

STATE OF WEST VIRGINIA

**PRELIMINARY PERFORMANCE REVIEW OF THE
Board of Medicine**

**Board Has an Appeal Rate of One Third
and a Low Reversal Rate**

**Board Is Above Average in the Number of
Actions Per 1,000 Licensees**

**Board Has Complied with the Remaining
Recommendations from the Report from
the Federation of State Medical Boards**

**OFFICE OF LEGISLATIVE AUDITOR
Performance Evaluation and Research Division
Building 1, Room W-314
State Capitol Complex**

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June 2000

PE 00-11-169

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June 2000

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Antonio E. Jones, Ph.D.
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June 11, 2000

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

The Honorable Vicki V. Douglas
House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Preliminary Performance Review of the *Board of Medicine*, which will be presented to the Joint Committee on Government Operations on Sunday, June 11, 2000. The issues covered herein are "*Board Has an Appeal Rate of One Third and a Low Reversal Rate; Board Is Above Average in the Number of Actions Per 1,000 Licensees; and Board Has Complied with the Remaining Recommendations from the Report from the Federation of State Medical Boards.*"

We conducted an exit conference with the *Board of Medicine* on June 2, 2000. We received the agency response on June 5, 2000.

Let me know if you have any questions.

Sincerely,

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

John Sylvia
Acting Director

JS/wsc

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Executive Summary

Issue Area 1: The Board Has an Appeal Rate of One Third and a Low Reversal Rate.

During the audit period of 1994 through 1999, the Board receives approximately 140 complaints a year. The Board averages around 84 complaints remaining open annually. It also closes an average of 102 complaints a year.

If there is disagreement with the physician over a ruling that resulted in disciplinary sanctions, the physician has the right to have judicial review of the case by a circuit court judge. The appeal rate for cases that had a hearing and received disciplinary sanctions is approximately 33%. There has only been one case reversed by judicial review in the last six years and the Board is currently appealing that case to the West Virginia Supreme Court of Appeals.

Issue Area 2: West Virginia's Board Is Above Average in the Number of Actions Per 1,000 Licensees.

Based on data from the *Federation of State Medical Boards of the United States*, West Virginia's Board is more active in comparison to other states in the number of physicians involved in board actions per 1,000 physicians. Over the last six years, West Virginia has ranked second highest in the nation in the level of activity with 9.4 actions per 1,000 licensed physicians. The national average for the same period is 5.8 per 1,000 licensed physicians.

Issue Area 3: The Board Has Complied with the Remaining Recommendations from the Report from the Federation of State Medical Boards.

The Board has now complied with all of the recommendations, that it agreed with, in the 1998 report written by the Federation of State Medical Boards of the United States. The resulting actions that have led to the compliance with the three remaining recommendations that the Board was in agreement with but had yet to be fully compliant with at the time of the 1999 special report include hiring a part-time attorney to act as prosecutor; allowing and establishing procedures for mediation; and implementing a public outreach program. The recommendations that the Board has complied with should help in making the Board a more effective agency.

Recommendation:

After conducting the preliminary performance review of the West Virginia Board of Medicine, the Legislative Auditor concludes that the agency is satisfactorily carrying out its duties according to §30-3-1 et al. Of the West Virginia Code. Therefore, it is recommended the West Virginia Board of Medicine be continued.

Review Objective and Scope

The objective of this preliminary performance review is determine if the Board of Medicine is making proper decisions pertaining to disciplinary actions; how the Board compares to other states with regard to disciplinary activity; the level of due process within the Board's disciplinary procedures; and compliance to the remaining recommendations made in a report prepared by the Federation of State Medical Boards of the United States where the Board was in agreement with and in the process of complying that was included in a special report prepared by the Performance Evaluation and Research Division during the 1999 Regular Session of the Legislature and presented to the Joint Committee on Government Operations at its April 18, 1999 interim meeting.

The time period of this review covers calendar years 1994 through 1999.

This review will assist the Joint Committee on Government Operations in making one of three recommendations to the Legislature for its next Regular Session:

1. the agency be terminated as scheduled;
2. the agency be continued and reestablished; or
3. the agency be continued and reestablished, but the statutes governing it be amended in specific ways to correct ineffective or discriminatory practices or procedures, burdensome rules and regulations, lack of protection of the public interest, overlapping of jurisdiction with other governmental entities, unwarranted exercise of authority either in law or in fact any other deficiencies.

