

## **Regulatory Board Evaluation**

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# **Board of Pharmacy**

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**The Board's Compensation Policy May  
Be Inconsistent with the Intent of the Legislature**



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**WEST VIRGINIA LEGISLATURE**  
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John Sylvia  
Director

October 20, 2002

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 *Regulatory Board Evaluation of the West Virginia Board of Pharmacy*, which will be reported to the Joint Committee on Government Operations on Sunday, October 20, 2002. The issue covered herein is "The Board's Compensation Policy May Be Inconsistent with the Intent of the Legislature."

We transmitted a draft copy of the report to the Board of Pharmacy on October 3, 2002. The Board opted not to have an Exit Conference. We received the agency response on October 10, 2002.

Let me know if you have any questions.

Sincerely,

Handwritten signature of John Sylvia in cursive script.  
John Sylvia

JS/wsc

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*Joint Committee on Government and Finance*

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# Executive Summary

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## **The Board's Compensation Policy May Be Inconsistent with the Intent of the Legislature.**

This report is a continuation of the *Regulatory Board Evaluation* of the Board of Pharmacy. In this review, the Legislative Auditor examined the Board's policy for compensation to board members. The Board currently compensates its members \$200 for each day spent attending meetings of the Board. This \$200 compensation is also provided to members for travel to or from the Board on days before or after board meetings. For example, if a board member travels to a meeting one day early, the member will be compensated \$200 for the day of travel in addition to receiving travel reimbursement. Members will also receive \$200 compensation for the following day spent at the board meeting.

A legal opinion by the Legislative Auditor's Office indicates that the Board's policy is legal. However, while the \$200 compensation for meetings attended is legal, the Board of Pharmacy is the only regulatory board that the Legislative Auditor has reviewed that has a greater compensation amount than the Legislature, which is \$150. Furthermore, compensation is not paid to legislators for travel time on days before or after meetings. The Legislative Auditor found that the additional cost to the Board under its current compensation policy can be relatively high. The policy of paying members for travel on days before or after meetings adds an additional \$1,000 to the Board's expenses per meeting. A part of the confusion may be a lack of definition in the West Virginia Code concerning *official duties* of board members. The Legislative Auditor presents this issue to the Committee in order to give the Legislature an opportunity to determine if this Board's compensation policy is consistent with the Legislature's intent and whether it has any concern that other boards may adopt a similar policy.

## **Recommendation**

1. *The Legislature should consider amending the appropriate sections in the West Virginia Code to clarify the compensation policies for members of licensing boards governed by Chapter 30. In addition, the Legislature should consider providing further clarity in the West Virginia Code on the definition of the official duties of board members.*





## ***Review Objective, Scope and Methodology***

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A Chapter 30 board review of the Board of Pharmacy is required and authorized by the West Virginia Sunset Law, Chapter 4, Article 10 of the West Virginia *Code*, as amended. In September, 2002, the Legislative Auditor issued a report on the Board of Pharmacy that determined: 1) the Board of Pharmacy is needed to protect public interest; and 2) the Board complies with general provisions of Chapter 30. In this second report on the Board, the Legislative Auditor examined the Board's policy for compensation to board members.

This review of the Board covers the period from calendar years 1999 through 2001. Information for this report was compiled from expense reimbursement files, West Virginia *Code*, board minutes, expenditures, and the Board's legislative rules.



# Issue 1

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## **The Board's Compensation Policy May Be Inconsistent with the Intent of the Legislature.**

This report is a continuation of the *Regulatory Board Evaluation* of the Board of Pharmacy. In this review, the Legislative Auditor examined the Board's policy for compensation to board members. The Board is currently compensating its members \$200 for each day spent attending sessions of the Board. This \$200 compensation is also provided to members for travel to or from the Board on days before or after board meetings. For example, if a board member travels to a meeting one day early, the member will be compensated \$200 for the day of travel in addition to receiving travel reimbursement. Members will also receive \$200 compensation for the following day spent at the board meeting. A legal opinion by the Legislative Auditor's Office indicates the Board's policy is legal; however, it may not be consistent with the Legislature's intent for the Board. A part of the confusion may be a lack of definition in the West Virginia *Code* concerning *official duties* of board members.

### **Current Compensation Policy of the Board**

The Board's daily compensation (per diem) is explained by §30-5-2c of the West Virginia *Code* as follows:

*Each member of the board shall receive two hundred dollars for each day spent in attending to the duties of the board or of its committees, and shall be reimbursed for all actual and necessary expenses incurred in carrying out his or her duties.*

The Board's Legislative Rules, §15-1-3.8 further state the following:

*Every member of the board shall be paid a per diem for each day actually spent in attending sessions of the Board or of its committees and the necessary travel, as set by W. Va. Code §30-5-2(c)... [emphasis added]*

Thus, board members receive \$200 for each day spent *traveling* to meetings and for each day spent *attending* meetings. While the \$200 compensation for meetings attended is legal, the Board of Pharmacy is the only regulatory board that the Legislative Auditor has reviewed that has a greater compensation amount than the Legislature, which is \$150. Furthermore, the

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Legislative Auditor found that the additional cost to the Board under its current compensation policy can be relatively high. The policy of paying members for travel on days before or after meetings adds an additional \$1,000 to the Board's expenses per meeting.

