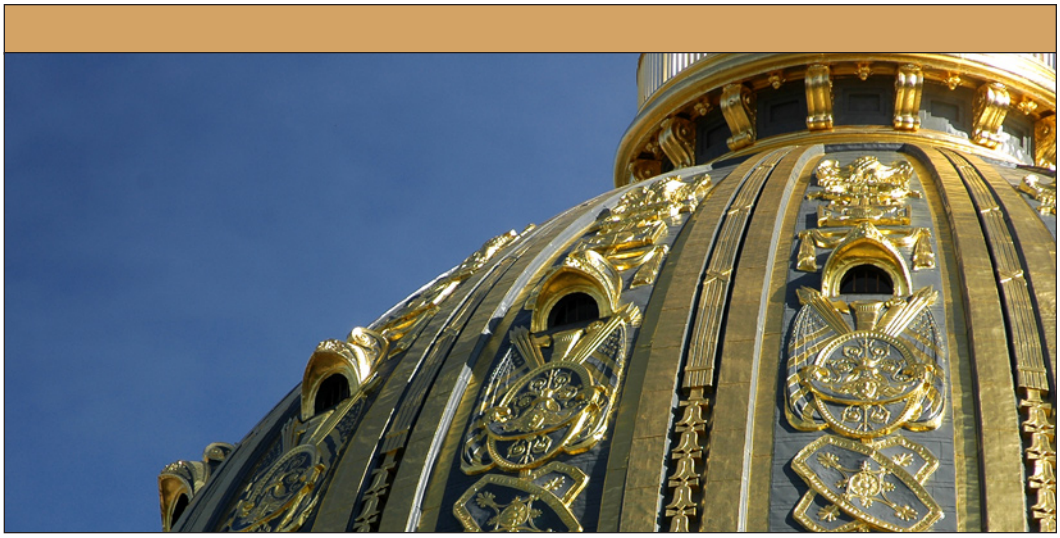

January 2011
PE 10-18-485

REGULATORY BOARD REVIEW

WEST VIRGINIA BOARD OF PHARMACY

AUDIT OVERVIEW

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

High Death Rates From Drug Overdoses Could Be Lowered if Statutory Changes Allowed Broader Use of the State's Prescription Drug Monitoring Program

WEST VIRGINIA LEGISLATIVE AUDITOR
PERFORMANCE EVALUATION & RESEARCH DIVISION

JOINT COMMITTEE ON GOVERNMENT OPERATIONS

Senate	House of Delegates	Agency/ Citizen Members
Edwin J. Bowman, Chair	Jim Morgan, Chair	John A. Canfield
Herb Snyder, Vice-Chair	Dale Stephens, Vice-Chair	W. Joseph McCoy
Walt Helmick	Ruth Rowan	Kenneth Queen
Brooks McCabe	Patti Schoen	James Willison
Clark S. Barnes	Craig Blair, Nonvoting	Vacancy
	Scott G. Varner, Nonvoting	

JOINT COMMITTEE ON GOVERNMENT ORGANIZATION

Senate	House of Delegates	
Edwin J. Bowman, Chair	Jim Morgan, Chair	Randy Swartzmiller
Herb Snyder, Vice-Chair	Dale Stephens, Vice-Chair	Joe Talbott
Richard Browning	Brent Boggs	Terry Walker
Dan Foster	Greg Butcher	Tom Azinger
Jeffrey V. Kessler	Samuel J. Cann, Sr.	Daryl E. Cowles
Brooks McCabe	Roy Givens	Pat McGeehan
Joseph M. Minard	Daniel J. Hall	Carol Miller
Corey L. Palumbo	William G. Hartman	Jonathan Miller
Randy White	Barbara Hatfield	Thomas Porter, Jr
Bob Williams	Mike Manypenny	Ruth Rowan
Jack Yost	Dale Martin	
Donna J. Boley	Daniel Poling	
John Shott	Meshea L. Poore	
Dave Sypolt	Margaret A. Staggers	

WEST VIRGINIA LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314
State Capitol Complex
Charleston, West Virginia 25305
(304) 347-4890

Aaron Allred	John Sylvia	Michael Midkiff	Brandon Burton	Sarah J. Lynch
Legislative Auditor	Director	Research Manager	Research Analyst	Referencer

CONTENTS

List of Tables

List of Appendices

EXECUTIVE SUMMARY

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

The West Virginia Board of Pharmacy is complying with most of the general provisions set forth in Chapter 30 of the *West Virginia Code*. The Board is financially self-sufficient, accessible to the public, has continuing education credits and maintains due-process rights for licensees. Since FY 2006, the Board has increased its end-of-year cash balance by over $1 million. The board has utilized the increased cash balance to purchase a new building for $370,000, which was paid in full on May 10, 2010. Complaints are resolved in a timely manner but the Board does not adhere to *West Virginia Code §30-1-5(c*) by providing status reports to the party filing the complaint when a complaint goes beyond six months. The Board does not provide agreement or closure letters to inform all parties that a complaint investigation has been completed. Therefore, the Board should adhere to Chapter 30 and provide status reports to the party filing the complaint when the complaint goes beyond six months and the Legislature should consider amending *West Virginia Code §30-1-5(c*) to require all Chapter 30 Boards to send letters of agreement or closure letters to all parties within three months of the Board's resolution date.

The Board is financially self-sufficient, accessible to the public, has continuing education credits and maintains due-process rights for licensees.

According to *West Virginia Code §30-1-12(b),* an annual report is to be submitted to the Governor and Legislature describing transactions for the preceding two years. The Board has not fulfilled this obligation since 2007. The Board should adhere to Chapter 30 and begin submitting annual reports. Currently, the Board does not have statutory authority under the West Virginia Code to perform federal criminal background checks during the licensure application process for pharmacists, pharmacy technicians or pharmacy interns. Due to the close proximity to lethal and addictive controlled substances the Legislature should consider amending *West Virginia Code* to enable the Board to conduct criminal background checks on all applicants and existing licensees according to a schedule determined by the Board.

Due to the close proximity to lethal and addictive controlled substances the Legislature should consider amending West Virginia Code to enable the Board to conduct criminal background checks on all applicants and existing licensees according to a schedule determined by the Board.

Issue 2: High Death Rates From Drug Overdoses Could Be Lowered if Statutory Changes Allowed Broader Use of the State's Prescription Drug Monitoring Program.

From 1999-2004, deaths from unintentional overdose in West Virginia increased 550 percent, the greatest increase for any state in the country. This is largely because of prescription opioid painkillers.

