Examiners made some improvements since the 2002 *Regulatory Board Evaluation*. Furthermore, the Board is in compliance with most general provisions of Chapter 30. There are some concerns with the Board's complaint process with respect to how the Board responded in two serious incidents. Given these two incidents and since all Chapter 30 boards have been given summary suspension power during the 2005 Regular Legislative Session, the Legislative Auditor concludes that the Board and its staff need to obtain appropriate training with respect to incidents that present a threat to the public. Furthermore, the State Auditor should extend this type of training to all Chapter 30 boards.

The Board needs to improve compliance with the Unemployment Compensation Law and the Worker's Compensation Law that requires professional licenses that are in default for payments to the State not be granted or renewed.

The Board needs to improve compliance with some general provisions of Chapter 30, and with other applicable laws. The Board has improved its compliance to the Open Governmental Proceedings Act and is in full compliance with the Act. The Board receives many complaints that may be appropriate for referring to the newly established Fraud Unit of the Insurance Commission. The Board needs to improve compliance with the Unemployment Compensation Law and the Worker's Compensation Law that requires professional licenses that are in default for payments to the State not be granted or renewed. However, compliance with this mandate is difficult because the database that contains the list of defaulted employers is difficult to query and does not facilitate identifying defaulted licensees. The alternatives to querying the database may also add an administrative burden on licensing boards. The Legislative Auditor will inform the Bureau for Employment Programs of the need to upgrade its employer default database in order to facilitate the compliance of licensing agencies to deny the renewal of licensees who are in default.

Recommendations

- The State Auditor's training program for licensing boards should include training on what constitutes an immediate threat to the public with respect to the suspension of a license prior to a hearing, and what procedures should be followed in the immediate suspension of a license.*
- With respect to the September 2005 Regulatory Board Evaluation, the Board of Dental Examiners and the Board staff need to obtain appropriate training regarding incidents that present a threat to the public.*

4. *The Board of Dental Examiners should document in its Board meeting minutes all instances in which a member of the Board is recused from voting.*

5. *The Board of Dental Examiners should comply with the Worker's Compensation and Unemployment Compensation laws by not issuing licenses or renewals to licensees who are in default in payments to the Commissioner for either worker's compensation or unemployment compensation taxes. The Legislative Auditor will inform the Bureau for Employment Programs of the need to upgrade its employer default database in order to facilitate the compliance of licensing agencies to deny the renewal of licensees who are in default.*

6. *The Board of Dental Examiners should consider referring appropriate complaint cases to the Insurance Commission for investigation by the newly established Fraud Unit.*

Issue 3

Update on the Status of the Board’s Payment of Retroactive Service Credit for its Executive Secretary.

In January 2002, the Board transferred \$28,120 to the Consolidated Public Retirement Board (CPRB) to purchase the employer portion of retirement benefits because the Board had failed to provide for participation of this employee prior to 1983.

The third issue of the 2002 *Regulatory Board Evaluation* stated that the Board of Dental Examiners exceeded its authority when it used licensure fees to pay for retroactive service credit for its executive secretary. In January 2002, the Board transferred \$28,120 to the Consolidated Public Retirement Board (CPRB) to purchase the employer portion of retirement benefits because the Board had failed to provide for participation of this employee prior to 1983. The report also noted that West Virginia state law allows employers funded by general revenue to purchase the employer share of retroactive benefits for its employees. However, Chapter 30 boards and other entities funded by special revenue are prohibited by law from taking the same action, except in two one-time opportunities provided by the Legislature in 1973 and 1988. The Legislative Auditor made two recommendations at the conclusion of this issue. The recommendations are as follows:

Recommendation 4

The West Virginia Board of Dental Examiners should request a refund from the Consolidated Public Retirement Board for the \$28,120.82 which the Dental Examiners Board unlawfully paid to purchase the Executive Secretary’s previous service credit.

The Board of Dental Examiners did not request a refund from the CPRB.

The Board of Dental Examiners did not request a refund from the CPRB. In a letter dated September 30, 2005 the executive secretary stated:

“...in regards to the retroactive service credit which was purchased for the previous Executive Secretary...the Board has taken no further action in this matter as the Board has been waiting some directive from the Joint Committee on Government Operations since the 2002 audit.”

Recommendation 5

The Legislature should consider amending the Code to allow Chapter 30 Boards and other agencies funded by special revenue the continuous provision to purchase the employer share of retroactive benefits for employees.

