



December 2011
PE 11-13-502

REGULATORY BOARD REVIEW

WEST VIRGINIA BOARD OF OSTEOPATHY

AUDIT OVERVIEW

The Board of Osteopathy Complies With Most
of the General Provisions of Chapter 30



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EXECUTIVE SUMMARY

This Regulatory Board Review of the Board of Osteopathy is required and authorized by the West Virginia Performance Review Act, Chapter 4, Article 10, Section 10 of the West Virginia Code.

Report Highlights:

Issue 1: The Board of Osteopathy Complies With Most of the General Provisions of Chapter 30.

- The West Virginia Board of Osteopathy complies with most of the general provisions set forth in Chapter 30 of the *West Virginia Code*. The Board is financially self-sufficient, has continuing education requirements, is accessible to the public, and maintains due process for complaint procedures.
- The Board provides due process during the complaint process but does not adhere to *West Virginia Code §30-1-5(c)* by providing status reports to the party filing the complaint within six months of the complaint being filed. Therefore, the Board should begin adhering to code and providing a formal status report to the party filing the complaint within six months of the complaint being filed.
- Currently, the Board does not have statutory authority under *West Virginia Code* to perform federal criminal background checks during the licensure process for DOs and osteopathic physician assistants. The Legislative Auditor recommends that the Legislature consider amending *West Virginia Code* to enable the Board to conduct federal criminal background checks on all applicants for licenses and on renewals at least every four to six years.

Recommendations

1. *The Board of Osteopathy should adhere to Chapter 30 and send formal status reports at the required time by certified mail to the party filing the complaint.*
2. *The Legislature should consider amending the West Virginia Code to enable the Board of Osteopathy to conduct federal criminal background checks on all applicants for licenses and on renewals at least every four to six years.*

BACKGROUND

The West Virginia Board of Osteopathy (Board) provides licensure to 1,061 Osteopathic Physicians (see Table 1) and 184 Osteopathic Physician Assistants. Osteopathic Physician Assistants may only practice as an assistant in West Virginia under the supervision of an osteopathic physician holding a regular, unrestricted license from the Board.

The Board also registers all state Osteopathic Professional Limited Liability Companies (PLLC) and Osteopathic Corporations. Every professional limited liability company is required to file with the Board annually the names of its members, and written documentation that the professional limited liability company carries at least one million dollars of professional liability insurance and a copy of the annual report required to be filed with the Secretary of State.

The West Virginia Board of Osteopathy provides licensure to 1,061 Osteopathic Physicians and 184 Osteopathic Physician Assistants.

Table 1	
Number of Licensed Osteopathic Physicians and Physician Assistants	
Osteopathic Physicians	1,061
Osteopathic Physician Assistants	184
<i>Source: West Virginia Board of Osteopathy</i>	

All 50 States and the District of Columbia Have a Regulatory Board for the Practice of Osteopathic Medicine

The practice of Osteopathic Medicine is regulated by licensure in all 50 states. Thirty-six states regulate DOs under a Board of Medicine or Medical Examiners while the remaining 14 states regulate the profession by a standalone board. Osteopathic Physicians Assistants are also regulated by licensure in all 50 states and the District of Columbia.

ISSUE 1

The Board of Osteopathy Complies With Most of the General Provisions of Chapter 30.

Issue Summary

The Board of Osteopathy has complied with most of the general provisions of Chapter 30. The Board is accessible to the public, financially self-sufficient and has a disciplinary procedure with due process. However, the Board is not adhering to the provision of providing formal status reports within six months of the complaint being filed to the party filing the complaint. Currently, the Board does not conduct state background checks and does not have statutory authority to perform federal criminal background checks. It is the Legislative Auditor's opinion that the Legislature should consider amending West Virginia Code to enable the Board to conduct federal criminal background checks on all applicants and renewals at a specified time frame.

The Board of Osteopathy has complied with most of the general provisions of Chapter 30. The Board is accessible to the public, financially self-sufficient and has a disciplinary procedure with due process.

Chapter 30 Compliance

The Board of Osteopathy is in compliance with the following general provisions of Chapter 30:

- The Chair or Chief Financial Officer must attend an orientation session conducted by the State Auditor (§30-1-2a(b));
- The Board has adopted an official seal (§30-1-5(a));
- The Board meets at least once annually (§30-1-5(a));
- The Board's complaints are investigated and resolved with due process (§30-1-5(c)); (30-1-8);
- Rules have been promulgated specifying the investigation and resolution procedure of all complaints (§30-1-8(c));
- The Board must be self-sufficient in carrying out its responsibilities (§30-1-6(c));

- The Board has established continuing education (§30-1-7a);
- The Board has a register of all applicants with the appropriate information specified in code (§30-1-12(a)), such as the date of application, name, age, education and other qualifications of residence, examination required, license granted or denied, suspensions, etc.; and
- A roster has been prepared and maintained of all licensees which includes name, and office address (§30-1-13).

