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REGULATORY BOARD REVIEW

BOARD OF OCCUPATIONAL THERAPY

AUDIT OVERVIEW

Regulation of Occupational Therapy Is Needed to Protect the Public

The Board of Occupational Therapy Complies with Some of the General Provisions of Chapter 30 of the W.Va. Code, But Improvement Is Needed

The Board of Occupational Therapy Is Exceeding Its Statutory Authority and Duties by Providing Free Continuing Education Services to Licensees at Significant Expense

The Board's Fees Do Not Generate Excessive Revenue When Compared to the Board's Normal Expenses

The Board of Occupational Therapy Needs to Consider What Measures It Needs to Take to Ensure Handicapped Accessibility to Its Office and Services Under the Americans with Disabilities Act

The Board's Website Needs Modest Improvement Overall to Enhance User-Friendliness and Transparency



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WEST VIRGINIA OFFICE OF THE LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

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

Aaron Allred
Legislative Auditor

John Sylvia
Director

Jill Mooney
Research Manager

Alexander Penny
Research Analyst

Angel Dorsey
Referencer

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

**1900 Kanawha Blvd. East
Building 1, Room W-314
Charleston, WV 25305-0610
(304) 347-4890**



**John Sylvia
Director**

October 16, 2023

The Honorable Jack Woodrum
State Senate
Building 1, Room 214W
1900 Kanawha Boulevard, East
Charleston, WV 25305

The Honorable Chris Phillips
House of Delegates
Building 1, Room 213E
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

Dear Chairs:

Pursuant to the West Virginia Performance Review Act, we are transmitting a Regulatory Board Review of the *Board of Occupational Therapy*. The issues covered herein are: “*Regulation of Occupational Therapy Is Needed to Protect the Public;*” “*The Board of Occupational Therapy Complies with Some of the General Provisions of Chapter 30 of the W. Va. Code, But Improvement Is Needed;*” “*The Board of Occupational Therapy Is Exceeding Its Statutory Authority and Duties by Providing Free Continuing Education Services to Licensees at Significant Expense;*” “*The Board’s Fees Do Not Generate Excessive Revenue When Compared to the Board’s Normal Expenses;*” “*The Board of Occupational Therapy Needs to Consider What Measures It Needs to Take to Ensure Handicapped Accessibility to Its Office and Services Under the Americans with Disabilities Act;*” and “*The Board’s Website Needs Modest Improvement Overall to Enhance User-Friendliness and Transparency.*”

We transmitted a draft copy of the report to the *Board of Occupational Therapy* on September 21, 2023. We received the agency response on October 4, 2023. If you have any inquiries on this report let me know.

Sincerely,

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

John Sylvia

Joint Committee on Government and Finance

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EXECUTIVE SUMMARY

The Performance Evaluation and Research Division (PERD) within the Office of the Legislative Auditor conducted this Regulatory Board Review of the Board of Occupational Therapy (Board) pursuant to the Performance Review Act, Chapter 4, Article 10. Objectives of this review were to determine the continued need for the Board, to assess the Board's compliance with the general provisions of Chapter 30 and other applicable laws, to determine whether the Board had the authority to offer free continuing education services to licensees, to determine if the Board's fees generate excessive revenue when compared to the Board's normal expenses, to evaluate the Board's website for user-friendliness and transparency, and to assess the general accessibility of the Board's facility with respect to the Americans with Disabilities Act. The issues of this report are highlighted below.

Frequently Used Acronyms in this Report:

PERD – Performance Evaluation and Research Division
OASIS – Our Advanced Solution with Integrated Systems
OT – Occupational Therapist
OTA – Occupational Therapy Assistant
NBCOT – National Board for Certification in Occupational Therapy
NPDB – National Practitioner Data Bank
PEIA – Public Employees Insurance Agency
CSR – Code of State Rules
CE – Continuing Education
ADA – Americans with Disabilities Act
OEO – Office of Equal Opportunity

Report Highlights:

Issue 1: Regulation of Occupational Therapy Is Needed to Protect the Public

- Occupational therapy is a specialized profession that requires technical knowledge and expertise.
- Although complaints are not prevalent the nature of the complaints indicate the potential for harm.
- Regulating the practice of occupational therapy, as currently established, should continue as currently structured.

Issue 2: The Board of Occupational Therapy Complies with Some of the General Provisions of Chapter 30 of the W. Va. Code, But Improvement Is Needed

- The Board is financially self-sufficient and has established continuing education requirements.
- While the Board resolved within 18 months all six of the complaints it received in three years, the Board did not send status reports to two licensees within six months as required.
- The Board should ensure that board members attend the required state auditor's training sessions for regulatory boards.

Issue 3: The Board of Occupational Therapy Is Exceeding Its Statutory Authority and Duties by Providing Free Continuing Education Services to Licensees at Significant Expense

- The Board's enabling statute, rules, and applicable laws do not authorize it to provide free continuing education services to licensees.
- Continuing education services are a significant expense for the Board for the small number of licensees that attend.

Issue 4: The Board's Fees Do Not Generate Excessive Revenue When Compared to the Board's Normal Expenses

- Following a fee decrease, the Board's revenues began to decline as its expenses increased slightly.
- Currently, the Board's fee structure does not raise revenue above what it needs to operate.

Issue 5: The Board of Occupational Therapy Needs to Consider What Measures to Take to Ensure It Provides Handicapped Accessibility to Its Office and Services Under the Americans with Disabilities Act

- There are physical barriers for the disabled to accessing the Board's office.
- The Board does not meet Americans with Disabilities Act requirements in its parking lot, entrances, elevator, bathrooms, and signage.
- It is recommended that the Board consider the measures it needs to take to improve handicap accessibility to its office and services under the Americans with Disabilities Act.