According to a United States Center for Disease Control (CDC) study released in July 2010, West Virginia led the nation in overall drug overdose death rates during calendar year 2007. From 1999-2004, deaths from unintentional overdose in West Virginia increased 550 percent, the greatest increase for any state in the country. This is largely because of prescription opioid painkillers. Examples of opiods are oxycodone and hydrocodone, both of which are prescribed for pain but can suppress breathing when taken in excess.

West Virginia's PMP is reactionary by statute, in that, the PMP is not programmed to identify or "red flag" abnormal prescription and dispensing practices.

The increase in unintentional drug overdose and rising prescription drug abuse has resulted in the development of Prescription Drug Monitoring Programs throughout the country. West Virginia is one of 34 states with an operational Prescription Drug Monitoring Program (PMP). A PMP is a statewide electronic database that stores designated data from pharmacies regarding controlled substances dispensed in the state. The West Virginia Board of Pharmacy maintains the West Virginia controlled substance monitoring database. West Virginia's PMP is reactionary by statute, in that, the PMP is not programmed to identify or "*red flag*" abnormal prescription and dispensing practices. The use of the PMP data and any reports are limited by West Virginia law to be used only during an investigation by law enforcement or a licensing board. However, several states have taken a proactive approach in the use of their PMP by programming the database to identify unusual prescription drug behavior and generating unsolicited reports that are forwarded to the appropriate authorities. The Legislative Auditor recommends the Legislature consider amending *West Virginia Code §60-A-9-5 and West Virginia Legislative Rule §15-8-7* to authorize the State's PMP database to be used proactively within appropriate statutory parameters. The state PMP is also used to assist in combating the methamphetamine problem but it could be used differently to be more effective. The State Police are limited to searching for one individual at a time, which prohibits their ability to track or trend for a region or group of people. It is the Legislative Auditor's opinion that the Legislature should consider a change in both *West Virginia Code §60-A-9-5 and West Virginia Legislative Rule §15-8-7* to require the Board of Pharmacy to issue a monthly or quarterly report

The Legislative Auditor recommends the Legislature consider amending West Virginia Code §60-A-9-5 and West Virginia Legislative Rule §15-8-7 to authorize the State's PMP database to be used proactively within appropriate statutory parameters.

that identifies the individuals who have exceeded their purchasing limit of pseudoephedrine.

Currently information sharing and cooperation across state lines from state PMPs does not yet exist. The Council of State Governments (CSG) recently developed the Prescription Monitoring Program Compact model legislation which is designed to allow states with prescription monitoring programs to share information with other state programs through a centralized database. The National Association of Boards of Pharmacy (NABP) informed members of the association that the NABP will be developing an interconnected communications hub for state PMPs, similar to the CSGs. With compact legislation already in place, the Legislature should consider implementing the enabling compact legislation designed by the Council for State Governments in order to allow for a sharing of prescription data between member states.

Recommendations

1. The Legislative Auditor recommends that the Board of Pharmacy should adhere to the general provision and begin sending status reports by certified mail with a signed return receipt to the party filing the complaint within six months of the complaint being filed.

2. The Legislative Auditor recommends that the Legislature consider amending West Virginia Code §30-1-5(c) and require all Chapter 30 Boards to send closure letters or letters of agreement to all parties soon after the Board's resolution date.

3. The Legislative Auditor recommends that the Board submit to the Governor and the Legislature its annual report beginning with fiscal year 2010.

4. The Legislative Auditor recommends that the Legislature consider amending the West Virginia Code to enable the Board of Pharmacy to conduct criminal background checks, through the National Criminal Investigative Center, on all applicants for licenses and existing licensees according to a schedule determined by the Board.

5. The Legislature should consider amending both West Virginia Code §60-A-9-5 and West Virginia Legislative Rule §15-8-7 to enable the PMP database to be used proactively within appropriate statutory parameters. The PMP should be allowed to generate unsolicited reports on a specified frequency to law enforcement or relevant state agencies, and to conduct red-flagging based on criteria and definitions for medical prescribing and dispensing standards, misuse of prescription drugs and doctor-shopping.

6. The Legislature should consider amending both West Virginia Code §60-A-9-5 and West Virginia Legislative Rule §15-8-7 to enable the PMP database to issue a periodic report that identifies individuals who have exceeded their purchasing limit of pseudoephedrine.

7. The Legislature should consider implementing the enabling compact legislation designed by the Council for State Governments in order to allow for a sharing of prescription data between member states.

OBJECTIVE, SCOPE & METHODOLOGY

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

Objective

The objective of this review is to determine if the Board of Pharmacy 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 2006 to 2010. Financial information was reviewed from the period of the last regulatory board review, and covered fiscal years 2002 through 2010. The Performance Evaluation and Research Division (PERD) compared the application and renewal fees for pharmacists, as well as, the continuing education hourly requirements to the rest of the country from the 2010 National Association of Boards of Pharmacy. PERD evaluated time frames for the resolution of complaints filed against the Board for years 2007-2010. PERD utilized information from the West Virginia Health Statistics Center to report on the unintentional overdose fatalities from calendar years 2001-2008. The scope of this review also covers years 2003-2010 for the number of methamphetamine lab incidents in West Virginia.

Methodology

PERD compiled information from the Board of Pharmacy for calendar years 2007 to 2010 regarding complaints and Board meeting minutes. The Board also provided information relating to the Board's roster and register, as well as answering questions relating to the changes made within the Board since the last Regulatory Board Review in 2002. Information was gathered from the surrounding states' regulatory boards. The Legislative Auditor also utilized information from the Federal Bureau

of Investigation regarding criminal background checks. The National Association of Boards of Pharmacy provided national information regarding the number of pharmacists, pharmaceutical technicians and interns within each state, as well as, the time frame to complete continuing education requirements. The Legislative Auditor reviewed the July 2010 United States Center for Disease Control report on overall overdose deaths in the United States to determine West Virginia lead the nation per 100,000 during 2007. The Alliance of States with Prescription Monitoring Programs forwarded documentation to the Legislative Auditor which identified the number of states which utilized their PMP to provide agencies with unsolicited reports. Documentation from both the Council for State Governments and the National Association of Boards of Pharmacy was reviewed detailing the development of their interconnecting hub for all states' prescription monitoring programs.