The Board collects initial and renewal fees from osteopathic physicians, osteopathic physician assistants, osteopathic corporations and osteopathic physician limited liability companies.

The Board Is Financially Self-Sufficient but Its Cash Balance Has Dropped to a Concerning Level

The Board collects initial and renewal fees from osteopathic physicians, osteopathic physician assistants, osteopathic corporations and osteopathic physician limited liability companies. The current cash balance is over \$350,000 (see Table 2). In December 2009, the office was moved from Weirton to Charleston.

Table 2
Board of Osteopathy Financial Data
FY 2007-2011

Fiscal Year	Gross Revenue	Disbursements	Cash Balance
2007	\$181,229	\$224,256	\$575,693
2008	\$189,251	\$233,209	\$531,735
2009	\$192,795	\$271,874	\$452,656
2010	\$255,212	\$339,182	\$386,686
2011	\$338,125	\$354,384	\$352,427

Source: Legislative Auditors Office, Digest of Revenue Sources in West Virginia

According to the Executive Director the move was made due to the Executive Secretary retiring “...and to make the Board more accessible to the Legislature and to State Government, it was determined that would

be a good time to make the move. The rent in Weirton was \$300/month. Since moving to Charleston, the rent increased to \$1,351.25.” To cover the increase in rent and to fund the financial contributions made to the West Virginia Medical Health Program, the Board increased all fees except osteopathic corporation applications, beginning in 2010. Table 3 demonstrates the difference in fee structure beginning in Fiscal Year 2010. While the Board is financially self-sufficient, the cash balance during the last few fiscal years has been reduced to where it is slightly higher than one year of expenditures, which is a concern. If cash balances drop well below one year of expenditures, the Board's financial condition becomes a concern.

While the Board is financially self-sufficient, the cash balance during the last few fiscal years has been reduced to where it is slightly higher than one year of expenditures, which is a concern.

Table 3
Increase in Board of Osteopathy Fee Structure

Type of Fee	Old Fee, Prior to FY 2010	New Fee, Beginning FY 2010
DO Application	\$200	\$400
DO License Renewal	\$200	\$400
Physician Assistant Application	\$100	\$200
Osteopathic Corporation Application	\$500	\$500
Osteopathic Corporation Renewal	\$250	\$400
Written Verifications	\$25	\$35
Late Fee	\$50	\$100
Duplicate License	\$10	\$30
Wall Certificate	\$20	\$50
Educational Permit	\$50	\$100
Changing Supervisor	\$25	\$50

Source: West Virginia Board of Osteopathy

The increase in fee structure has significantly increased the annual revenue and will continue to assist the board in maintaining its self-sufficiency. The Board, like most Chapter 30 boards, relies on application and renewal fees as a means for self-sufficiency. In relation to surrounding and neighboring states, West Virginia is slightly higher than

the average for DO licensure and renewal fees, as well as, osteopathic physician assistant initial licensure fees (see Table 4).

Table 4
Current Fees Compared to Neighboring States

State	Osteopathic Licensure Fee	Osteopathic Renewal Fee	Osteopathic Physicians Assistant Licensure Fee	Osteopathic Physicians Assistant Renewal Fee
Ohio	\$335	\$337 (Biennial)	\$200	\$135 (Biennial)
Pennsylvania	\$45	\$220 (Biennial)	\$30	\$10 (Biennial)
Virginia	\$302	\$337 (Biennial)	\$130	\$135 (Biennial)
Kentucky	\$300	\$150 (Annual)*	\$100	\$150 (Biennial)
Maryland	\$790	\$512 (Biennial)	\$225	\$186 (Biennial)
North Carolina	\$350	\$175 (Annual)*	\$200	\$100 (Annual)*
South Carolina	\$580	\$160 (Biennial)	\$120	\$50 (Biennial)
West Virginia	\$400	\$400 (Biennial)	\$200	\$100 (Biennial)
Average of Neighboring States	\$386	\$317 (Biennial)	\$144	\$124 (Biennial)

Source: 2011 Federation of State Medical Boards

*Annual fees were counted twice to equal a biennial fee for the purpose of calculating the average fee of neighboring states.