Issue 6: The Board's Website Needs Modest Improvement Overall to Enhance User-Friendliness and Transparency

- The Board's website needs more improvements to enhance user-friendliness and scores moderately high in transparency. Additional features should be considered to further improve user-friendliness, such as a search tool, site functionality tool, social media links, and RSS feeds.
- The Board's website could benefit from additional transparency features such as budget data, FOIA information, agency history, and website update status.

PERD's Response to the Agency's Written Response

The Board provided its response on October 4, 2023 (Appendix E). The Board reported that it reviewed the report and agreed with the findings and recommendations. The Board further noted that some actions have already been taken to implement the recommendations.

Recommendations

1. *The legislative auditor recommends that the Legislature continue the Board of Occupational Therapy as currently regulated.*
2. *The Board should ensure that all its members attend at least one orientation session for each term they are in office.*
3. *The Board should provide status updates to licensees and complainants within six months of the complaint and comply with all certified mail requirements.*
4. *The Board should continue contacting the Governor's Office for Board appointees.*
5. *The Board should proactively develop written data security policies and procedures and implement the same in the event of a disaster or disruption to business continuity.*
6. *The Board should provide a call-in number, livestream access, or other remote attendance instructions when it offers teleconferences on its online meeting notices filed with the Secretary of State's Office.*
7. *The Board should update its address in the Charleston area telephone directory to promote public access.*
8. *The Legislature should consider amending W. Va. Code 30-1-5 to require reporting of individual practice violations from additional entities such as hospitals, health care organizations, and liability insurance organizations to the healthcare licensing boards listed in Appendix C.*
9. *The Legislature should also consider amending W. Va. Code 30-1-5 to include civil penalties for failure to report by mandated reporters.*
10. *To ensure that expanded reporting requirements do not result in unnecessary reporting, the healthcare licensing boards should clearly indicate in their respective rules and on their websites the types of issues that should and should not be reported.*
11. *The Board of Occupational Therapy should refrain from providing free continuing education services to licensees at its expense.*
12. *The Board of Occupational Therapy should consider what measures it needs to take to improve handicap accessibility to its office and services under the Americans with Disabilities Act.*
13. *The Legislature should consider amending W. Va. Code §5A-1-11(c)(8) to specify the Office Equal Opportunity inspect physical properties, owned or leased by the state, and approve compliance with Americans with Disabilities Act standards.*

14. *The Legislature should consider amending W. Va. Code §5A-10-et seq. to require that state agency properties comply with the Americans with Disabilities Act under the provisions of 42 U.S.C. §12101, et seq.*
15. *The Legislature should consider amending W. Va. Code §5A-10-et seq to require the Real Estate Division executive director receive approval by the OEO coordinator prior to entering any lease or renewal of a lease of physical properties.*
16. *The Board should consider improving the user-friendliness and transparency of its website by incorporating more of the website elements identified.*
17. *The Board should consider registering for a “.gov” domain.*

ISSUE 1

Regulation of Occupational Therapy Is Needed to Protect the Public

Issue Summary

This is a regulatory board review of the Board of Occupational Therapy (Board) required by law to determine if there is a continued need for the Board and regulation of the occupational therapy profession, or can the profession be regulated less restrictively and can the Board be consolidated with another board. The Board licenses occupational therapists (OT) and occupational therapy assistants (OTA). In considering the need for a regulatory board, the legislative auditor determines if there would be significant adverse effects to the public if the profession were unregulated. The legislative auditor determines that the public could be harmed if the practice of occupational therapy was unregulated. Therefore, the legislative auditor recommends that regulation by the Board be continued as currently structured.

The legislative auditor determines that the public could be harmed if the practice of occupational therapy was unregulated. Therefore, the legislative auditor recommends that regulation by the Board be continued as currently structured.

Occupational Therapy Is a Specialized Profession

In occupational therapy, therapeutic interventions are applied to help patients participate in, and complete, everyday life activities such as taking care of oneself, taking care of one's family, working, participating socially, going to school, and participating in leisure activities. Areas of focus within the practice may include the use of adaptive equipment, family training, structuring daily routines, techniques to aid concentration, fall prevention, enhancing home and work accessibility, enhancing functional mobility, and the development of fine motor skills. Patients include young children, the elderly, disabled individuals, and those recovering from injuries.

Occupational therapy may occur at a hospital or clinical setting, at a school, at the patient's home, or at a community-based setting. Depending on the patient's needs, therapeutic procedures and techniques in occupational therapy may require physical contact. Occupational therapy practitioners may be involved in patient care transfers. Patient care transfers include moving a patient from one flat surface to another. Some instances where patient care transfers may be necessary include getting in and out of bed; in and out of a wheelchair; and the use of baths, showers, or toilets. Techniques to develop or rehabilitate fine motor skills, such as those involved in eating and the use of one's hands, may require a more sensitive level of touch.

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The Board Licenses Over 1,450 Individuals

The Board of Occupational Therapy issues biennial licenses to OTs and OTAs who have met qualifications the Legislature established in W. Va. Code §30-28 et al. Table 1 shows the number of licensees regulated by the Board between fiscal years (FY) 2020 and 2022. According to Board-provided data, most of its licensees are employed by institutions such as hospitals, nursing homes, home healthcare agencies, and schools.¹

Licensee	2020	2021	2022
OTs	788	837	866
OTAs	605	591	599
Totals	1,393	1,428	1,465

Source: Board of Occupational Therapy.