Background

The West Virginia Board of Pharmacy provides licensure and regulation to 3,481 pharmacists (see Table 1). A registered pharmacist in the state of West Virginia is a licensed practitioner which provides pharmaceutical care to customers. According to *West Virginia Code §30-1-5(25)*, pharmaceutical care *"...is the provision of drug therapy and other pharmaceutical patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms or arresting or slowing of a disease process as defined in the rules of the board."*

Table 1
Total Number of Licensed Pharmacists, Certified Pharmacy Technicians And Interns

Pharmacists	3,481
Pharmacy Technicians	3,412
Interns	887

Source: West Virginia Board of Pharmacy as of February, 2010.

Currently, all states have a licensing board to regulate the practice of pharmacy. According to *West Virginia Code §30-5-5* in order to be licensed as a pharmacist, a person shall be at least 18 years old, present to the board that he or she is a graduate of a recognized school of pharmacy, present to the board that he or she has completed at least 1,500 hours of internship in a pharmacy, pass an examination approved by the board and present to the board he or she is a person of good moral character.

The Board also oversees the registration of pharmacist technicians and the licensure of pharmacist interns. As of February 2010, the board registered 3,412 pharmacy technicians and licensed 887 interns (see Table 1). In order to obtain registration to practice as a pharmacy technician the applicant must be at least 18 years old, a high school graduate or its equivalent, present to the board that he or she is of good moral character and satisfactorily complete a board approved pharmacy technician training program. In most cases job duties include receipt of prescription request, retrieval and measurement of medication, entering prescriptions into the pharmacy computer, preparation of labels and prescription containers, stocking and taking of inventory, and maintenance of patient profiles. West Virginia pharmacy interns may begin upon pharmacy

school enrollment. West Virginia requires interns to work 1,500 hours under the direct supervision of a licensed pharmacist. Licensed interns may compound, assist in preparing, and dispense prescriptions and prescription refills.

In addition to the licensure and regulation of pharmacists, interns, and pharmacy technicians, the Board is required to regulate mail-order houses, wholesale distributors, pharmacies, and pharmacist consultants, as well as regulate the manufacture and packaging of drugs or medicines. Upon evaluation and payment of application fees, permits are issued. Table 2 illustrates the total number of permits issued as of February, 2010.

The Board of Pharmacy conducts inspections of pharmacies every two years to ensure that the dispensing of prescription drugs is happening in a safe, sanitary environment and being done by competent licensed individuals according to federal and state drug laws.

Table 2
Permits Issued for Mail-Order Houses, Pharmacies, and the Manufacture and Packaging of Drugs or Medicines

Type of Permit	Number Issued
Mail-Order Houses	506
Wholesale Distributors	852
Pharmacies	610
Pharmacist Consultant	407
Manufacture and Packaging of Drugs or Medicines	19

Source: The West Virginia Board of Pharmacy as of February, 2010.

Inspections of in-state facilities are conducted throughout the year. The Board of Pharmacy conducts inspections of pharmacies every two years to ensure that the dispensing of prescription drugs is happening in a safe, sanitary environment and being done by competent licensed individuals according to federal and state drug laws. The Board conducts opening inspections of pharmacies applying for an initial license and at least a biennial inspection of each licensed pharmacy. The Board employs five inspectors who each cover a certain geographic region of the state and operate out of their homes. The 610 pharmacies are divided between the inspectors.

In regard to in-state mail-order houses, manufacturers and distributors the Executive Director reported "*The Board's inspectors inspect all in-state facilities that we license. However, the pharmacies*

take priority, and we only visit the manufacturers and distributors on an ad-hoc basis when they have a change in status, have an issue, or when the inspector can coordinate it with another inspection in the same area. They are not on a fixed schedule or regular cycle at this time due to limits in manpower." The out-of-state mail-order houses, manufacturers and distributors are required to submit proof of their home state's licensure, and if they are in good standing with the home state, then according to the Executive Director, "*…that is all that is required. We rely on their home state requirements for operation."*

ISSUE 1

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

Issue Summary

The West Virginia Board of Pharmacy is financially self-sufficient and has improved its financial condition compared to previous years. The Board is also complying with most of the general provisions set forth in Chapter 30 of the *West Virginia Code*. The Board is accessible to the public, has continuing education credits and maintains due-process rights for licensees. However, the Board does not provide status reports to the party filing the complaint when a complaint goes beyond six months. The Board also has not submitted annual reports to the Governor since 2007. It is the Legislative Auditor's opinion that the Board should adhere to Chapter 30 provisions and submit status reports to the party filing the complaint and submit annual reports to the Legislature.

The Board is accessible to the public, has continuing education credits and maintains due-process rights for licensees.

Chapter 30 Compliance

The Board Pharmacy 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 (§30-1-4);
- 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 financially 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.;
- The Board has complied with public access requirements as specified by (§30-1-12(c));
- A roster has been prepared and maintained of all licensees which includes name, and office address (§30-1-13).

The board has utilized the increased cash balance to purchase a new building for $370,000, which was paid in full on May 10, 2010.

The Board Is Financially Self-Sufficient

The Board collects initial and renewal fees from pharmacists, pharmacist interns, pharmacist technicians, pharmacist consultants, pharmacies, mail-order houses, wholesale distributors and manufacturers. The current cash balance exceeds $2 million (see Table 3 below). Given the Board's average annual expenditures over the past five years, the Board's cash balance for 2010 is at a sufficient level.

Table 3
West Virginia Board of Pharmacy Operating Budget
Fiscal Year 2006-2010

Fiscal Year	Revenue	Expenditures	Cash Balance
2006	$706,989	$785,574	$1,088,506
2007	$1,445,705	$652,364	$1,881,847
2008	$625,214	$821,229	$1,685,832
2009	$1,195,454	$753,964	$2,127,322
2010	$1,324,643	$1,376,860	$2,075,104

Source: West Virginia Digest of Revenue Sources, FY 2006-2009, West Virginia Legislative Auditor's Office.

The board has utilized the increased cash balance to purchase a new building for $370,000, which was paid in full on May 10, 2010. The

board was paying $30,000 per year in rent which covered all maintenance and utilities. According to the Executive Director, "*We expect to incur significant expense for the utilities and maintenance, but firmly believe we will be paying less per month by owning than we were by renting. We have set a ball-park figure of $5,000 to $10,000 savings per year by owning.*" [1]Due to renovations that are to be made at the location, the Executive Director estimates they will move into the new location in early fall.

Application and renewal fees for the professions regulated by the Board have led to a sufficient cash balance. It is the Legislative Auditor's opinion that the Board is facing no budgetary concerns at this time.