Every aspect of this review complied with **Generally Accepted Government Auditing Standards.**

Background

The West Virginia Board of Medicine (the Board) was restructured in 1980 by the West Virginia Medical Practice Act from the old Medical Licensing Board of West Virginia. The Board was created to protect the public interest through regulating the practice of medicine and surgery and the practice of podiatry in the state. Thus, assuring that only qualified and capable individuals are licensed to practice such professions.

The Board consists of fifteen members. One member is the State Director of Health ex officio, with the right to vote as a member of the Board. The other fourteen members are appointed by the Governor, with the advice and consent of the Senate. Eight members are required to be individuals holding the degree of doctor of medicine and two are required to hold the degree of doctor of podiatric medicine. One member is to be an individual certified by the Board as a Type A physician assistant. Each of these members must be licensed or certified to practice his or her profession in the state on the date of appointment and must have been licensed or certified and actively practicing their profession for at least five years immediately preceding the date of appointment. In addition to the membership mentioned above, the Board has three lay members appointed to represent health care consumers. These three individuals nor any member of their immediate family can be a provider or be employed by a provider of health care services. Terms to serve on the Board are for five years and are limited to no more than two consecutive terms. The term for the State Director of Health lasts for the period that he or she holds that office. Also, the Board has a staff of eleven full time employees and one part time employee.

The Board is responsible for licensing of individuals who practice medicine and surgery and podiatry. The Board also licenses physician assistants. As of the beginning of 1999, there are 5,251 actively licensed physicians with 3,415 of them practicing in West Virginia. There are 104 actively licensed podiatrists with 65 of them practicing in the state. There are also 335 licensed physician assistants, 590 medical corporations and 34 limited liability companies (see Table 1).

Table 1
Licensure Activity as of January 1, 2000

Type of Licensure	Number
Actively Licensed Physicians	5,251
Actively Licensed Physicians Practicing in West Virginia*	3,415
Inactively Licensed Physicians	869
Actively Licensed Podiatrists	104
Actively Licensed Podiatrists Practicing in West Virginia*	65
Inactively Licensed Podiatrists	22
Physician Assistants	335
Medical Corporations	590
Professional Limited Liability Companies	34

*It should be noted that these numbers are included in the overall number of licenses of physicians and podiatrists.

Last year (1999), the Board licensed 391 physicians, 9 podiatrists, 49 physician assistants, 49 medical corporations. The Board also registered 9 limited liability companies (see Table 2).