According to Board-provided data, most of its licensees are employed by institutions such as hospitals, nursing homes, home healthcare agencies, and schools.

All 50 states regulate the practice of occupational therapy. West Virginia requires OTs to attain a master's degree or higher in occupational therapy and complete the requisite training from a university or college program accredited by the Accreditation Council for Occupational Therapy Education. To be licensed in West Virginia OTAs must earn an associate degree in occupational therapy and be supervised by an occupational therapist. In addition, occupational therapists and occupational therapy assistants must pass a nationally recognized examination.

Although Complaints Are Not Prevalent the Nature of the Complaints Indicates the Potential for Harm

The Board received six complaints from FY 2020 to FY 2022 (see Issue 2 for further discussion). The complaints include allegations of falsification of visitations and assessments; fraudulent billing for services; inappropriate delegation of duties; and alleged verbal abuse towards co-workers and patients. The Board ordered three years' probation for the licensee of one complaint and dismissed the other five complaints. In the complaint that resulted in probation, the Board found that the OTA's

¹The Board provided employment data for about 80 percent, or 1,200, of licensees. It does not require license applicants or renewal to provide employment data. It noted some therapists work for multiple facilities, schools, and counties.

patients did not receive services ordered for them and were exposed to harm.

PERD also reviewed the list of disciplinary actions reported by states to the National Board for Certification in Occupational Therapy (NBCOT), a nationally recognized certification board for occupational therapists and occupational therapy assistants. NBCOT has disciplinary powers over those occupational therapists and occupational therapy assistants holding its credentials. In 2019, NBCOT reviewed 153 disciplinary cases and imposed discipline, including suspension and censure, in 22 cases nationwide. Three of the 22 actions were for patient harm/abuse and two stem from sexual misconduct. The other reasons for disciplinary action were failure to cooperate with state licensing boards (nine), felony conviction (five), documentation problems (two) and misrepresentation of credentials (one).

PERD also reviewed the United States Department of Health & Human Services' (DHHS) Health Resources and Services Administration's (HRSA) National Practitioner Data Bank (NPDB). The NPDB is a web-based repository of reports containing information on certain adverse actions and on medical malpractice payments related to health care practitioners, providers, and suppliers from all 50 States. PERD found the NPDB receives a relatively small number of disciplinary action reports for occupational therapy practitioners, but the reports suggest the potential for harm to the public.

Table 2 shows the regulatory actions reported in the adverse action reports for occupational therapy practitioners from 2012 through 2022. Adverse action reports come from hospitals, licensing authorities, and other health care entities reporting adverse clinical privileges actions. Nationally, reported regulatory actions include an average of 41 licenses suspended, 13 revoked, and 36 instances for both censure and probation each year.

PERD also reviewed the list of disciplinary actions reported by states to the National Board for Certification in Occupational Therapy (NBCOT), a nationally recognized certification board for occupational therapists and occupational therapy assistants. In 2019, NBCOT reviewed 153 disciplinary cases and imposed discipline, including suspension and censure, in 22 cases nationwide.

The National Practitioner Data Bank is a web-based repository of reports containing information on certain adverse actions and on medical malpractice payments related to health care practitioners, providers, and suppliers from all 50 States.

Table 2
National Practitioner Data Bank
Regulatory Action Against Occupational
Therapists Nationwide
2012 through 2022

Code	Total Count	Average per Year
Suspension of License	453	41
Reprimand or Censure	395	36
Probation of License	394	36
Other Licensure Action	237	22
Licensure Restored	207	19
Revocation of License	137	13
Voluntary Surrender of License	134	12

Source: U.S. Department of Health and Human Services, Health Resources and Services Administration, National Practitioner Data Bank, <https://www.npdb.hrsa.gov/>, as of April 4, 2023.

The adverse action reports indicate that serious harm occurs within the profession.

For those reports that included a basis of action, Table 3 shows some of the most common reasons for the adverse action reports during the period and a yearly average. Most reports are for actions such as practicing with an expired license, criminal conviction, or other. Table 3 also includes the number of reports that PERD most closely associated with direct risk of harm: unprofessional conduct, incompetence, malpractice, negligence, patient abuse, and patient neglect. The adverse action reports indicate that serious harm occurs within the profession.

Table 3
National Practitioner Data Bank
Cause for Adverse Action Reports
Occupational Therapists Nationwide
2012 through 2022

Code	Total Count	Average per Year
Practicing With an Expired License	215	20
Criminal Conviction	166	15
Other	151	14
Failure to Maintain Accurate or Adequate Records	84	8
Practicing Without a License	71	6
Disciplinary Action Taken by Licensing authority	61	6
Unprofessional Conduct	0	0
Incompetence	6	1
Malpractice	0	0
Negligence	23	2
Patient Abuse	3	0
Patient Neglect	1	0

Source: U.S. Department of Health and Human Services, Health Resources and Services Administration, National Practitioner Data Bank, <https://www.npdb.hrsa.gov/>, as of April 4, 2023.

In addition to adverse action reports, the NPDB receives reports on malpractice payments. Medical malpractice payments are reported by each entity that makes a payment for the benefit of a practitioner in settlement or satisfaction of a claim or judgment. There were 71 malpractice reports concerning occupational therapy practitioners sent to the NPDB from 2012 through 2022. The NPDB receives around six malpractice reports each year. The reports include an outcome field that describes the severity of the alleged malpractice injury. The NPDB-designated outcome codes include emotional injury only; insignificant injury; minor temporary injury; major temporary injury; minor permanent injury; significant permanent injury; major permanent injury; quadriplegic, brain damage, lifelong care; and death. Table 4 shows the total count each outcome code. The malpractice reports indicate that serious harm occurs within the profession.