The West Virginia Board of Pharmacy, like most Chapter 30 Boards, relies on application and renewal fees as a means for self-sufficiency. The Board requires pharmacists to pay an initial licensure fee of $255, which includes the fees for the state errors and omissions exam, and a biennial renewal fee of $120 (see Table 4). West Virginia's initial licensure application fee including any state exam fee or processing fee is the fourth highest of any state pharmacy board in the nation. Table 4 below compares the application and renewal fees of pharmacists in the surrounding states.

Table 4
Pharmacists Licensing Fees in West Virginia and Bordering States

State	Total Number of Pharmacists	*Application Fee	Renewal Fee	Renewal Period
Kentucky	6,678	$150	$80	Annual
Maryland	8,384	$100	$250	Biennial
Ohio	16,598	$110	$97.50	Annual
Pennsylvania	19,891	$40	$150	Biennial
Virginia	10,429	$280	$90	Annual
West Virginia	**3,481**	**$255**	**$120**	**Biennial**
National Average	**8,099**	**$137**	**$136**	**Biennial**

Source: 2010 National Association of Boards of Pharmacy Survey of Pharmacy Law
Including any state exam fees or processing fees.

Application and renewal fees for the professions regulated by the Board have led to a sufficient cash balance. It is the Legislative Auditor's opinion that the Board is facing no budgetary concerns at this time.

[1] *West Virginia Board of Pharmacy 2510 East Kanawha Blvd. Charleston, WV 25311*

The Board of Pharmacy Has Established Continuing Education Requirements

The West Virginia Board of Pharmacy has established continuing education requirements for licensed Pharmacists. According to *West Virginia Legislative Rule Title 15 Series 3,* a licensed pharmacist shall complete a minimum of 30 continuing education hours every two years to renew his or her license to practice pharmacy in West Virginia. The Continuing Education Committee is responsible for approval of the content each continuing pharmaceutical education program offers.

The requirements of the surrounding states and the country are fairly uniform regarding the types of programs that are recognized and the prescribed range of acceptable content matter.

Across every state licensed pharmacist are required to complete continuing education hours in order to renew their license. Table 5 shows the requirements of West Virginia and the surrounding states. The requirements of the surrounding states and the country are fairly uniform regarding the types of programs that are recognized and the prescribed range of acceptable content matter.

Table 5
West Virginia and Surrounding States Continuing Education Requirements for Pharmacists

State	Hours	Renewal Period
National Average	**25**	**2 Years**
Kentucky	15	1 Year
Maryland	30	2 Years
Ohio	60	3 Years
Pennsylvania	30	2 Years
Virginia	15	1 Year
West Virginia	**30**	**2 Years**

Source: National Association of Boards of Pharmacy

West Virginia licensed pharmacists are required to keep records, receipts, and certifications of continuing pharmacy education programs completed for four years in a manner that will enable their retrieval upon request from the Board. Continuing education hours are verified by a Board inspector upon the biennial inspection. Certificates of continuing education must be present at the pharmacy where the pharmacist is employed in order for the inspector to verify the correct number of hours has been obtained. According to a Board representative, "*At each biennial inspection the inspector reviews the continuing education credits for each pharmacist employed. If the continuing education credits are not in the pharmacy a letter is sent by the inspector to the pharmacist requesting certificates be sent to the inspector's address for verification. If this is not*

done a complaint is filed by the inspector and the pharmacist would answer to the complaint committee." As with other states, pharmacy technicians are not required to maintain any continuing education credits.

The Board of Pharmacy Is Publicly Accessible

The Board of Pharmacy adheres to the general provision of chapter 30 which requires public accessibility. In accordance with state code the Board has its telephone number listed within the Charleston telephone directory and has a website available to the public. The website contains information on each board member, staff member and inspector. The website also contains applicable sections of code, legislative rules, as well as applications/renewal forms, board meetings, and complaint forms. As a result of PERD's last audit in September 2002, the Board made the following additions to their website:

In accordance with state code the Board has its telephone number listed within the Charleston telephone directory and has a website available to the public.

- details of Board approved continuing education courses currently being offered;
- a listing of any pharmacist or pharmacist technician who has had complaints brought against them;
- a listing of licensed pharmacists, pharmacy technicians, or any business associated with the board; and
- links to forms associated with obtaining permits or licensure.

The Board continues to update its website as needed.

The Board Does Not Provide Status Reports

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. Table 6 demonstrates the Board is providing due-process rights for licensees and resolving most cases within 18 months.

Table 6
Complaint Resolution Statistics

Calendar Year	Number of Complaints Received	Number Resolved Within 18 Months	Average Time to Resolution
2007	67	64	4.8 months
2008	80	69	5.5 months
2009	74	69*	5.3 months

**** Three files are still pending and have not yet fallen oustidie the 18 month time frame.***
Source: West Virginia Board of Pharmacy

The Legislative Auditor reviewed complaint cases since 2007 and noted that the Board is currently not providing status letters within six months of reviewing a complaint to the party filing the complaint. According to the Executive Director, "*I have not sent any formal status report letters.*" **The Board of Pharmacy should adhere to the regulations of Chapter 30 and begin sending status reports at the required time by certified mail to the party filing the complaint.**

Table 6 demonstrates the Board is providing due-process rights for licensees and resolving most cases within 18 months.

Complaints are received by the Board in writing, by phone or in person. Upon completion of the investigation, information presented within a report is sent to the Complaint Committee. The Committee provides recommendations and the full Board votes whether to approve or reject the recommendations. **The Legislative Auditor noted that 5 revocation recommendations from the Board during 2007 and 2 from 2008 were resolved in a timely fashion but the revocation letters were not mailed to the licensees for over 2 years. Current statute does not mandate letters of closure or letters of agreement be provided to all parties involved within the complaint. Therefore, it is the Legislative Auditor's opinion that the Legislature consider amending *West Virginia Code §30-1-5(c)* that requires Chapter 30 Boards to send closure letters or letters of agreement to all parties soon after the Board's resolution date.**

The Board Has Not Submitted Annual Reports to the Governor

According to *West Virginia Code §30-1-12(b)* an annual report is required to be submitted to the Governor and Legislature describing transactions for the preceding two years. The Board has not submitted an annual report since FY 2007. According to the Executive Director, "*We were not aware of the requirement for an annual report until I heard it at the Auditor's annual training last December."* The Board is currently preparing this year's report for filing. **In order to keep the Governor and the Legislature abreast of the Board's recent transactions, an annual report should be completed and submitted to the Legislature for fiscal years 2010 and 2011.**

The Board 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 application process for pharmacists, pharmacy technicians or pharmacy interns.