The Board of Osteopathy Has Established Continuing Education Requirements

The West Virginia Board of Osteopathy has established continuing education requirements for licensed DOs and osteopathic physician assistants. According to *West Virginia Code §30-14-10(b)*, as a prerequisite to renewal of a license issued by the Board, each DO licensee biennially “...shall furnish to the board satisfactory evidence of having completed thirty-two hours of educational refresher course training, of which the total amount of hours must be approved by the American Osteopathic Association, and fifty percent of the required thirty-two hours shall be classified as category (1).” The Board does not require copies of continuing education certificates to be forwarded with

The West Virginia Board of Osteopathy has established continuing education requirements for licensed DOs and osteopathic physician assistants.

the renewal form. The Board instead selects a percentage of physicians to be audited. Following the license renewal period, a formula is used by the Board to randomly select 10% of the total number of physicians who renewed their license in that year. Their files are reviewed for continuing education certificates; a letter is then sent requesting copies of continuing education certificates. Any false reporting of continuing education hours identified is presented to the Board for further action.

Osteopathic physician assistants are also required per *West Virginia Legislative Rules Title 24, Series 2. §24-2-7.4*, to provide written documentation of successful completion of a minimum of 100 hours of continuing education in courses approved by the Board during the preceding two-year period. Osteopathic physician assistants continuing education credits are randomly audited by the National Commission on Certification of Physician Assistants. Osteopathic physician assistants who fail to respond to the audit, refuse to submit documentation or have falsified documentation may be subject to immediate loss of certification.

The Board does not require copies of continuing education certificates to be forwarded with the renewal form. The Board instead selects a percentage of physicians to be audited.

The Board of Osteopathy Is Publicly Accessible

The Board of Osteopathy adheres to the general provision of chapter 30 which requires public accessibility. In accordance with state code the Board has its address and telephone number listed within the Charleston telephone directory and has a website available to the public. The website contains a list of the board members, complaint forms, a directory of osteopathic physicians, physician assistants and corporations, links to related websites and newsletters issued from the Board.

The Board of Osteopathy Has a Complaint Process but Does Not Provide Status Reports

The West Virginia Board of Osteopathy provides due process during the complaint process by following disciplinary and complaint procedures outlined within *West Virginia Legislative Rule Title 24 Series 6*. Any person, firm, corporation, member of the Board, or public officer may make a complaint to the Board. All complaints are assigned a complaint number, logged into a database, with appropriate correspondence forwarded to the complainant and the respondent. Any information regarding a complaint may be sent by the Board to the licensee concerned for his or her written comment and he or she shall submit a written reply

Osteopathic physician assistants continuing education credits are randomly audited by the National Certification of Certified Physicians Assistants.

within 20 days of receiving the complaint, or waive the right to do so. The complaint is then reviewed by the Compliant Committee; unless the complaint is deemed outside its jurisdiction, the committee determines whether there is sufficient evidence to warrant further proceedings or if further investigation is needed.

According to *West Virginia Code §30-1-5(c)*, each board has a duty to investigate and resolve complaints which it receives and shall within six months of the complaint being filed, send a status report to the party filing the complaint by certified mail with a signed return receipt and within one year of the status report's return receipt date issue a final ruling. Therefore, according to code, each complaint file should be resolved within 18 months. The Board is providing due process but as noted in Table 5, in some instances, cases are not being resolved within 18 months. During fiscal year 2009, the five unresolved cases have been open on average 1,148 days. According to the Executive Director, some complaints cannot be resolved within the timeframe "...because of legal delays or appeals." Also according to the Executive Director, "Sometimes Federal Authorities request the Board hold on any action until they take action on federal charges."

The Board is providing due process but as noted in Table 5, in some instances, cases are not being resolved within 18 months.

Table 5
Complaint Resolution Statistics
Fiscal Years 2009-2011

Fiscal Year	Number of Complaints Received	Number Resolved Within 18 months	Number of Cases Resolved After 18 months	Number of Cases Still Open	Average Time of Resolution for Closed Cases (in days)
2009	39	27	7	5	306
2010	42	29	4	9	279
2011	39	27	0	12	164

Source: West Virginia Board of Osteopathy

Currently, the Board is not adhering to *West Virginia Code §30-1-5(c)*, and providing status reports to the party filing the complaint within six months of the Board reviewing the complaint. According to the Executive Director, "There is not a "formal," standardized letter that is mailed within 6 months to the complainant on all cases. It is handled on a case by case basis. Some complainants are given updates in writing;

others receive telephone calls from the Board Staff.” The Legislative Auditor’s recommends that the Board of Osteopathy should send formal status reports at the required time by certified mail to the party filing the complaint.