There were 71 malpractice reports concerning occupational therapy practitioners sent to the NPDB from 2012 through 2022.

Table 4
National Practitioner Data Bank
Reported Outcomes for Medical Malpractice
Reports Occupational Therapists Nationwide
2012 through 2022

Code	Total Count
Emotional Injury Only	1
Insignificant Injury	2
Minor Temporary Injury	33
Major Temporary Injury	19
Minor Permanent Injury	6
Significant Permanent Injury	4
Major Permanent Injury	1
Quadriplegic, Brain Damage, Lifelong Care	0
Death	4
Cannot be Determined from Available Records	1

Source: U.S. Department of Health and Human Services, Health Resources and Services Administration, National Practitioner Data Bank, <https://www.npdb.hrsa.gov/>, as of April 4, 2023.

Insurance Coverage Requires Regulation

PERD found that regulation was required for occupational therapy services to be covered by Medicare, Medicaid, and the Public Employees Insurance Agency (PEIA). The Centers for Medicare & Medicaid Services (CMS) uses broad language that includes licensure or certification. The CMS defines qualified professionals as follows:

occupational therapist...who is licensed or certified by the state to furnish therapy services, and who also may appropriately furnish therapy services under Medicare policies. Qualified professional may also include...an occupational therapy assistant (OTA) when furnishing services under the supervision of a qualified therapist, who is working within the state scope of practice in the state in which the services are furnished. [emphasis added]

In addition, PERD found that PEIA adheres to Medicare policy

PERD found that regulation was required for occupational therapy services to be covered by Medicare, Medicaid, and the Public Employees Insurance Agency.

for reimbursement. In its outpatient billing manual, PEIA uses the same code for occupational therapy as Medicare. Similarly, the inpatient manual includes occupational therapy as an inpatient service and includes the statement, *“We follow Medicare’s definition of inpatient services as the basis for the standardized payment amount for operation costs.”*

Conclusion

It is the legislative auditor’s opinion that regulation of OTs and OTAs by the Board of Occupational Therapy should be continued. Occupational therapy is a highly specialized profession that includes hands-on contact with vulnerable populations. Though not numerous, the complaints received by the Board, NBCOT, and reports sent to the NPDB indicate the public could face serious harm without regulation. The Board serves this regulatory function through education and competency criteria, continuing education enforcement, and responding to complaints.

Occupational therapy is a highly specialized profession that includes hands-on contact with vulnerable populations.

Recommendations

1. *The legislative auditor recommends that the Legislature continue the Board of Occupational Therapy as currently regulated.*

ISSUE 2

The Board of Occupational Therapy Complies with Some of the General Provisions of Chapter 30 of the W. Va. Code, But Improvement Is Needed

Issue Summary

The Board complies with some of the general provisions of W. Va. Code §30-1-et al. The Board is financially self-sufficient, provides public access on its website to all completed disciplinary actions in which discipline was ordered, and has established continuing education requirements. However, the Board's current roster, open meeting notifications, and its listing in the Charleston area telephone directory need improvements to enhance public access. The Board must also ensure that board members attend the State Auditor's Seminar on Regulatory Boards. Moreover, all five board members are serving at least 11 years past their term limits despite the Board's requests to the Governor's Office for successors to be appointed. Furthermore, the Board should develop and implement a written business continuity plan to secure its records and operations.

All five board members are serving at least 11 years past their term limits despite the Board's requests to the Governor's Office for successors to be appointed.

The Board Complies with Some General Provisions of Chapter 30

Chapter 30, Article 1, of the West Virginia Code identifies important provisions for the effective operation of regulatory boards. The Board is compliant with the following provisions:

- The chairperson, the executive director or the chief financial officer of the board must have annually attended an orientation session conducted by the State Auditor as required under West Virginia Code §30-1-2a(c)(2).
- The Board has adopted an official seal (§30-1-4).
- The Board has held at least one board meeting a year (§30-1-5(a)).
- The Board provided public access on a website to all completed disciplinary actions in which discipline was ordered (§30-1-5(d)).
- The Board promulgated procedural rules specifying the investigation and resolution procedure of all complaints (§30-1-8(k)).
- The Board is financially self-sufficient in carrying out its responsibilities (§30-1-6(c)).

The Board is financially self-sufficient in carrying out its responsibilities (§30-1-6(c)).

- The Board has established continuing education requirements (§30-1-7a).
- The Board submitted an annual report to the governor and Legislature describing transactions for the preceding two years (§30-1-12(b)).

The Board has not complied with the following requirements:

- Four of the Board's five members have not attended at least one orientation session during their terms as required under (§30-1-2a (c)(3)).
- The Board did not send a status report to licensees in two instances within six months of the complaint being filed as specified in (§30-1-5(c)).
- The Board's roster does not include office addresses of licensees and subsequently was not arranged alphabetically by the cities or counties in which the licensees' offices were situated (§30-1-13).
- The Board did not provide an open meeting notice for one meeting (§6-9A-3(e)).
- The Board did not provide the public with a way to attend four teleconference meetings remotely (§6-9A-3(e)(1)).
- The Board has not updated its office address in the state government listings of the Charleston area telephone directory as specified by (§30-1-12(c)).