The Code was amended to make the proposed changes in the 2005 Regular Legislative Session when the Legislature enacted HB 2984.

The Code was amended to make the proposed changes in the 2005 Regular Legislative Session when the Legislature enacted HB 2984. The CBRB had proposed these changes in 2003 and 2004, and maintained an agency policy to correct employer errors or oversight as far as practicable. According to the Board attorney:

“Effective April 9, 2005, all employer errors or oversight, or retirement system error will be corrected in accordance with the provisions of WVC §5-10-44.”

The CPRB Upholds Its Decision

In April 2003, the Legislative Auditor sent a letter to the executive director of the CPRB requesting clarification on the final decision from the CPRB concerning the purchase of retroactive service credit by the Board of Dental Examiners. The executive director of the CPRB responded:

“...the CPRB does not believe that there is any basis to reverse the purchase of retroactive service on behalf of (name). Unless the CPRB receives direction from the leadership of the Legislature stating otherwise, the CPRB will uphold the purchase of retroactive service... .”

The executive director of the CPRB also informed the Legislative Auditor that the CPRB proposed legislative changes that would *“ensure fairness to plan participants in situations involving employer error or oversight.”*

Appendix A: Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314
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Charleston, West Virginia 25305-0610
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(304) 347-4939 FAX



John Sylvia
Director

October 31, 2005

John F. Parkulo, Executive Secretary
Board of Dental Examiners
207 South Heber Street
Beckley, WV 25802

Dear Mr. Parkulo:

This is to transmit a draft copy of the remaining issues of the Regulatory Board Evaluation of the Board of Dental Examiners. This report is scheduled to be presented during the November 13, 2005 interim meeting of the Joint Committee on Government Operations. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have.

We need to schedule an exit conference to discuss any concerns you may have with the report. We would like to have the meeting on Thursday, November 3, 2005 either in person at our office in Charleston, or via teleconference. Please notify us to schedule an exact time. In addition, we need your written response by noon on Monday, November 7, 2005 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Wednesday, November 9, 2005 to make arrangements.

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

Sincerely,

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

John Sylvia

Enclosure

Joint Committee on Government and Finance

Appendix B: Agency Response

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November 9, 2005

Mr. John Sylvia
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Performance Evaluation & Research Division
Building 1, Room W-314
1900 Kanawha Blvd., East
Charleston, WV 25305-0610

RECEIVED
NOV 09 2005

PERFORMANCE EVALUATION AND
RESEARCH DIVISION

RE: Performance Evaluation of the West Virginia Board of Dental Examiners

Dear Mr. Sylvia:

The undersigned, as Executive Secretary for the West Virginia Board of Dental Examiners, hereby submits the following response on behalf of the West Virginia Board of Dental Examiners to the Performance Evaluation of the Performance Evaluation and Research Division by revised draft dated November 4, 2005.

First of all, the West Virginia Board of Dental Examiners appreciates the recommendations and conclusions of the Legislative Auditor in recommending to the Great Legislature of the State of West Virginia that there be a continuation of the Board of Dental Examiners for the regulation of the practice of dentistry and the protection of the public as set forth in issue number one of the performance evaluation report.

As it relates to issue number two, concerning the need of the Board to approve compliance with some of the provisions of §30 and other applicable laws, the West Virginia Board of Dental Examiners respectfully concedes that it does need to improve compliance with provisions of §30, as well as other applicable laws as set forth in the performance evaluation report.

As noted by the performance evaluation, the West Virginia Board of Dental Examiners is in compliance with most general provisions of §30. The Board has also endeavored to make improvements recommended in the prior evaluation report of 2002,

and is comfortable that such improvements have been made. The Board will further endeavor to ensure that compliance with the previous recommendations stay in effect as noted in the evaluation report.

The West Virginia Board of Dental Examiners reasserts its previous position concerning the complaint process and concurs with the report that the West Virginia Board of Dental Examiners receive training concerning the response in the complaint process in general, and specifically dealing with responding to serious incidents that may come to the Board's attention. In this endeavor the Board has requested the services of the Attorney General's Office, specifically Darlene Ratliff-Thomas, Assistant Attorney General, to conduct a training seminar to be held on December 9, 2005, for implementation of such purposes.

Part of the training process will also entail instruction for purposes of complying with the passage of Senate Bill 737 during the 2005 legislative session which allows licensing Boards to suspend a license prior to a hearing if a licensee constitutes an immediate threat to the public. Darlene Ratliff-Thomas will instruct the Board during the scheduled training seminar.

