

Regulatory Board Evaluation

Board of Examiners of Psychologists

**The Board of Examiners of Psychologists
is Necessary to Protect the Public**

**The Board is in Partial Compliance with Chapter 30
of the West Virginia Code and is Not in Compliance
with Other Applicable Laws**



**September 2002
PE02-19-251**

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Aaron Allred
Legislative Auditor

John Sylvia
Director

David Mullins
Research Manager

Shannon Berman
Research Analyst

Performance Evaluation and Research Division
Building 1, Room W-314
State Capitol Complex
Charleston, West Virginia 25305
(304) 347-4890

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

September 15, 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

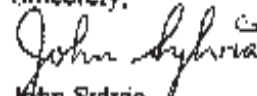
Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a *Regulatory Board Evaluation of the Board of Examiners of Psychologists*, which will be reported to the Joint Committee on Government Operations on Sunday, September 15, 2002. The issues covered herein are "The Board of Examiners of Psychologists is Necessary to Protect the Public;" and "The Board is in Partial Compliance with Chapter 30 of the West Virginia Code and is not in Compliance with Other Applicable Laws."

We transmitted a draft copy of the report to the Board of Examiners of Psychologists on August 28, 2002. The Board opted not to have an Exit Conference. We received the agency response on September 6, 2002.

Let me know if you have any questions.

Sincerely,


John Sylvia

JS/wsc

Joint Committee on Government and Finance

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Executive Summary

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

This report is a Regulatory Board Evaluation which requires by law a determination of whether or not the Board of Examiners of Psychologists is necessary for the protection of public health and safety. In determining if there is a need for the Board, a primary consideration is whether the unregulated practice of the profession would clearly endanger the health and safety of the public. The finding of this issue is that licensing Psychologists is necessary for public protection.

Issue 2: The Board is in Partial Compliance with Chapter 30 of the West Virginia Code and Is Not in Compliance with Other Applicable Laws.

The Board of Examiners of Psychologists complies with most applicable laws and rules. Primarily found within the Board's own article of Code and in the general requirements of Chapter 30, these requirements are important in the effective operation of a licensing board. The Board is not in compliance with the requirement that an officer of the Board attend the orientation session provided by the State Auditor and the Register of Applicants maintained by the Board is not complete. The Board promulgated rules addressing disciplinary and complaint procedures as required by the general provisions of Chapter 30. The Legislative Auditor determined that although the due process rights of licensees is protected throughout the process, complaints could be resolved in a more timely manner.

The Open Governmental Proceedings Act prohibits public agencies from making decisions in closed meetings. The Board is not in compliance with the Open Governmental Proceedings Act as it filed only one meeting notice with the Secretary of State's Office since June 1999. Failure to comply with the Act could result in an annulment of the Board's decisions by a court of law.

The Board set fees by rule and is financially self-sufficient. Continuing education is required by rule and audited. The Board is accessible to the public, meets regularly and maintains adequate records of meetings.

Recommendations

1. The Legislative Auditor recommends that the Legislature continue the licensure requirement for psychologists.
2. An officer of the Board should attend the training offered by the State Auditor.
3. The Board should develop its register of applicants to comply with state laws.
4. The Board should instruct its investigator to complete investigations in the time period required by its rules. The Board should also adopt the policy of requiring the investigator to notify the Board in writing when and why the investigation will take over 60 days.
5. The Board should comply with the Open Governmental Proceedings Act.

Review Objective, Scope and Methodology

This regulatory board evaluation of the Board of Examiners of Psychologists was conducted in accordance with the West Virginia Sunset Law, Chapter 4, Article 10 of the West Virginia *Code*. As stated in Code, a regulatory board evaluation is to determine whether a Board is 1) necessary for the protection of public health and safety, and 2) whether the Board is operating in compliance with applicable laws and rules.

This regulatory board evaluation covers the period of 1999 through June 2002. Information compiled in this evaluation was acquired from the West Virginia *Code*, interviews with the Board's staff, examinations of annual reports, meeting minutes, complaint files and expenditure schedules. Every aspect of this report complies with Generally Accepted Government Auditing Standards (GAGAS).