Four of the Board's five members have not attended at least one orientation session during their terms as required under (§30-1-2a (c)(3)).

The Board Is Financially Self-Sufficient

Table 5 shows that the Board is financially self-sufficient as required by W. Va. Code §30-1-6(c). It is the legislative auditor's opinion that cash reserves that are from one to two times a board's annual expenditures are at a prudent level. However, as can be seen, the Board has accumulated an end-of-year cash balance at between 216 and 242 percent of its annual expenditures. The Board's revenues primarily come from OT and OTA licensing and renewal fees. Annual disbursements include a staff salary and benefits, travel, computer services, and continuing education services.

The Board has accumulated an end-of-year cash balance at between 216 and 242 percent of its annual expenditures.

Table 5 Board of Occupational Therapy Budget Information FY 2020 through FY 2023					
Fiscal Year	Beginning Cash Balance	Revenues	Expenditures	Ending Cash Balance	End-of-Year Cash as a Percentage of Annual Expenditures
2020	\$226,807	\$102,610	\$97,918	\$231,619	237%
2021	\$231,619	\$92,576	\$94,295	\$228,281	242%
2022	\$228,281	\$96,675	\$101,212	\$223,744	221%
2023	\$223,744	\$92,486	\$100,132	\$216,098	216%
Avg.	\$227,613	\$96,087	\$98,389	\$224,935	228%

Source: Our Advanced Solution with Integrated Systems (OASIS) WV-FIN-GL-151 Cash Balance report. PERD calculations of percentages.

To assess the risk of fraud on the revenue side, PERD calculated the minimum expected revenue for the Board by multiplying licensee fees by the number of reported licensees. Table 6 provides a comparison of actual and expected revenues for the Board for FY 2020 through 2022. Given that for every year reviewed actual revenues exceeded the expected revenue, the legislative auditor deems the likelihood of fraud having occurred on the revenue side as relatively low.

Table 6 Board of Occupational Therapy Expected Revenue and Actual Revenue FY 2020 through FY 2022			
Fiscal Year	Expected Revenue	Actual Revenue*	Difference
2020	\$80,010	\$102,610	\$22,600
2021	\$84,380	\$92,576	\$8,196
2022	\$89,040	\$96,675	\$7,635
Avg.	\$84,477	\$97,287	\$12,810

Source: PERD calculations based on the OASIS Cash Balance report, WV-FIN-GL-151, and board information.
**Licensees renew biennially so revenues fluctuate.*

Given that for every year reviewed actual revenues exceeded the expected revenue, the legislative auditor deems the likelihood of fraud having occurred on the revenue side as relatively low.

To assess the risk of fraud on the expenditure side, PERD calculated the percentage of expected and required expenditures for FY 2020 through FY 2023 (see Table 7). The legislative auditor determines that the risk of fraud is relatively low on the expenditure side when a Board's required and expected expenditures are 90 percent or more of total annual expenditures. PERD's evaluation of the Board's expenditures shows that on average 82 percent of expenses are expected and required.

Fiscal Year	Percent
2020	78%
2021	85%
2022	81%
2023	85%
Avg.	82%

Source: PERD calculations based on OASIS Account Status report, WV-FIN-GL-062.

PERD's evaluation of the Board's expenditures shows that on average 82 percent of expenses are expected and required.

Since the percentage of expected and required expenditures were below 90 percent, PERD conducted a detailed review of the Board's expenditures from FY 2020 through FY 2022 to further assess the risk of fraud. Upon examining these expenditures, PERD determined that the Board's expenditures to host continuing education conferences and provide online continuing education subscriptions free of cost for licensees were the reason the required and expected expenditures were below 90 percent. Without the cost of continuing education, the Board's expected and required costs would have been 99 or 100 percent in each year examined. PERD determined that the continuing education expenses were legitimate, and that fraud has not likely occurred. However, PERD was concerned that these expenses may not be statutorily authorized and requested a legal opinion from the Office of the Legislative Auditor's Legislative Services Division regarding the authority of the Board to provide continuing education free of cost. **This matter is further discussed in Issue 3.**

Without the cost of continuing education, the Board's expected and required costs would have been 99 or 100 percent in each year examined.

The Board’s Initial Licensure Fees Are Higher than All but One Surrounding State While Its Renewal Fees Are Generally in the Middle of Surrounding States

West Virginia and surrounding states’ licensure and renewal fees can be seen in Table 8. The initial licensure for West Virginia OTs is \$150 and is \$100 for OTAs. West Virginia’s renewal fee for OTs is \$120 and \$100 for OTAs. The initial licensure fee for OTs and OTAs is higher for all surrounding states but Maryland. West Virginia’s OT and OTAs’ renewal fees are far less than Maryland’s but otherwise generally fall at a mid-point between the rest of the neighboring states. **The Board fee structure is discussed further in Issue 4.**

The initial licensure fee for OTs and OTAs is higher for all surrounding states but Maryland.

State	Occupational Therapists		Occupational Therapy Assistants		Renewal Cycle
	Initial Fee	Renewal Fee	Initial Fee	Renewal Fee	
Kentucky	\$50	\$50	\$35	\$35	Annual
Maryland	\$200	\$280	\$200	\$200	Biennial
Ohio	\$100	\$70	\$100	\$70	Biennial
Pennsylvania	\$30	\$55	\$30	\$45	Biennial
Virginia	\$130	\$135	\$70	\$70	Biennial
Surrounding States Avg.	\$102	\$138	\$87	\$91	
West Virginia	\$150	\$120	\$100	\$100	Biennial

Source: PERD’s analysis of other state occupational therapy boards websites and statutes.