## **Board Compensation Policy Exceeds that of the Legislature**

Legislators currently receive \$150 compensation and reimbursement for expenses when attending meetings, such as an extended regular session. However, compensation is not paid to legislators for travel time on days before or after meetings. Legislators receive only expense reimbursement for these days. Although the Board of Pharmacy's statute allows its members to be compensated an additional \$50 more than legislators, and the Legislative Rules of the Board allow members to receive compensation on travel days before or after board meetings, statute does not appear to clearly define the Legislature's intent for compensation to Board members. In §30-1-11(a) of the *Code*, the following information is provided on compensation:

*Each member of every board referred to in this chapter shall receive compensation for attending official meetings or engaging in official duties **not to exceed the amount paid to members of the Legislature** for their interim duties as recommended by the citizens legislative compensation commission and authorized by law. **The limitations contained in this section do not apply if they conflict with provisions of this chapter relating to a particular board and enacted after the first day of January, one thousand nine hundred ninety-five.** [emphasis added]*

The *Code* appears to allow some exceptions in the amount of compensation paid. Since the Board of Pharmacy's statute was enacted after the first day of January, 1995, the above section of the *Code* allows the Board to pay a greater amount of compensation than received by the Legislature. However, it is not clear if the statute allows compensation be paid for days of travel before or after board meetings. Another chapter in the *Code* *does* appear to allow travel time to be compensated. West Virginia *Code* §12-3-7, which was last amended in 1925, states the following:

*The members of all state boards and commissions, unless a different rate of compensation is provided by law, shall be allowed four dollars per day for each day necessarily employed as such (including the time spent in going to*

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*and returning from the place of meeting)....* [emphasis added]

## **Conclusion**

Based on the Board of Pharmacy's statute, legislative rules, and the statute found in §12-3-7, it appears that board members can legally be compensated \$200 for travel on days before or after board meetings. However, this practice is not consistent with the policy of the Legislature, which only allows \$150 in compensation and does not allow payment for travel on days before or after meetings. The additional compensation provided to Board of Pharmacy members under its current policy can be costly. The Board is currently spending an average of \$1,000 per board meeting to compensate members for a separate day of travel to attend the meeting. An additional \$350 per meeting is spent in compensating members at the \$200 rate, rather than the \$150 rate that legislators receive. These compensation policies may not be consistent with the Legislature's intent for licensing boards governed by Chapter 30 of the *West Virginia Code*. Part of the confusion may result from a need for the *Code* to define what the *official duties* are of board members. The Legislative Auditor presents this issue to the Committee in order to give the Legislature an opportunity to determine if this Board's compensation policy is consistent with the Legislature's intent and whether it has any concern that other boards may adopt a similar policy.

## **Recommendation**

1. *The Legislature should consider amending the appropriate sections in the West Virginia Code to clarify the compensation policies for members of licensing boards governed by Chapter 30. In addition, the Legislature should consider providing further clarity in the West Virginia Code on the definition of the official duties of board members.*



# Appendix A: Transmittal Letter to Agency

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John Sylvia  
Director

October 3, 2002

William T. Douglass, Jr.  
Board of Pharmacy  
232 Capitol Street  
Charleston, WV 25301-2206

Dear Mr. Douglass:

This is to transmit a draft copy of the Regulatory Board Evaluation of the Board of Pharmacy. This report is scheduled to be presented at the Sunday, October 20, 2002 interim meeting of the Joint Committee on Government Operations. 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. If you would like to schedule an exit conference to discuss any concerns you may have with the report between October 3, 2002 and October 8, 2002, please notify us. We need your written response by noon on October 10, 2002 in order for it to be included in the final report.

We request that your personnel treat the draft report as confidential and that it not be disclosed to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

Handwritten signature of John Sylvia in cursive script.  
John Sylvia

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*Joint Committee on Government and Finance*

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# Appendix B: Agency Response



## Board of Pharmacy

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October 4, 2002

John Sylvia, Director  
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**R E C E I V E D**  
OCT 10 2002

PERFORMANCE EVALUATION AND  
RESEARCH DIVISION

Dear Mr. Sylvia:

I am writing in response to your report on the Board of Pharmacy's compensation policy. The Board does agree with the opinion that members can be legally compensated \$200 for travel on days to and from a board meeting. In regards to the definition of official duties, it would seem obvious that the travel necessary to be present at the meeting would be an official duty. Otherwise, if you are not present at the meeting, then you cannot conduct the necessary Board business that day.

Some of the members of the Board of Pharmacy operate their own business and must either close their store or hire an additional pharmacist for the day or days they are absent in order to serve the state as a member of the Board of Pharmacy. The amount of \$200 for a travel day might seem costly but comes nowhere near the amount the members either lose in business or pays out in salary and benefits to another pharmacist to staff their pharmacy. It should also be pointed out that the only time that Board members submit an expense reimbursement form is in conjunction with attendance at a Board meeting, conference, or committee meeting. Board members spend several hours each month reviewing materials sent from the office, on phone calls with office staff, and answering questions from licensees. They do not submit this time for reimbursement although it could arguably be considered as engaging in official duties. I believe that the Board's compensation policy is consistent with the Legislature's intent since all relevant sections of the Code allow for such compensation and such compensation is not profitable for Board members but merely covers a small portion of their expenses.

Sincerely,

William T. Douglass, Jr.  
Executive Director and  
General Counsel