The Board Can Not Perform Federal Criminal Background Checks

The Board of Osteopathy does not conduct state background checks and does not have statutory authority under the West Virginia Code to perform federal criminal background checks during the licensure process for DOs and osteopathic physician assistants. According to Public Law 92-544, a state can only utilize the national fingerprinting process by enacting legislation “...that designates specific licensing or employment purposes for which state and local government agencies may submit fingerprints to the FBI and receive FBI maintained criminal history record information (CHRI).” Without proper authority the Board cannot require federal background checks for its licensees. There are currently six state agencies (Division of Motor Vehicles, State Tax Division, State Alcohol Commission, Insurance Commission, West Virginia Office of Emergency Services and the Legislative Auditor’s Office) that have mandated employees submit fingerprints for background checks. Three neighboring states (Ohio, Kentucky, and Virginia) require some form of background checks for DOs prior to licensure.

According to the Executive Director, criminal background checks have not been implemented by the West Virginia Board of Osteopathy for the following reasons:

1. Even when knowing an applicant has a legal history, many times that information gets expunged from a criminal record.
2. West Virginia does not have a real-time reporting turn around by external agencies.
3. The WV Board of Osteopathy is a member of the Federation of State Medical Boards and receives timely reports regarding any licensing action taken in other states.
4. The WV Board of Osteopathy also is required to report and inquire to the National Practitioner Data Bank on licensing matters.

Currently, the Board is not adhering to West Virginia Code §30-1-5(c), and providing status reports to the party filing the complaint within six months of the Board reviewing the complaint.

The Board of Osteopathy does not conduct state background checks and does not have statutory authority under the West Virginia Code to perform federal criminal background checks during the licensure process for DOs and osteopathic physician assistants.

5. The additional cost and time to require applicants to be fingerprinted and wait for the reports would greatly delay the licensing process and discourage physicians from licensing in West Virginia.

Doctors of osteopathy and osteopathic physician assistants are currently requested to provide documentation on initial applications and renewals concerning any previous infractions with the law. If the applicant answers yes to the question they are to provide the Board with a detailed description of the event. The Board's current system relies on the honesty of the applicant, as well as information from other state boards. Rather than relying on disciplinary information to be provided from the applicant, the Federation of State Medical Boards and the National Practitioner Data Bank, consideration should be given by the Board to conduct background checks on all applicants and renewals at least every four to six years. The West Virginia State Police background check requires a fingerprint from the applicant and a total cost of \$40 for the fingerprinting service. The FBI can review the fingerprint card from the State Police or a fingerprinting technician and provide a national background check for a fee of \$18. The FBI's processing time may take up to 12 weeks. If enacted with appropriate legislation the federal criminal background check could be paid from the initial application fee. While expediting application speed is important for any board, the primary role of licensing boards is to protect the public. **Therefore, the Legislative Auditor recommends that the Legislature consider amending the West Virginia Code to enable the Board of Osteopathy to conduct federal criminal background checks, on all applicants for licenses and on renewals at least every four to six years.**

Rather than relying on disciplinary information to be provided from the applicant, the Federation of State Medical Boards and the National Practitioner Data Bank, consideration should be given by the Board to conduct background checks on all applicants and renewals at least every four to six years.

Conclusion

The Board of Osteopathy has adhered to most of the general provisions of Chapter 30 of the *West Virginia Code*. The Board is providing due-process for its licensees but should adhere to state code and submit status reports to the party filing the complaint within six months of the complaint being filed. The fundamental purpose of licensure and regulation for Chapter 30 boards is to protect the public. In order to enhance public protection, the Legislative Auditor recommends that the Legislature consider amending West Virginia Code to enable the Board to conduct federal criminal background checks on all applicants and existing

licensees at least every four to six years.

Recommendations

1. *The Board of Osteopathy should adhere to Chapter 30 and send formal status reports at the required time by certified mail to the party filing the complaint.*
2. *The Legislature should consider amending the West Virginia Code to enable the Board of Osteopathy to conduct federal criminal background checks on all applicants for licenses and on renewals at least every four to six years.*

Appendix A: Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

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John Sylvia
Director

November 29, 2011

Ms. Diana Shepard, Executive Director
West Virginia Board of Osteopathy
405 Capitol Street
Suite 402
Charleston, WV 25301

Dear Ms. Shepard:

This is to transmit a draft copy of the Regulatory Board Evaluation of the West Virginia Board of Osteopathy. This report is scheduled to be presented during the December 13-14, 2011 interim meetings of the Joint Committee on Government Operations, and the Joint Committee on Government Organization. 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 committees may have.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us. We need your written response by noon on December 6, 2011 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 Thursday, December 8, 2011 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,


John Sylvia

Joint Committee on Government and Finance

Appendix B: Objective, Scope and Methodology

This Regulatory Board Review of the Board of Osteopathy is required and authorized by the West Virginia Performance Review Act, Chapter 4, Article 10, Section 10 of the West Virginia Code.