The Board Resolves Complaints in a Timely Manner

PERD reviewed the six complaints the Board received in FY 2020 through FY 2022. The Board resolved all complaints within 18 months of their initial filing and the disciplinary actions are publicly available on the Board’s website as required by W. Va. Code §30-1-5 (c) and (d). Table 9 provides an overview of the complains and average

time to resolve them. The nature of the complaints included practicing outside the scope of practice, falsely documented visit times and assessments, fraudulent billing, and unprofessional conduct. Five of the six complaints were dismissed, and one consent order was entered. The Board dismissed two of the complaints because it deemed it did not have enough evidence to show probable cause that the licensees had violated the Board's procedural rules for handling complaints. The Board had issued a subpoena for information to an entity holding the treatment records. However, citing the Health Insurance Portability and Accountability Act, the entity refused to release the records. The Board's executive secretary dismissed a third complaint upon advice by the Board's Attorney General counsel that the complaint was outside the Board's jurisdiction.

The Board resolved all complaints within 18 months of their initial filing and the disciplinary actions are publicly available on the Board's website as required by W. Va. Code §30-1-5 (c) and (d).

Fiscal Year	Number of Complaints Received	Number of Cases with Disciplinary Actions	Average Resolution Time in Days
2020	3	0	218
2021	0	0	-
2022	3	1	71

Source: PERD's analysis of the Board's complaint files

The Board Should Provide Status Reports for Complaints and Use Certified Mail when Required

West Virginia Code §30-1-5(c) requires boards to send a status report to the party filing a complaint and the respondent within six months after the complaint was initially filed if the case has not been resolved within six months. The Board had two complaints that required status reports and while the Board sent the complainants a status report, it did not send a status report to the licensees within six months. Only when the licensees asked for the status of the complaints against them did the Board's executive secretary send the status reports. Moreover, the Board did not send the status reports by certified mail as is required by W. Va. Code §30-1-5(c). In a third instance, the Board did not have documentation it notified a licensee by certified mail of a complaint's resolution. Therefore, **the Board should provide status updates to licensees and complainants within six months of the complaint and comply with all certified mail requirements.**

The Board had two complaints that required status reports and while the Board sent the complainants a status report, it did not send a status report to the licensees within six months.

The Board Has Established Continuing Education Requirements

The Board has established continuing education (CE) requirements for OTs and OTAs by rule in W. Va. Code of State Rules (CSR) §13-4 et al. OTs and OTAs must complete 24 hours of continuing education and competency activities during the 2-year period preceding the application for renewal. Table 10 displays the CE requirements in West Virginia and the surrounding states.

Table 10 Occupational Therapists and Occupational Therapy Assistants Continuing Education Requirements West Virginia and Surrounding States			
State	OTs	OTAs	Renewal Cycle
Kentucky	12	12	Annual
Maryland	24	24	Biennial
Ohio	20	20	Biennial
Pennsylvania	24	24	Biennial
Virginia	20	20	Biennial
Surrounding States Avg. on Biennial Cycle	22.4	22.4	
West Virginia	24	24	Biennial

Source: PERD's analysis of other state's licensing board websites, statutes, and rules.

To monitor for compliance with CE requirements, the Board randomly selects seven percent of OTs and seven percent of OTAs applying for renewal for audit. Selected licensees upload documentation through a commercial electronic licensing management platform (licensing management system) the Board uses. The Board then reviews the documentation for compliance with its rule. For non-audited licensees, the Board reviews the dates and hours licensees entered in the Board's licensing management system. In addition to audited licensees, the Board requires individuals licensed since the 2020 implementation of licensing management system to upload documentation for all CE hours.

Since the Board Is Dependent on an Online Licensing Management System, the Board Should Continue to Develop and Implement a Business Continuity Plan

The Board began using an online licensing management system, Certemy, in 2020 for all applications for licensure and license renewals. Furthermore, the licensing management system is where licenses submit their continuing education records and documentation to the Board. The licensing management system also serves as the public interface the Board uses for its licensee lookup and verification function and to generate its mailing list of licensees. As such, the Board is dependent on the licensing management system vendor for access to its records and its business operations. While the Board is not statutorily required to develop policies and procedures that address the potential loss of records and the recovery process; nevertheless, according to the National Institute of Standards and Technology, identifying and creating an effective, contingency and disaster recovery plan is imperative to securing information systems and mitigating risk. The National Institute of Standards and Technology is an agency of the United States Department of Commerce that develops information systems standards to guide federal agencies. When PERD asked what would happen if the Board lost access to the data, the Board responded:

In order to provide our customers (licensees) modern digital services to obtain and maintain their licensing credentials with the State of West Virginia, we contract with Certemy to provide the Application Service to support the Board's licensure database management system. As the State does not have internal resources to provide such services, we initiated the process of finding a vendor who could meet our needs in the most reliable, user-friendly, secure, and cost-effective manner. Certemy was chosen for a number of reasons, including their high data security and compliance standards . . .

When we renew our contract with Certemy in May of 2023, we will include the WV Office of Technology SaaS Addendum created to help protect the state in cloud-based purchases. This, combined with Certemy's data security standards, will ensure the Board does not lose access to the data they manage for us.

The SaaS Addendum the Board plans to incorporate into its contract renewal includes the following provision:

The Board is not statutorily required to develop policies and procedures that address the potential loss of records and the recovery process.

According to the National Institute of Standards and Technology, identifying and creating an effective, contingency and disaster recovery plan is imperative to securing information systems and mitigating risk.