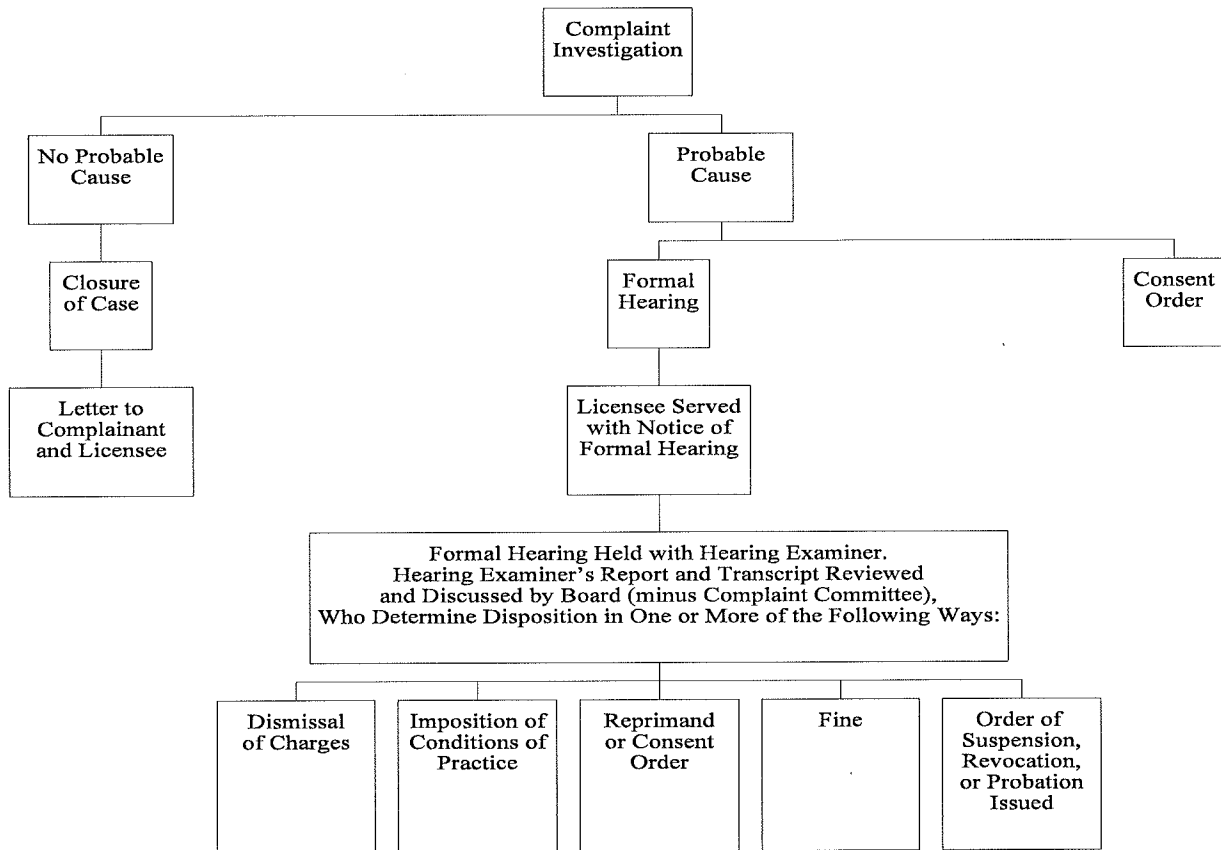
Table 2
Licenses Issued in 1999

Type of Licensure	Number Issued
Physicians	391
Podiatrists	9
Physician Assistants	49
Medical Corporations	49
Professional Limited Liability Companies	9
Total Licenses Issued	507

In addition to licensing, the Board is responsible for receiving complaints and acting on them. Once a formal written complaint has been received, it is referred to the complaint coordinator for logging, opening of case file and summary. The complaint is then reviewed by the Board's investigator and director for jurisdiction determination for further direction. A letter of acknowledgment is sent to the complainant explaining the necessity for confidentiality. A letter is

sent to the licensee requesting response to the complaint made. The response of the licensee is received and summary documented in the case file. The response is then summarized or forwarded in full to the complainant for comment. The response of the complainant is received and summary is documented in the case file. The case file is then placed on the agenda of the Complaint Committee for direction. After the Complaint Committee investigates the case, it determines if there is no probable cause or if there is probable cause. If there is probable cause the licensee is given a choice of signing a consent order or having a formal hearing (see Chart 1). A consent order is an order made by the Board in which the licensee agrees to the disciplinary sanctions. If the licensee does not agree to disciplinary sanctions then a formal hearing is held.

**Chart 1
Formal Hearing Procedure**



Issue Area 1: The Board Has an Appeal Rate of One Third and a Low Reversal Rate.

During the audit period of 1994 through 1999, the Board receives approximately 140 complaints a year (see Table 3). The Board averages around 84 complaints remaining open annually. It also closes an average of 102 complaints a year.

**Table 3
Number of Complaints Received (1994-1999)**

	1994	1995	1996	1997	1998	1999
Total Number of Complaints Filed	113	133	162	129	158	140
Number of Complaints Remaining Opened	74	130	88	54	63	93
Number of Complaints Closed	63	89	98	121	127	111

The Board had 147 cases result in a disciplinary sanction over the period of 1994 through 1999 (see Table 4). That averages to 24 cases a year that result in disciplinary sanctions. Out of cases that have a disciplinary sanction over the last six years, approximately one-fourth of them result in a hearing (see Table 5). The others result in a consent order being agreed to by the physician subject to disciplinary sanctions. Of the thirty-six cases that resulted in a hearing from 1994 to 1999, twelve of them were appealed for judicial review by a circuit court judge as allowed by §30-3-14, paragraph (l) of the Code. Out of the twelve cases appealed for judicial review, only one was reversed and the Board is appealing that reversal which goes before the West Virginia Supreme Court of Appeals. Judicial review of the remaining eleven cases upheld the Board's decision. The one case that a judicial review overturned represents a reversal rate of 8.3% over the last six years.