The Board Does Not Perform Federal Criminal Background Checks

The Board 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 application process for pharmacists, pharmacy technicians or pharmacy interns. 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. According to the National Association of Boards of Pharmacy there are 15 states that require some form of background check for pharmacists prior to licensure. The Board has discussed background checks at meetings. According to the Executive Director, "*We do not currently run those checks. We have discussed them at Board Meetings, and it would require changes to rule and additional costs to the applicants. The Board is considering them as we are rewriting our code with House*

Government Organization for the next Legislative Interims, and will be re-doing our rules once the task is completed through the 2011 Regular Legislative Session."

The Board currently reviews applicant's disciplinary background history by the following:

1. requesting background history from the applicant, and
2. obtaining a background report from the NABP national database.

Pharmacists, pharmacy technicians and intern applicants are requested to provide documentation concerning any previous disciplinary actions taken against them in another state or if they have been convicted of any infraction against pharmacy law. If the applicant answers yes to the previous question they are to provide the Board with a detailed description of the event and any action taken against them. According to *West Virginia Code §30-5-7,* the Board may deny an application if the applicant has "*…been convicted in any of the courts of this state, the United States of America, or any other state, of a felony or any crime involving moral turpitude which bears a rational nexus to the individual's ability to practice as a pharmacist or pharmacist technician."*

The Board also uses a national disciplinary database from the NABP. The NABP houses a clearinghouse which is a national database of educational, competence, licensure, and disciplinary information on pharmacists practicing in NABP's member states and jurisdictions. Information for the database is supplied by each individual state board. The database is used by the Board of Pharmacy to determine the acceptability and qualifications of pharmacists who are requesting a license by reciprocity. According to the Executive Director "*NABP sends us a report indicating where the pharmacists have been licensed, and whether they have been subject to discipline in any other jurisdiction. If they have had prior discipline, we get a copy of the order and review it. If it is anything involving moral turpitude, fraud, drug diversion, or other significant cause for discipline, then it is up to be reviewed by the full Board to determine eligibility."*

The Board's current system relies on the honesty of the applicant to provide accurate information, as well as, information from other state boards. Rather than relying on disciplinary information to be provided to the Board from the applicant and the NABP, consideration should be given by the Board to conduct background checks on all applicants and also on 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 application fee. **The Legislative Auditor recommends that the Legislature consider amending the West Virginia Code to enable the Board of Pharmacy 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 to the Board from the applicant and the NABP, consideration should be given by the Board to conduct background checks on all applicants and also on renewals at least every four to six years.

Conclusion

The Board of Pharmacy has adhered to the majority 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 filling the complaint within six months of the complaint being filed, as well as, submit annual reports to the Legislature and the Governor. According to Chapter 30, the fundamental purpose of licensure and regulation is to protect the public. The Board of Pharmacy currently licenses and regulates pharmacists, pharmacy technicians and interns whom all have access to prescription medication within the pharmacy which they are employed. Such a close proximity to addictive and lethal medication should warrant a federal background check for prospective licensees in order to protect the public from unprofessional behavior. Currently the Board of Pharmacy does not have statutory authority under West Virginia Code 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 existing licensees at least every four to six years.

Recommendations

1. The Legislative Auditor recommends that the Board of Pharmacy should adhere to the general provision and begin sending status reports by certified mail with a signed return receipt to the party filing the complaint within six months of the complaint being filed.

2. The Legislative Auditor recommends that the Legislature consider amending West Virginia Code §30-1-5(c) and require all Chapter 30 Boards to send closure letters or letters of agreement to all parties soon after the Board's resolution date.

3. The Legislative Auditor recommends that the Board submit to the Governor and the Legislature its annual report beginning with fiscal year 2010.

4. The Legislative Auditor recommends that the Legislature consider amending the West Virginia Code to enable the Board of Pharmacy to conduct criminal background checks, through the National Criminal Investigative Center, on all applicants for licenses and existing licensees according to a schedule determined by the Board.

ISSUE 2

High Death Rates From Drug Overdoses Could Be Lowered if Statutory Changes Allowed Broader Use of the State's Prescription Drug Monitoring Program.

Issue Summary

The West Virginia Board of Pharmacy maintains the statewide electronic database that is part of the State's Prescription Drug Monitoring Program. The database collects data from pharmacies regarding controlled substances dispensed within the state. Prescription drug monitoring programs (PMP) are operational in 34 states. States differ in the housing entities, scope of coverage and investigatory powers. Some states take a proactive approach by identifying unprofessional behavior and generating unsolicited reports whenever suspicious behavior is detected. Reports vary from the use of drugs by region to a listing of patients who may be "*doctor-shopping."* Twenty-seven (27) of the 34 states with operational programs generate reports that are sent to state agencies, law enforcement or the Attorney General. West Virginia does not utilize the database to generate unsolicited reports, instead information stored is to only be released by the Board during an investigation. Prescription medication accounts for the second most abused category of drugs, ahead of cocaine, heroin, methamphetamine, and other drugs. Therefore, in order to become more proactive the Legislative Auditor recommends that the Legislature consider a change in *West Virginia Code* to require the Board of Pharmacy to issue an unsolicited report to law enforcement and other relevant state medical agencies indentifying the highest-dispensed drugs in each county, as well as reports which identify or "*red-flag"* individuals who may be "*doctor-shopping", "red-flag"* prescribers or pharmacists who may fall outside the range of normal prescription patterns and to issue a monthly report only to the West Virginia State Police which identifies the individuals who have went over their purchasing limit of pseudoephedrine.

Twenty-seven (27) of the 34 states with operational programs generate reports that are sent to state agencies, law enforcement or the Attorney General. West Virginia does not utilize the database to generate unsolicited reports, instead information stored is to only be released by the Board during an investigation.

West Virginia Leads the United States in Overdose Death Rates

According to a United States Center for Disease Control (CDC) study released in July 2010, West Virginia led the nation in overall drug overdose death rates during calendar year 2007. The CDC's study summarized the most recent information about deaths and emergency visits resulting from drug overdoses in 2007. During 2007, the CDC reported that West Virginia's drug overdose rate was 21.1 per 100,000. The CDC report is based on overdose death from both prescription medication and illegal drugs. The 2007 drug overdose death rates of West Virginia are nearly 7 times that of the state with the lowest drug overdose death rate, South Dakota. The study reported that states in the Appalachian region and the Southwest have the highest death rate. Table 7, compares the West Virginia overall overdose death rate to the surrounding states.