Business Continuity and Disaster Recovery: The Service provider shall provide a business continuity and disaster recovery plan executive summary upon request. Lack of a plan will entitle the public jurisdiction to terminate this contract for cause.

To follow up, PERD asked the Board if it had requested its vendor's disaster recovery plan executive summary and whether the Board had its own plan in the event it lost access to its data. The Board then requested the vendor's security statement and disaster and recovery plans which it provided to PERD. Regarding the Board's plan, the Board's executive secretary stated that it maintains Excel and Word files that make it possible for it to recreate some of its records and maintain business continuity if necessary. Moreover, the Board expressed the intention to create a formal plan to address potential disasters and business continuity and begin performing a daily download of the public interface which includes licensee name, license number, and license expiration date, as well as if there are any applicable disciplinary actions and/or orders against the licensee into an Excel spreadsheet.

These actions represent important steps towards mitigating risk; however, daily downloads of the public interface would not include all data hosted within the licensing management system such as the continuing education files and application documentation. The Board should continue to identify its data needs in the event of a disruption of services and consult with the vendor to plan and address the potential loss of board records. Moreover, the Board's plan should consider recovery duration time for the recovery of services and develop tests to ensure it can implement its plan. **The legislative auditor recommends that the Board proactively develop written data security policies and procedures and implement the same in the event of a disaster or disruption to business continuity.**

The Board Should Ensure that Board Members Attend the Required State Auditor's Training Sessions for Regulatory Boards

West Virginia Code §30-1-2a(c)(3) states that each board member shall attend the State Auditor's Seminar for Regulatory Boards a least once during each term of office. Of the Board's five members, four have not attended the required seminar for multiple terms. Two board members have not attended a seminar since 2011, and two others last attended in 2013. According to a legal opinion from Legislative Services, a board

The Board expressed the intention to create a formal plan to address potential disasters and business continuity and begin performing a daily download of the public interface.

Of the Board's five members, four have not attended the required seminar for multiple terms.

member who continues to serve after an original term expired must attend the required seminar at least once as though he or she is serving a new appointed term. Only the citizen board member, also serving past his expired appointed term, has attended a seminar during his current term of office. Therefore, **the Board should ensure that all its members attend at least one orientation session for each term they are in office.**

The Board Should Continue to Request the Governor Appoint Replacements

All five board members are serving after their second consecutive terms expired. No new members have been appointed since 2010, and all other members have been serving since at least 2006. One member has been serving since 1999. The Board has contacted the Governor's Office regarding new appointments multiple times since the last appointment, but no appointments have been made. The Board provided documentation of correspondence with the Governor's Office made in 2021, 2019, 2018, and 2016. Therefore, **the legislative auditor finds that the Board should continue contacting the Governor's Office for board member appointments.**

All five board members are serving after their second consecutive terms expired. No new members have been appointed since 2010, and all other members have been serving since at least 2006.

The Board's Roster of Licensees Does Not Conform to Law

Until June 9, 2023, W. Va. Code §30-1-13 required boards to maintain a roster of its licensees with the licensee office addresses arranged alphabetically by licensee name as well as by the city or county of the office. During the period reviewed, the Board's roster did not comply with law as it did not have the licensee office addresses. However, subsequent to the passage of SB 240 during the 2023 legislative session the Board's roster no longer has to include the office addresses of licensees.

The Board Should Provide Remote Attendance Instructions When It Offers Teleconference Meetings

The Board conducted four teleconference meetings from FY 2020 through FY 2022. The Board stated that the office was open for public access and the Board's executive secretary was physically present. Regardless, if the majority of Board members intend to access a meeting remotely, the Board should provide remote instructions for public attendance. Moreover, the remote instructions should be included in the

Board meeting notices filed with the Secretary of State’s Office. During the COVID-19 pandemic, the Ethics Commission posted guidelines on its main webpage that stated, “*a governing body’s efforts to accommodate additional attendees through providing a call-in number or access to a livestream of the meeting would meet the minimum requirements of the Open Meetings Act.*” Given this advice, **the Board should provide a call-in number, livestream access, or other remote attendance instructions when it offers teleconferences on its online meeting notices filed with the Secretary of State’s Office.**

While the Board has been at its current location in Morgantown since 2015, the directory still lists the Board’s prior office address.

The Board Should Update Its Address in the Charleston Area Telephone Directory

The Board’s current address is not listed in the 2022 Charleston area telephone directory as required by W. Va. Code §30-1-12(c). While the Board has been at its current location in Morgantown since 2015, the directory still lists the Board’s prior office address. Moreover, the WV.gov online agency directory also lists the Board’s previous address. Therefore, **the Board should update its address in the Charleston area telephone directory to promote public access.**

The Board’s Enabling Statute Does Not Require Informed Entities Such as Liability Insurance Organizations or Healthcare Facilities to Report Potential Violations to It

The general provisions for all regulatory boards (W. Va. §30-1-5(d)) require professional licensing boards to timely report violations of individual practice acts to each other. The law also requires licensees to timely report to their own board any known or observed violations of their practice act or board rules by another licensee of the same regulatory board. However, the Board’s enabling statute does not require anyone to report potential practice act or rules violations. In comparison, the West Virginia Board of Medicine’s enabling statute requires reporting by entities in positions to identify potential violations, including hospitals, peer licensees, liability insurance organizations, including the state Board of Risk and Insurance Management, the courts, state medical associations, and managed care organizations operating in West Virginia. Additionally, the Board of Medicine’s enabling statute provides it with the authority to assess a civil penalty against a mandated reporter found to have violated the reporting requirement.