Conclusion

The Board is apparently making proper decisions with regard to disciplinary actions. Decision making of this kind is difficult and should not be taken lightly. Individuals' livelihoods that took years of education and a great deal of financial resources are at stake. Also, the Board must take into consideration the risk to the safety of patients who see physicians who are incompetent to practice medicine. These are decisions not easily made. With one third of all cases that go to a formal hearing appealed for judicial review, only one case in five years has been overturned by such review. This measure supports the conclusion the Board is fair in its decision making regarding disciplinary actions because if the opposite were true there would be more decisions overturned through judicial review.

Table 4
Cases With Disciplinary Sanctions (1994 - 1999)

	1994	1995	1996	1997	1998	1999
Cases with Disciplinary Sanctions through Consent Order	24	26	12	15	17	17
Cases with Disciplinary Sanctions through Order by Board	4	8	4	8	9	3
Total Disciplinary Sanctions	28	34	16	23	26	20

Table 5
Number of Appeals Versus Hearings (1994 - 1999)

	1994	1995	1996	1997	1998	1999	Total
Number of Hearings Decided	6	6	7	6	8	3	36
Hearing / Decision Pending	0	0	0	0	1	0	1
Number of Appeals	3	1	1	3	4	0	12
Appeal/Board Upheld	3	1	1	3	2	0	10
Appeal/Board Reversed	0	0	0	0	1	0	1
Appeal / Decision Pending	0	0	0	0	1	0	1

Issue Area 2: West Virginia's Board Is Above Average in the Number of Actions Per 1,000 Licensees.

In comparison with other states, West Virginia's board has more actions per 1,000 licensees than most states. Based on data from the Federation of State Medical Boards of the United States (Federation), West Virginia had an average Composite Action Index (CAI) from 1994 through 1999 of 9.43 (see Table 6). This means that out of every 1,000 licensees, 9.43 or about ten are involved in Board actions annually. The CAI is an arithmetic mean of the four ratios of 1) total actions / total licensed physicians; 2) total actions / practicing-in-state; 3) total prejudicial actions / total licensed physicians; 4) total prejudicial actions / practicing-in-state physicians. According to the Federation, these ratios are combined to give a more balanced tool to measure a board's disciplinary activity over time. Actions included in the CAI are prejudicial actions such as revocation or restriction of license and non-prejudicial actions such as the denial of a license due to a lack of qualifications or a reinstatement following a disciplinary procedure.

**Table 6
Composite Action Index (1994-1999)***

State	1994 Composite Action Index	1995 Composite Action Index	1996 Composite Action Index	1997 Composite Action Index	1998 Composite Action Index	1999 Composite Action Index	Average Composite Action Index (1994-1999)
Alabama	1.77	5.03	3.42	4.75	5.90	5.75	4.44
Alaska	8.34	5.13	10.50	8.09	13.03	11.43	9.42
Arizona	12.98	15.36	20.79	13.86	8.45	6.50	12.99
Arkansas	3.49	3.71	4.16	4.95	7.84	5.30	4.91
California	7.40	4.98	13.41	3.20	4.86	9.60	7.24
Colorado	8.94	10.25	10.43	7.95	6.34	7.31	8.54
Connecticut	3.91	5.49	4.93	4.39	4.52	2.98	4.37
Delaware	1.37	1.27	4.11	2.11	1.32	1.10	1.88
Florida	10.63	8.88	7.19	5.33	2.85	5.85	6.79
Georgia	8.43	8.78	5.18	4.64	6.75	5.24	6.50
Hawaii	1.07	1.50	4.52	3.01	3.25	2.43	2.63
Idaho	4.29	3.33	5.02	3.14	4.60	6.22	4.43
Illinois	3.79	3.52	3.85	5.85	3.82	4.40	4.21
Indiana	6.17	3.45	3.70	3.75	4.07	4.80	4.32
Iowa	7.86	9.14	10.01	10.15	6.04	6.07	8.21
Kansas	6.61	3.41	6.41	4.22	3.24	3.18	4.51
Kentucky	9.22	6.27	4.93	5.73	5.33	5.96	6.24
Louisiana	4.73	4.87	2.87	2.77	4.73	4.11	4.01
Maine	4.15	3.75	6.27	3.82	8.76	4.18	5.16