The 2007 drug overdose death rates of West Virginia are nearly 7 times that of the state with the lowest drug overdose death rate, South Dakota.

Table 7
Overall Drug Overdose Death Rate in West Virginia and Surrounding States

State	Death Rate Per 100,000
Virginia	7.1
Ohio	12.5
Pennsylvania	12.7
Kentucky	15.1
West Virginia	**21.1**

Source: Center for Disease Control: Unintentional Drug Poisoning in the United States 2007

The CDC study reported that in 2007, opiods were involved in more unintentional overdose deaths than heroin and cocaine combined.

Drug overdoses are either intentional or unintentional. Unintentional or accidental drug overdoses, are labeled as those in which individuals did not intend to harm themselves. In 2007, there were 27,658 unintentional drug overdoses which occurred in the United States. The rate of unintentional drug overdoses has increased five-fold since 1990. **This is largely because of prescription opioid painkillers**. The CDC study reported that in 2007, opiods were involved in more unintentional overdose deaths than heroin and cocaine combined. Opioids are synthetic versions of opium. They have the ability to reduce pain but can also suppress breathing to a fatal degree if taken in excess. Examples of

opioids are oxycodone, hyrdocodone and methadone. The CDC report identified West Virginia, Utah, New Mexico, Oklahoma and Louisiana, as having the five highest overall overdose death rates in the country. Also, according to the United States Drug Enforcement Administration (DEA), West Virginia leads the nation in methadone-related deaths per capita, and has the fastest-growing rate of methadone overdoses.

From 1999-2004, deaths from unintentional overdose in West Virginia increased 550 percent, the greatest increase for any state in the country.

From 1999-2004, deaths from unintentional overdose in West Virginia increased 550 percent, the greatest increase for any state in the country. Table 8 documents the number of unintentional deaths from drug overdose occurring within West Virginia from 2001-2008. The West Virginia Health Statistics Center acknowledges that there has been a large increase in the total number of unintentional drug overdoses within the state.

Table 8
West Virginia Unintentional Drug Overdose Fatalities
2001-2008

Year	Methadone	Oxycodone	Methamphetamine	Other	Total
2001	24	19	0	66	109
2002	55	37	0	60	152
2003	71	43	2	138	254
2004	107	42	0	158	307
2005	116	57	5	172	350
2006	127	70	2	198	397
2007	102	98	3	217	420
2008	91	128	4	223	446

Source: West Virginia Health Statistics Center 2010

The abuse of prescription medication has increased dramatically in the United States since 1990. West Virginia's unintentional pharmaceutical drug overdoses during 2006 were reviewed in depth by the United States CDC. The objective was to evaluate the risk characteristics of persons dying of unintentional pharmaceutical overdoses in West Virginia, the types of drugs involved, and the role of drug abuse in the deaths. Researchers collected data from medical examiners, patient social histories, the state PMP and opiate treatment program records. According to the CDC in 2006, two-thirds of the deaths (275) involved prescription drugs that had not been prescribed to the individual who died and one in five had "*doctor-shopped"* or looked for a physician to prescribe pain medication. Ninety-five (95) percent of the unintentional poisoning deaths had signs

According to the CDC in 2006, two-thirds of the deaths (295) involved prescription drugs that had not been prescribed to the individual who died and one in five had "doctor-shopped" or looked for a physician to prescribe pain medication.

suggestive of nonmedical or abusive use. In other words, these individuals may have begun taking prescription medication for pain but they had moved into a way of using the medication that was not as prescribed.

The United States CDC advises state agencies that manage Prescription Drug Monitoring Programs to "…*proactively identify 1) patients who abuse drugs and fill multiple prescriptions from different health-care providers and 2) providers whose prescribing practices are outside the standards of appropriate medical care."*

West Virginia is one of 34 states with an operational Prescription Drug Monitoring Program (PMP). A PMP is a statewide electronic database that stores designated data from pharmacies regarding controlled substances dispensed in the state.

West Virginia's Prescription Drug Monitoring Program Is Not Proactive

Rising prescription drug abuse has resulted in the development of Prescription Drug Monitoring Programs. West Virginia is one of 34 states with an operational Prescription Drug Monitoring Program (PMP). A PMP is a statewide electronic database that stores designated data from pharmacies regarding controlled substances dispensed in the state. State PMPs are housed in health or human service departments, Boards of pharmacy, law enforcement agencies, professional licensing agencies or a consumer protection agency. The West Virginia Board of Pharmacy maintains the West Virginia controlled substance monitoring database.

West Virginia's PMP is established and governed by statute and by legislative rules. When a medical services provider dispenses a controlled substance, the pharmacist shall according to *West Virginia Code §60A-9-4*, submit the name, address and birth date of the person for whom the prescription is written, the name of the controlled substance dispensed, the quantity of dosage, the name, address and Drug Enforcement Administration controlled substance registration number of the practitioner writing the prescription and the date the prescription was filled. Pharmacists are required to submit this information to the Board's database, at least every week. According to *West Virginia Code §60-A-9-5 and West Virginia Legislative Rule §15-8-7.3*, the stored information **may be disclosed by the Board during an investigation** to authorized agents of a board in this state or another that licenses prescribing practitioners, authorized members of the West Virginia State

Police and the federal drug enforcement agency, inspectors of the board, and prescribing practitioners and pharmacists. Once an investigation is initiated the noted medical boards or agents may have access to the database. However, the accessibility of the data **is limited** to those individuals under investigation.

West Virginia's PMP is reactionary by statute, in that, the PMP is not programmed to identify or "*red flag*" abnormal prescription and dispensing practices. The use of the PMP data and any reports are limited by West Virginia law to be used only during an investigation by law enforcement or a licensing board. However, several states have taken a proactive approach in the use of their PMP by programming the database to identify unusual prescription drug behavior and generate unsolicited reports that are forwarded to the appropriate authorities. **According to the Alliance of States with Prescription Monitoring Programs**, **27 of the 34 states with operational PMPs are proactive in that they generate unsolicited reports.** Six states (Idaho, Louisiana, Massachusetts, Oklahoma, Ohio and Texas) send reports to law enforcement agencies and one state, North Carolina, sends reports to the Attorney General.

The use of the PMP data and any reports are limited by West Virginia law to be used only during an investigation by law enforcement or a licensing board.