The West Virginia Board of Dental Examiners, concerning recusals documented, respectfully informs the Performance Evaluation and Research Division that the Board has directed that all meeting notes for future purposes reflect all recusals of any Board member, and has instructed that the minutes of general meetings properly reflect any and all recusals engaged by the Board by making the same an agenda item. The minutes shall reflect an opportunity for recusals and any recusals cited by Board members appropriately as recommended by the Legislative Auditor.

In response to the evaluation report's comments concerning the financial self-sufficiency of the Board, the Board concurs with the evaluation findings that there are some budgetary concerns. Currently the Board has proposed fee increases to the Legislature, and will defer to the particular rule and explanation therein for a more thorough explanation of the need for the financial resources as respectfully requested by the West Virginia Board of Dental Examiners.

Certainly to continue to conduct the business at hand, which is to advance the practice of dentistry in the State of West Virginia and to protect the public in such endeavors, it is incumbent that the Board secure additional financial proceeds for such purposes. The Board desires to engage added revenues for the following:

1. A hearing examiner process;
2. Conducting two additional Board Meetings per year;
3. Conducting criminal background checks;
4. Educating Board members to the complaint procedure and processes as recommended in the evaluation report;
5. Employing the services of an investigator;

-
6. Increased office and maintenance costs;
 7. Increased legal fees;
 8. Compensating for increased costs in employee benefits; and
 9. Consideration of additional increases in employees' salaries to hire the most competent and professional individuals to discharge the duties of either Executive Secretary, Office Manager, and/or Office Assistant, keeping pace with current salaries for such positions as it relates to the operation of the West Virginia Board of Dental Examiners as delegated to them by the Legislature of the Great State of West Virginia.

Furthermore, as indicated in the evaluation report, it is incumbent for the Legislature to be advised that the licensure renewal for the practice of dentistry is the bulk of the revenues generated, and such fees are due on or before February 1 of each year. In that respect, the ending balances for the Board as set forth in the Auditor's report showing fiscal year balances is not indicative of cash availability during the months of September and October of each year.

The West Virginia Board of Dental Examiners begins submitting renewal applications during the month of October of each year for the ensuing year. Therefore cash flow analysis is also reporting and showing revenues generated for the ensuing licensing year. The review of the balances during the month of October of each year clearly indicate that the Board is in need of fee increases for the purposes set forth in their respectful request by rule currently on file with the Legislative Rule Making Review Committee, as well as the implementation of recommendations as set forth by the Legislative Auditor's Office in this evaluation.

The Board will endeavor to continue its compliance with the Open Governmental Proceedings Act as noted in the evaluation report.

The Board will also endeavor to comply with the State law which requires agencies to refuse to issue or renew a license to practice a profession if the licensee, as an employer, is in default under either the unemployment compensation law or the worker's compensation law. The Board was not knowledgeable of the authority and/or the direction as set forth in West Virginia Code §21A-2-6(17), §23-1-1b(g)(16) and §23-2C-15(e) prior to the Auditor's report, and has since that time engaged the proper channels of communications and procedures to effectively and efficiently discharge the responsibilities as set forth by statute.

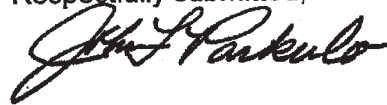
In this respect the Board has instructed its management representatives to take such actions and engage such communications as necessary or appropriate to effectively discharge the responsibilities as established by law. The West Virginia Board of Dental Examiners, upon proper legal advisory, will effectively begin this process for the 2006 license renewal period which is currently in effect at this time.

The Board of Dental Examiners will endeavor to engage the services of the West

Virginia Insurance Fraud Prevention Act as set forth in the evaluation report and would like to take this opportunity to thank the Auditor for pointing out that particular service as it relates to the discharge of the Board's responsibilities as delegated to them by the West Virginia Legislature.

In conclusion, the West Virginia Board of Dental Examiners appreciates the opportunity to work with the Legislative Auditor's Office to deal with any and all deficiencies that exist. The West Virginia Board of Dental Examiners will continue in its endeavor and takes pride in discharging its duties on behalf of the residents of the State of West Virginia, the citizens of the United States of America, and all persons coming through its boundaries for such services.

Respectfully submitted,



JOHN F. PARKULO
Executive Secretary

JFP/smc