Maryland	7.97	6.79	7.17	6.84	6.98	5.56	6.89
Massachusetts	3.68	3.31	4.41	3.34	2.94	3.46	3.52
Michigan	3.40	5.29	4.54	5.36	6.78	6.51	5.31
Minnesota	5.13	4.98	5.53	3.20	4.22	2.72	4.30
Mississippi	7.85	8.79	10.85	10.13	8.21	7.15	8.83
Missouri	8.13	4.46	4.33	4.19	2.71	3.82	4.61
Montana	8.39	6.00	4.45	4.69	2.94	4.01	5.08
Nebraska	5.63	4.33	5.24	7.25	8.39	6.84	6.28
Nevada	4.00	7.78	5.10	4.32	4.99	3.94	5.02
New Hampshire	2.44	3.01	2.30	2.58	5.12	7.33	3.80
New Jersey	5.60	5.07	5.31	3.64	3.95	NA	4.71
New Mexico	3.98	6.34	5.98	2.45	11.26	5.33	5.89
New York	5.88	7.19	6.48	6.84	7.00	7.20	6.77
North Carolina	3.38	3.82	3.38	7.02	6.58	6.58	5.13
North Dakota	8.06	6.79	10.92	7.25	8.82	11.20	8.84
Ohio	4.76	6.25	6.57	5.87	6.84	9.17	6.58
Oklahoma	9.07	5.98	7.96	8.25	9.78	6.63	7.95
Oregon	5.41	5.74	4.57	4.58	4.21	3.78	4.72
Pennsylvania	3.08	3.08	4.97	5.05	3.37	3.74	3.88
Rhode Island	6.98	5.92	6.67	8.61	7.90	3.33	6.57
South Carolina	6.67	4.03	4.71	3.99	5.51	3.97	4.81
South Dakota	6.39	5.21	6.25	6.60	6.37	2.59	5.57
Tennessee	3.95	4.54	3.43	2.46	0.99	1.44	2.80
Texas	6.40	6.96	6.05	6.14	7.08	5.45	6.35
Utah	3.61	3.03	5.66	3.61	5.23	3.19	4.06
Vermont	6.02	8.51	8.58	5.39	9.11	9.03	7.77
Virginia	3.89	3.23	2.82	3.65	3.19	5.13	3.65
Washington	5.33	6.44	5.48	5.53	4.71	4.33	5.30
West Virginia	11.18	11.93	8.45	7.98	9.67	7.37	9.43
Wisconsin	5.36	4.42	5.08	4.42	5.66	6.19	5.19
Wyoming	10.91	8.42	3.68	11.72	7.05	9.35	8.52
National Average	5.95	5.72	6.17	5.49	5.87	5.48	5.78

*Source: Federation of State Medical Boards of the United States, Inc.

The CAI for West Virginia actually accounted 36 physicians in 1999. The six year average CAI of 9.43 places West Virginia second highest in the nation and highest among bordering states

in the number of physicians per 1,000 who are involved in Board actions. Arizona was first with a five year average CAI of 12.99. Naturally, one must take into consideration that other states may have a lower CAI yet have more physicians involved in medical board actions than West Virginia because they have more licensed physicians. West Virginia's ordinal ranking through the six year period measured has been as high as 2nd highest CAI and as low as 9th highest CAI (see Table 7).

Table 7
Ordinal Ranking of the West Virginia Board of Medicine

Year	Ranking (1=highest CAI, 50=lowest CAI)
1994	2
1995	2
1996	9
1997	8
1998	4
1999	7
1994 - 1999 Average	5.34

Conclusion

From the numbers generated from the Federation of State Medical Boards of the United States, it can be concluded that the Board is active in comparison to other states in the number of physicians involved in board actions per 1,000 physicians. An active board will help in assuring that qualified physicians practice in the state. Also, West Virginia's high CAI is a sign of a relatively high rate of disciplinary activity with physicians in the state.

Issue Area 3: The Board Has Complied with the Remaining Recommendations from the Report from the Federation of State Medical Boards.

Towards the end of 1997, The Board requested that the Federation of State Medical Boards of the United States conduct an independent and impartial review of its procedures. This was the first time that the Federation completed a report of West Virginia or of any state of this nature. The Board received the report in May of 1998. The Board created a five member ad hoc committee to review Federation's report and its recommendations. The ad hoc committee made its report on the Federation's recommendations to the full Board on November 8, 1998.