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

This report is a *Regulatory Board Evaluation*, which requires by law a determination of whether or not the Board is necessary for the protection of public health and safety. In determining if there is a need for the Board of Examiners of Psychologists, a primary consideration is whether the unregulated practice of the profession would clearly endanger the health and safety of the public. **The Legislative Auditor has determined that the Board of Examiners of Psychologists is necessary for the assurance of public protection.**

The Board licenses both psychologists and school psychologists. The practice of school psychology is similar to that of psychology; however, school psychologists are limited to practice on school property, providing services to school age children for school related problems. In fiscal year 2002, the Board licensed 502 psychologists and 127 school psychologists. The practice of psychology involves the principles, methods and procedures of understanding, predicting and influencing behavior. Psychologists treat individuals experiencing problems with adjustment, emotions and learning.

Psychologists can have considerable influence over their patients. In the most serious cases, psychologists treat patients who are suicidal and/or homicidal. Psychologists also render opinions in legal matters, including:

- ï competency to stand trial
- ï length of jail terms
- ï guilt or innocence
- ï custody and visitation

Psychologists are in a unique position to abuse, mislead and misinform the patient and the public. Incompetent or unethical psychologists can cause significant damage to families and individuals. Violations of confidentiality can cause public humiliation and financial losses to the patient. In West Virginia, a license to practice psychology requires a Masters or Doctoral degree in psychology or the equivalent from an accredited institution of higher learning; adequately supervised professional experience; and successful completion of the examination provided by the Association of State and Provincial Psychology Boards. The majority of private or public insurance carriers require licensure or regulation of the profession of psychology in order for treatment to be covered.

Conclusion

...public protection is provided for by the Board of Examiners of Psychologists

Licensure is required in all 50 states and the District of Columbia in order to practice psychology. In West Virginia, the Board of Examiners of Psychologists enforces ethical standards for psychologists, responds to complaints and assures that psychologists complete a rigorous application and supervision process. Their patients are emotionally vulnerable and are sometimes a danger to themselves and/or others. It is the opinion of the Legislative Auditor that public protection is provided for by the Board of Examiners of Psychologists.

Recommendation 1

The Legislative Auditor recommends that the Legislature continue the licensure requirement for psychologists.

The Board is in Partial Compliance with Chapter 30 of the West Virginia Code and is Not in Compliance with Other Applicable Laws.

The Board of Examiners of Psychologists complies with most applicable laws and rules. These laws and rules, found within the Board's own article of the Code and in the general provisions of Chapter 30, are important in the effective operation of a licensing board. The Board complies with the following requirements:

- i An official seal has been adopted (β30-1-4);
- i The Board has a lay member appointed by the Governor (β30-1-4(a));
- i The Board meets at least once annually (β30-1-5(a));
- i The Board maintains a record of its proceedings (β30-1-12(a));
- i An annual report has been submitted to the Governor and Legislature describing budget data and transactions for the preceding two years (β30-1-12(b));
- i The Board's address and telephone number are listed in the State Government listing of the Charleston area telephone book (β30-1-12(c));
- i The Board maintains a complete roster of licensees (β30-1-13).

Non-Compliance With Open Governmental Proceedings Act

iDocumentation...shows only one meeting notice filed since June, 1999, [but] minutes indicate the Board met twenty times between January 1999 and April 2002.i

The Board is not in compliance with the Open Governmental Proceedings Act (β6-9A). Documentation provided by the Secretary of State's Administrative Law Division shows only one meeting notice filed since June 1999. An analysis of meeting minutes indicates the Board met twenty times between January 1999 and April 2002.

The Open Governmental Proceedings Act prohibits decision making in closed meetings. The Board routinely made decisions while holding closed

The Board routinely made decisions while holding closed meetings. Such decisions can be annulled by a court of law...

meetings. Such decisions can be annulled by a court of law under the authority of West Virginia Code §6-9A-6. The Open Governmental Proceedings Act provides public accountability and access. Citizens require access to the Board whose purpose is to protect public health and safety. Licensees must be aware of the Board's actions and decisions as it bestows the privilege of licensure. The Board needs to direct its staff to file meeting notices with the Secretary of State's Office in a timely manner.

Board Members Have Not Attended Orientation Session

The Board is not in compliance with §30-1-2a(b), which requires an officer of the Board to attend the annual orientation session provided by the State Auditor. An officer of the Board did not attend the November 15, 2000 or September 12, 2001 sessions, in fact no current Board member or staff person has received training at any time. The last time a representative of the Board attended an orientation was June 10, 1999. This attendee was not an officer of the Board and is no longer employed by the Board. After being informed by the Legislative Auditor that training was required, two members of the Board's staff met with the State Auditor's Director of Training and plan to attend the September 2002 training session.