A study conducted by Simeon Associates Inc. and sponsored by the U.S. Department of Justice found that states that have operational PMPs reduce the probability of abuse of various prescription drugs more than states that do not have a PMP. Furthermore, of the states that have a PMP, those that are proactive in their use are more effective in reducing the probability of prescription drug abuse than states that are reactionary in the use of their PMP.[2]

An example of proactive use of a PMP is the state of Oklahoma. According to Oklahoma's PMP Director, "*We use the PMP for so many different things; it is hard to find a starting point. Most importantly, it provides us with trending information. That would include the use of certain drugs by region, overall growth, identifying combinations that are medically unsound, overdose analysis, unusual prescribing practices, audits and the list goes on."* Analyzing this information and looking for trends has contributed to criminal proceedings against

[2] *Ronald Simeone and Lynn Holland, An Evaluation of Prescription Drug Monitoring Programs, (Simeone Associates Inc., Albany, New York, 2006), p. 39.*

doctors, pharmacists and patients. According to the Program Director, "*There have been several cases where the PMP was the primary vehicle for criminal and civil actions against doctors, pharmacist, and patients. Those include a doctor who was prescribing Schedule II medications from her hospital bed; a pharmacists who decided it was more lucrative to sell pseudoephedrine products in mass that he quit filling prescriptions; and a patient who visited over 100 doctors and 100 pharmacies in less than a year.*"

West Virginia will have to use caution in how it uses the PMP proactively to avoid violating an individual's constitutional rights. Standards for appropriate medical prescribing practices may have to be established, along with definitions of what constitutes inappropriate prescription drug use or "doctor-shopping" in order to allow red-flagging of the PMP and for reports to be generated. According to the Board of Pharmacy's Executive Director, utilizing the database proactively for "*... any trending would have to be done by drug and area, not by individual. This would be helpful to know what are the highest-dispensed drugs in an area, so law enforcement could know what they are likely to encounter. Some states have put in a "flagging" system to alert of situations that look like "doctor-shopping." This may be permissible because it would be an automated notice of potential criminal activity.*" **The Legislative Auditor recommends that the Legislature consider amending *West Virginia Code §60-A-9-5 and West Virginia Legislative Rule §15-8-7* to authorize the State's PMP database to be used proactively within appropriate statutory parameters.**

Standards for appropriate medical prescribing practices may have to be established, along with definitions of what constitutes inappropriate prescription drug use or "doctor-shopping" in order to allow red-flagging of the PMP and for reports to be generated.

The West Virginia Medicaid Retrospective Drug Utilization Review Program Uses a Controlled Substance Database to Note High Volume Drug Dispensing Pharmacies and to Trigger Investigations

One example of an agency within West Virginia that utilizes a controlled substance database to identify the highest volume pharmacies is the West Virginia Medicaid Retrospective Drug Utilization Review Program (RetroDUR). The West Virginia Medicaid RetroDUR reviews drug utilization of West Virginia Medicaid patients for all claims

submitted to Medicaid by pharmacies for payment. The database contains information regarding the pharmacy and prescriber identifier information, type of drug, quantity, the day the drug was dispensed, and any other technical information required by the National Council of Prescription Drug Programs. The information contained within the database is used to generate reports by the West Virginia Bureau for Medical Services which routinely identifies the highest volume pharmacies. According to a representative, "*Medicaid only reviews pharmacies, not pharmacists, but trending changes using the claims database can trigger an investigation. Complaints or random discoveries can also trigger investigations."* Investigations are conducted by the Medicaid Fraud Control Unit. The database utilized by RetroDUR may only be accessed by the Medicaid Fraud Unit once a "*target"* physician has been named as someone who may be acting unprofessionally. According to the Medicaid Fraud Control Unit's Director, "*...once we have a nexus to a provider or a scheme within our jurisdiction we dig into available data. We often run peer comparison reports to see where a target provider is in relation to other similarly situated providers with regard to billing certain medical codes. It is very persuasive and sometimes it identifies new targets for investigation."*

The West Virginia PMP Database Is Also Used to Combat the Methamphetamine Problem Within the State

In 2005 changes were made to both Federal and State law regarding the purchase of products containing pseudoephedrine. Any pharmacy that sells pseudoephedrine, according to both the 2005 federal law and *West Virginia Legislative Rule 15, Series 11,* shall require the person purchasing the product to produce a driver's license or government-issued photo identification and sign a form attesting to the validity of the information. **Pharmacists are required to transmit the name, address and driver's license number of the purchaser, name of the drug, quantity purchased "*…not less than monthly to the central repository."*** This change initially contributed to methamphetamine laboratory incidents during CY 2005, 2006 and 2007 (see Table 9).

Table 9
West Virginia Methamphetamine Lab Incidents
2003-2010

Year	Incidents
2003	73
2004	168
2005	213
2006	83
2007	40
2008	108
2009	146
2010	*80

Source: United States Drug Enforcement Administration
**As of July 2010*

However, methamphetamine lab incidents are once again increasing. West Virginia is on track to exceed last year's number of methamphetamine lab busts. The state PMP is being used to assist in combating the methamphetamine problem but it could be used differently to be more effective. The pseudoephedrine information contained within the database is accessed by the West Virginia State Police to gain information on a suspect. The suspect's name can then be used to determine if the person has purchased an unusual amount of drugs in a certain time frame. The State Police are limited to searching for one individual at a time, which prohibits their ability to track or trend for a region or group of people.

The inability of the State Police to have a report produced which red flags individuals who are near their purchasing limit of three packages or more than nine grams in a 30-day limit, hinders police efforts in tracking individuals who are buying large amounts of pseudoephedrine.

The information stored within the database could be used to trend or track multiple purchases or for unusual activity in a certain area. According to a West Virginia State Police representative, "*The database is not proactive because it can only be used as a source of information once an investigation has started. The database would be more effective for police efforts if it was more accessible and produced a report which "red flagged" individuals who are at or near their purchasing limit."* The inability of the State Police to have a report produced which red flags individuals who are near their purchasing limit of three packages or more than nine grams in a 30-day limit, hinders police efforts in tracking individuals who are buying large amounts of pseudoephedrine. According to the United States Drug Enforcement Administration, "*West Virginia's most pronounced drug problems involve the abuse and clandestine manufacture of methamphetamine, marijuana consumption*

and cultivation, and pharmaceutical drug diversion and abuse." **It is the Legislative Auditor's opinion that the Legislature should consider a change in both *West Virginia Code §60-A-9-5 and West Virginia Legislative Rule §15-8-7* which requires the Board of Pharmacy to issue a monthly or quarterly report that identifies the individuals who have exceeded their purchasing limit of pseudoephedrine.**

A Prescription Monitoring Program Compact Has Been Designed to Allow States With PMPs to Share Information With Other State Programs

The Council of State Governments (CSG) recently developed the Prescription Monitoring Program Compact model legislation which is designed to allow states with prescription monitoring programs to share information with other state programs through a centralized database.