During the 1999 Regular Session of the Legislature, the Performance Evaluation and Research Division (PERD) was requested to review the Federation's report and determine if the Board was complying with the report's recommendations. PERD presented its report on the Board's level of compliance with the recommendations made in the Federation's report to both the House and Senate Government Organization Committees in February, 1999 and to the Joint Committee on Government Operations in April, 1999. PERD's report identified that the Board agreed with eight of the eleven recommendations made by the Federation and had already complied with five of these recommendations and were in the process of complying with the three outstanding recommendations that it was in agreement. The Board disagreed with three remaining recommendations because it felt that the Federation's facts on the issues pertaining to those recommendations were inaccurate. After reviewing the Federation's report and information from the Board, PERD believes that the reason for the misinterpretation of information by the Federation in those areas was a result of inexperience in doing performance consulting due to the fact that this was the Federation's first report of this nature.

Of the recommendations made in the Federation's report that the Board agreed with, it was still in the process of complying with three of them at the time PERD's initial report in 1999. The first area that the Board has since complied with deals with Federation Recommendation 1 pertaining to the hiring of a part-time attorney to work on Board's Complaint Committee as its prosecutor. Although the issues leading to this recommendation surrounded the unsubstantiated claim by the Federation that the Board's attorney and not the Board were selecting hearing examiners. PERD reviewed this claim and found no evidence that this was taking place. Previously, the Board's only attorney acted as both the Board's council and prosecutor. The hiring of an additional attorney separates these duties and alleviates the appearance of any conflict of interest.

The second area that the Board has since complied with is Federation Recommendation 3 relating to mediating the development of mutually acceptable consent orders. Previously, when the Federation made this recommendation, the allowance for mediation was not mentioned in the Board's statute and the Board did not do mediation as a result of this. Since then, H.B. 2082 was passed during the 1999 Regular Session that allows for mediation under §30-4-13 of the Code. The bill passed March 12, 1999 and went into affect ninety days from passage which was May 11, 1999.

The third area that the Board has since fully complied with is Federation Recommendation

11 pertaining to the implementation of a public outreach program. The Board has completed a standard presentation video with the assistance of Charleston Area Medical Center. The video was completed and reviewed by the Board at its July 12, 1999 meeting. Copies of the video have been given to each Board member to assist them when making presentations throughout the state.

Conclusion

The Board has now complied with all of the recommendations, that it agreed with, in the 1998 report written by the Federation of State Medical Boards of the United States. The recommendations that the Board has complied with should help in making the Board a more effective agency.

Recommendation:

After conducting the preliminary performance review of the West Virginia Board of Medicine, the Legislative Auditor concludes that the agency is satisfactorily carrying out its duties according to §30-3-1 et al. Of the West Virginia Code. Therefore, it is recommended the West Virginia Board of Medicine be continued.

APPENDIX A

Transmittal Letter to Agency

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

Building 1, Room W-314
1900 Kanawha Boulevard, East
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(304) 347-4890
(304) 347-4939 FAX



Antonio E. Jones, Ph.D.
Director

June 2, 2000

Mr. Ronald Walton, Executive Director
West Virginia Board of Medicine
101 Dee Drive
Charleston, WV 25311

Dear Mr. Walton:

Pursuant to the West Virginia Sunset Law, we are transmitting a draft of the Preliminary Performance Review of the Board of Medicine, which is scheduled to be presented to the Joint Committee on Government Operations on Sunday, June 11, 2000 at 12:00 noon in the Senate Judiciary Room.

We would appreciate a written response by 12:00 noon on Monday, June 5, 2000 so that it can be printed with the report. If you have any questions please contact Brian Armentrout, Research Manager.

Sincerely,

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

John Sylvia
Acting Director

Joint Committee on Government and Finance

APPENDIX B
Agency Response



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Cecil H. Underwood
Governor

June 5, 2000

Joan E. Ohi
Secretary

RECEIVED

JUN 5 2000

RESEARCH AND PERFORMANCE
EVALUATION DIVISION

Mr. Antonio Jones, Director
Performance, Evaluation and Review Division
Room W-314, Main Capitol
Charleston, West Virginia 25305

Dear Mr. Jones:

The staff from the Board of Medicine and I have reviewed the draft PERD review.

We concur with all its statements. Regarding Public Outreach, in addition to the video mentioned in the report, the Board of Medicine has instituted a newsletter, refined its website and has done presentations at several state and local medical association meetings.

Sincerely,

Henry G. Taylor, M.D., M.P.H.
Commissioner

HGT/dgg

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