Register of Applicants Not Complete

The general requirements of Chapter 30 specifically instructs boards to maintain a register of all applicants. The Board provided the Legislative Auditor with documents titled "New Supervised Psychologists" and "Active Supervisees", which it deems to be the register of applicants. Information required by West Virginia Code is not available in the register. Neither of the documents contain:

- the age of the applicant;
- whether an examination was required;
- license number;
- renewals;
- suspensions or;
- revocations.

In addition, there is no indication that any applicant was ever rejected.

The Complaint Process Could Be More Timely

The Board of Examiners of Psychologists has promulgated rules addressing disciplinary and complaint procedures and contested case hearing procedures as required by §30-1-8(h). Title 17, Series 4 of the Code of State Rules provides for disciplinary action against psychologists and school psychologists upon proof that a psychologist has been convicted of a felony or is:

...in his or her professional capacity, engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of W. Va. Code....

Any person, firm, corporation, member of the Board or public officer may make a complaint to the Board. The Board may provide a form, but accepts complaints in any written form. Once a complaint is received, the Board forwards the complaint to the licensee and requests a response within thirty days. Once the licensee responds, a copy of the response is forwarded to the complainant, who is given twenty days to submit a written reply. After review of the complaint, the Board is authorized to conduct an investigation if it determines one is necessary to determine the truth and the validity of allegations. Investigations may be assigned to an ethics investigator who is required to report to the Board within sixty days. The Board's rules do not indicate a specific time period for the resolution of complaints.

In the past three years, the Board received 17 complaints, all dealing with ethical violations. The Legislative Auditor found that complaints took between 2 and 18 months, with an average of 10 months to resolve. The Legislative Auditor reviewed 10 complaint files to determine why complaints are not resolved in a more timely manner. The Legislative Auditor found nine out of the 10 cases required an investigation. In the cases requiring investigations, only 6 had enough documentation in the file to determine the length of investigation. The Legislative Auditor found three cases in which investigations were completed in the time period required by the Code of State Rules. In the remaining 3 cases, investigations took 5 to 9 months to complete, even though §17-4-5.14 of the Code of State Rules requires the investigator to provide the Board with a report in 60 days. Once an investigator's report is complete, the complaint is essentially on hold until the next regularly scheduled Board meeting, only then does the Board take action.

The Legislative Auditor notes that each complaint against a licensee was referred to the Board's investigator. It is the opinion of the Legislative Auditor that the Board does take seriously its role of public protection. Although the

...the Legislative Auditor is concerned with the length of time complaints remain unresolved...(however) the due process rights of licensees is protected throughout the disciplinary process.

Legislative Auditor is concerned with the length of time complaints remain unresolved, the due process rights of licensees is protected throughout the disciplinary process. In 8 out of 17 complaints, the Board determined that there were no violations. The Board suspended one license in this time period but has not levied or collected fines against a licensee.

Board is Financially Self-Sufficient

Chapter 30 Boards are required by §30-1-6(c) to set fees, which shall be sufficient to enable boards to effectively carry out their responsibilities. The Board of Examiners of Psychologists has set its fees by rule and is financially self-sufficient. Revenues, expenditures and end of year balances for four fiscal years are available in Table 1.

Table 1 Revenue, Expenditures and End of Year Balance 1999-2002			
Fiscal Year	Revenue	Expenditures	Balance
1999	\$90,608	\$66,643	\$47,792
2000	\$101,507	\$105,979	\$43,321
2001	\$112,082	\$95,987	\$59,419
2002	\$81,050	\$98,644	\$41,825

Source: 2002 PERD analysis of data provided by the Board.

The Board last raised its fees in 1997, when it raised the oral examination fee from \$125 to \$250 and the biennial license fee from \$100 to \$250. West Virginia's annual licensure cost of \$125 for psychologists is under the nationwide average of \$156. Licensure fees in surrounding states, and the number of licensees are available in Table 2.

**Table 2
Licensure Fees and Number of Licensees**

State	# Licensees	Annual Cost of Licensure
Kentucky	716	\$300
Maryland	2,330	\$125
Ohio	3,700	\$175
Pennsylvania	6,125	\$60
Virginia	1,916	\$113
West Virginia	593	\$125

Source: 2002 PERD analysis of US state psychology licenses.