Objective

The objective of this review is to determine if the Board of Osteopathy is operating in compliance with the general provisions of Chapter 30 of the West Virginia Code and other applicable laws and rules.

Scope

The scope of this audit focuses on years 2007-2011. Financial information was reviewed from fiscal years 2007 through 2011. The Performance Evaluation and Research Division (PERD) compared application and renewal fees for DOs and osteopathic physician assistants to the surrounding states. PERD also evaluated time frames for the resolution of complaints filed against the Board from fiscal years 2009 through 2011.

Methodology

PERD compiled information from the Board for fiscal years 2009 to 2011 regarding the number and resolution of complaints. The Board also provided information regarding the roster of DOs, osteopathic physician assistants, osteopathic professional limited liability companies and osteopathic corporations, the fees associated with each and the Board's complaint procedure. The Legislative Auditor utilized information from the Federal Bureau of Investigation regarding criminal background checks. PERD utilized information from the Digest of Revenue Sources to review the Board's financial data from fiscal years 2007 to 2011. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix C: Agency Response

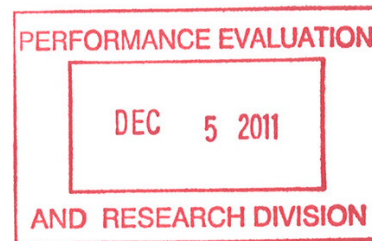


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December 5, 2011

John Sylvia, Director
Performance Evaluation and Research Division
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Re: 2011 Legislative Audit

Dr. Mr. Sylvia:

The West Virginia Board of Osteopathy received a draft copy of the Regulatory Board Evaluation conducted by your staff. We appreciate the efforts of your staff to insure the information reported is correct and accurately reflects how the WV Board of Osteopathy functions.

There are five (5) items I wish to address more thoroughly out of the report. They are:

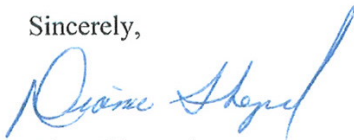
- 1) While the Board's financial report (Table 2) reflects a continuous decline in cash reserves, the Board has taken action to change the trend of decline. The fee increases instituted in 2010, stabilization of the moving costs and a change in counsel from the Attorney General's Office which will bring about a 6% decrease in salary costs.
- 2) The fee increases reflected in Table 3 were reported as higher, on the average, than the fees of seven (7) surrounding states. The average is only \$14 higher and is significantly lower than South Carolina or Maryland.
- 3) The report reflects a formal six month letter is not always sent to the person(s) filing a complaint. The Board will adhere to a regular six month, written, formal notification to each complainant. However, there is an "informal" paper trail within each complaint file consisting of letters written or telephone calls made to the complainant during the investigation.

- 4) In addressing complaints not being resolved within the 18 month requirement, there may be extenuating circumstances such as legal delays or appeals. However, the Board has recognized an issue with timely resolution of complaints and has taken corrective action. A new Executive Director was hired in 2009 and new legal counsel obtained in November 2011. If you look at Table 5 in the report, you will see a steady decline in the last two years in the average time of resolution. We expect this trend to continue.

- 5) The Board does not support the need for criminal background checks for Osteopathic applicants or current licensees for the following reasons:
 - a) Information can be expunged;
 - b) WV Board of Osteopathy reports to and receives from the Federation of State Medical Boards and the National Practitioner Data Bank information concerning actions taken in other states;
 - c) The additional \$40 cost for fingerprinting would require another fee increase which was just implemented in 2010;
 - d) WV Board of Osteopathy can issue the license for a clean and complete application in less than one month. Adding an additional 10-12 weeks for FBI processing time would discourage physicians from applying for licensure in WV;
 - e) Background checks are conducted before matriculation at all osteopathic medical schools and again during the medical student's second year.

I hope this information is helpful and will be included in the final report. We appreciate the opportunity to respond.

Sincerely,



Diana Shepard
Executive Director



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