Individual states PMPs vary but each program serves as an invaluable tool in the prevention of the diversion of controlled substances. However, information sharing and cooperation across state lines does not yet exist. The Council of State Governments (CSG) recently developed the Prescription Monitoring Program Compact model legislation which is designed to allow states with prescription monitoring programs to share information with other state programs through a centralized database. According to the compact, the purpose is to provide a mechanism for state prescription monitoring programs to securely share prescription data to improve public health and safety. The compact provides model legislation that states can pass that will provide for uniformity in PMP data sharing. For over a year, CSG worked with federal, state and local officials as well as national stakeholder organizations representing a variety of prescription monitoring programs nationwide. The CSG, in conjunction with federal and state policymakers produced a compact which specifically addresses the key issues that the interested stakeholders felt were essential to sharing prescription data while protecting patient privacy. In addition, the National Association of Boards of Pharmacy (NABP) informed members of the association that the NABP will be developing an interconnected communications hub for state PMPs, similar to the CSGs. The hub will soon be operational.

Conclusion

The West Virginia Board of Pharmacy utilizes a controlled monitoring substance database as a means to collect data on substances dispensed within the state. The information stored in the database is

not used as a tool to initiate investigations by law enforcement or other relevant state medical agencies. It is the Legislative Auditor's opinion that the Legislature should consider amending the governing statute of its PMP to enable the database to be used proactively. Appropriate care will be needed to avoid the violation of individual constitutional rights. Furthermore, medical prescribing standards and definitions of inappropriate prescription drug practices and doctor-shopping may need to be defined.

Recommendations

5. The Legislature should consider amending both West Virginia Code §60-A-9-5 and West Virginia Legislative Rule §15-8-7 to enable the PMP database to be used proactively within appropriate statutory parameters. The PMP should be allowed to generate unsolicited reports on a specified frequency to law enforcement or relevant state agencies, and to conduct red-flagging based on criteria and definitions for medical prescribing and dispensing standards, misuse of prescription drugs and doctor-shopping.

6. The Legislature should consider amending both West Virginia Code §60-A-9-5 and West Virginia Legislative Rule §15-8-7 to enable the PMP database to issue a periodic report that identifies individuals who have exceeded their purchasing limit of pseudoephedrine.

7. The Legislature should consider implementing the enabling compact legislation designed by the Council for State Governments in order to allow for a sharing of prescription data between member states.

Appendix A: Transmittal Letter to Agency

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

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

John Sylvia
Director

December 29, 2010

Mr. David E. Potters, Executive Director
West Virginia Board of Pharmacy
232 Capitol Street
Charleston, WV 25301

Dear Mr. Potters:

This is to transmit a draft copy of the Performance Review of the West Virginia Board of Pharmacy. This report is scheduled to be presented during the January 9-11, 2011 interim meeting of the Joint Committee on Government Operations and the Joint Committee on Government Organizations. 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 January 5, 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, January 6, 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

Enclosure

JS/bb

Joint Committee on Government and Finance

Appendix B: Status of State Prescription Drug Monitoring Programs

Status of State Prescription Drug Monitoring Programs		
State	**PMP**	**Status of Enabling Legislation**
Alabama	Operational	Enacted
Alaska		Enacted
Arizona	Operational	Enacted
Arkansas		
California	Operational	Enacted
Colorado	Operational	Enacted
Connecticut	Operational	Enacted
Delaware		Enacted
District of Columbia		
Florida		Enacted
Georgia		
Hawaii	Operational	Enacted
Idaho	Operational	Enacted
Illinois	Operational	Enacted
Indiana	Operational	Enacted
Iowa	Operational	Enacted
Kansas		Enacted
Kentucky	Operational	Enacted
Louisiana	Operational	Enacted
Maine	Operational	Enacted
Maryland		
Massachusetts	Operational	Enacted
Michigan	Operational	Enacted
Minnesota	Operational	Enacted
Mississippi	Operational	Enacted
Missouri		
Montana		
Nebraska		
Nevada	Operational	Enacted
New Hampshire		
New Jersey		Enacted
New Mexico	Operational	Enacted
New York	Operational	Enacted
North Carolina	Operational	Enacted
North Dakota	Operational	Enacted
Ohio	Operational	Enacted
Oklahoma	Operational	Enacted
Oregon		Enacted
Pennsylvania	Operational	Enacted
Rhode Island	Operational	Enacted
South Carolina	Operational	Enacted
South Dakota		Enacted
Tennessee	Operational	Enacted
Texas	Operational	Enacted
Utah	Operational	Enacted
Vermont	Operational	Enacted
Virginia	Operational	Enacted
Washington	Operation Suspended	Enacted
West Virginia	Operational	Enacted
Wisconsin		Enacted
Wyoming	Operational	Enacted
Total	**34**	**43**
Source: 2010 National Alliance for Model State Drug Laws		

Appendix C: Agency Response

January 5, 2011

John Sylvia, Director
West Virginia Legislature
Performance Evaluation and Research Division
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610

Re: Performance Review of the West Virginia Board of Pharmacy

Dear Mr. Sylvia:

I have received the draft copy of the Performance Review of the Board of Pharmacy, and appreciate the opportunity to respond. First, your staff has kept us informed throughout the process, and has maintained open communication about the direction of the review and recommendations in the draft. As such, we are not requesting an exit conference.

In direct response to the draft, it raises two issues, Chapter 30 Compliance, and Broader Use of the Controlled Substances Monitoring Program. With regard to compliance issues, we have filed our 2010 Annual Report as recommended, and have obtained a copy of a complaint case six-month status report form used by another licensing board to use as a form to provide status updates as recommended. We are also sending closure letters in all cases. With regard to uses of the Controlled Substances Monitoring Program database, the Board understands that this is an issue of policy for the Legislature to determine whether to keep the functions as primarily treatment-driven, or to seek out a more proactive, law enforcement based program

Thank you for your assistance in this process. Should you need anything further, please feel free to contact me.

Sincerely,

David E. Potters

David E. Potters
Executive Director & General Counsel

WEST VIRGINIA LEGISLATIVE AUDITOR
PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314, State Capitol Complex, Charleston, West Virginia 25305

telephone: 1-304-347-4890 | www.legis.state.wv.us /Joint/PERD/perd.cfm | fax: 1- 304-347-4939