Continuing Education is Required and Audited

The Code of State Rules, §17-2-9, addresses license renewals. It provides for continuing education requirements for psychologists and school psychologists. Licensed psychologists are required to obtain 20 direct contact hours of Board-approved continuing education credits during the first two years of licensure and every two years thereafter. School psychologists are required to obtain 30 hours of continuing education credits or a valid National Certification card issued by the National Association of School Psychologists. The licensee is directed to present evidence of compliance with the continuing education requirements on his or her application for license renewal. The Board randomly audits a quarter of its licensees' continuing education credits.

Conclusion

The Board of Examiners of Psychologists complies with many of the general provisions of Chapter 30 of the West Virginia Code. The Board is accessible to the public through its telephone listing. The Board meets regularly and maintains adequate records of meetings. The Board requires continuing education of licensees, responds to complaints, provides due process to licensees against whom a complaint has been filed and maintains financial independence. The Board should direct appropriate members to attend the orientation session, should complete its register of applicants and comply with the Open Governmental Proceedings Act.

Recommendations:

2. An officer of the Board should attend the training offered by the State Auditor.
3. The Board should develop its register of applicants to comply with state law.
4. The Board should instruct its investigator to complete investigations in the time period required by its rules. The Board should also adopt the policy of requiring the investigator to notify the Board in writing when and why the investigation will take over 60 days.
5. The Board should comply with the Open Governmental Proceedings Act.

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

August 28, 2002

Dr. Jeff Harlow
Board of Examiners of Psychology
PO Box 3955
Charleston, WV 25339-3955

Dear Dr. Harlow:

This is to transmit a draft copy of the Regulatory Board Review of the Board of Examiners of Psychology. This report is scheduled to be presented at the Sunday, September 15, 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 wish to schedule an exit conference to discuss any concerns you may have with the report please notify us to schedule an exact time. In addition, we need your written response by noon on September 5, 2002 in order for it to be included in the final report.

We request that your personnel treat the draft report as confidential and request that it not be disclosed to anyone except those agency employees who will prepare the response to the report or who will participate in the exit conference. Thank you for your cooperation.

Sincerely,

Handwritten signature of John Sylvia in cursive script.
John Sylvia

Enclosure

Appendix B: Agency Response



STATE OF WEST VIRGINIA
BOARD OF EXAMINERS OF PSYCHOLOGISTS

Telephone: (304) 558-0604

P.O. Box 3955
Charleston, West Virginia 25339-3955

Fax: (304) 558-0608

September 5, 2002

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

R E C E I V E D
SEP 06 2002

PERFORMANCE EVALUATION AND
RESEARCH DIVISION

Re: Regulatory Board Review Report

Dear Mr. Sylvia:

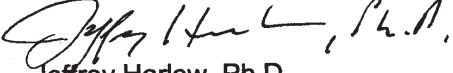
It is greatly appreciated that Legislative Auditor recommends to the Legislature that it continue the psychology licensure law. It is also appreciated that the Legislative Auditor recognizes that the board, "complies with most applicable laws and rules.... requires and audits continuing education for licensees....and....does take seriously its role of public protection."

In regard to cited areas in need of correction, please note these mitigating facts. The Board thought that it was in compliance with chapter 30 of the WV Code by maintaining a roster of Licensed Psychologists and School Psychologists. Now that it is aware that a register of applicants is also required, such a register will be maintained. For many years, the board notified the Secretary of State of its meeting dates. Copies of meeting notifications made during the period of January 1999 to April 2002 were submitted to the Legislative Auditor. It is unknown why the Secretary of State has no record of receiving these notifications. The employee who wrote them is no longer with the Board. Please note that 13 of the 17 ethical inquiries received since 3/17/99 have been acted upon, and 3 of the 4 remaining inquiries are prepared for Board review and will be acted upon during the Board's September meeting.

The Board will complete the legislative Auditor's recommendations. A board officer will attend state auditor training. A register of applicants will be developed. The Board's investigator will be instructed to meet the 60 day time limit or inform the board in writing why it can't be met. Finally, the board shall notify the Secretary of State of its meeting dates and times.

Again, the board appreciates the Legislative Auditor's recognition of the necessity of the psychology licensure law, the continuance of which will allow the Board to complete its primary mission of protecting the public.

Sincerely,


Jeffrey Harlow, Ph.D.
Executive Director