The Board’s enabling statute does not require anyone to report potential practice act or rules violations. In comparison, the West Virginia Board of Medicine’s enabling statute requires reporting by entities in positions to identify potential violations.

State healthcare professional licensing boards are better able to fulfill their purpose to protect public health, safety, and welfare when they have prompt and valid information from reliable sources to inform their disciplinary process. Some information pertinent to public health and safety, includes, but is not limited to, professional misconduct, sexual misconduct with patients or surrogates and controlled substance diversion. Without statutory requirements, healthcare organizations and professionals may not report violations despite possessing credible information about problem practitioners. West Virginia Code §30-1-5(d) requires that law-enforcement agencies and courts timely report to the appropriate board any violation of individual practice acts by any individual. It is unknown how many cases related to major violations that other entities in positions to identify potential violations may choose not to report. The Board is unable to take action to protect public safety unless it has access to such information. **Therefore, the Legislature should consider amending W. Va. Code 30-1-5 to require violation reporting from additional entities as previously stated to the healthcare licensing boards listed in Appendix C.** Furthermore, without enforcement authority over the reporting requirements, required entities may choose not to report. **Therefore, the Legislature should also consider including civil penalties for all mandated reporters for failure to report.**

More mandated reporters could enhance regulatory boards' effectiveness in protecting the public. However, it is important that boards clearly communicate the criteria for reporting violations to avoid receiving complaints that do not warrant investigation because reporting requirements are vague. **Therefore, the healthcare licensing boards should clearly indicate in their respective rules and on their websites the types of issues that should and should not be reported.**

Conclusion

The Board of Occupational Therapy complies with some of the general provisions of Chapter 30, Article 1, of the West Virginia Code, including being currently financially self-sufficient. However, the Board should adhere to W. Va. Code §30-1-5(c) and send official status reports to the party filing the complaint and the respondent within six months after the complaint is initially filed. The Board and its rules generally protect the public. However, the Board can improve compliance with the general provisions of Chapter 30 of W. Va. Code, especially those that increase public access. Additionally, the Board needs to take further steps to mitigate the risk that its access to its data in the online licensing management system it uses could be disrupted or lost.

Without statutory requirements, healthcare organizations and professionals may not report violations despite possessing credible information about problem practitioners.

The Legislature should consider amending W. Va. Code 30-1-5 to require violation reporting from additional entities as previously stated to the healthcare licensing boards.

Recommendations

2. *The Board should ensure that all its members attend at least one orientation session for each term they are in office.*
3. *The Board should provide status updates to licensees and complainants within six months of the complaint and comply with all certified mail requirements.*
4. *The Board should continue contacting the Governor's Office for Board appointees.*
5. *The Board should proactively develop written data security policies and procedures and implement the same in the event of a disaster or disruption to business continuity.*
6. *The Board should provide a call-in number, livestream access, or other remote attendance instructions when it offers teleconferences on its online meeting notices filed with the Secretary of State's Office.*
7. *The Board should update its address in the Charleston area telephone directory to promote public access.*
8. *The Legislature should consider amending W. Va. Code 30-1-5 to require reporting of individual practice violations from additional entities such as hospitals, health care organizations, and liability insurance organizations to the healthcare licensing boards listed in Appendix C.*
9. *The Legislature should also consider amending W. Va. Code 30-1-5 to include civil penalties for failure to report by mandated reporters.*
10. *To ensure that expanded reporting requirements do not result in unnecessary reporting, the healthcare licensing boards should clearly indicate in their respective rules and on their websites the types of issues that should and should not be reported.*

ISSUE 3

The Board of Occupational Therapy Is Exceeding Its Statutory Authority and Duties by Providing Free Continuing Education Services to Licensees at Significant Expense

Issue Summary

The Board offers continuing education classes at no cost to licensees. The Board stated that it believed providing the services to be a worthwhile use of funds that contributes to fulfilling the agency's mission. However, a legal opinion from the Office of the Legislative Auditor's Legislative Services Division found the Board's enabling statute and relevant laws and rules do not authorize such practice. Moreover, the continuing education services are a significant expense for the Board despite a low percentage of licensees who take the classes and the number of credit hours awarded.

A legal opinion from the Office of the Legislative Auditor's Legislative Services Division found the Board's enabling statute and relevant laws and rules do not authorize the Board to offer continuing education at no cost to licensees.

The Board's Enabling Statute, Rules, and Applicable Laws Do Not Authorize Providing Free Continuing Education Services

PERD found that the Board offered free, one day, in-person continuing education (CE) conferences in 2019, 2022, and 2023 to all of its licensees. The conferences were held in different towns across the state and attendees were awarded with six hours of CE. In the context of the Board's CE requirements, full attendance at the conference awards licensees with one fourth of the biennial requirement of 24 hours. Attendance to two conferences during the biennial cycle would provide licensees with one half of the CE requirement. Additionally, during FY 2020 through FY 2022, because of the COVID-19 pandemic, the Board provided free online subscriptions to educational courses that awarded various credit hours and access to three, six-credit hour webinars.

PERD found that the Board offered free, one day, in-person continuing education (CE) conferences in 2019, 2022, and 2023 to all of its licensees.

The Board's enabling statute (W. Va. Code §30-28), CSR Title 13, Series 1 & 4, and the General Provisions for all regulatory boards (W. Va. Code §30-1) do not indicate that the Board has the explicit or implied authority to provide continuing education services. According to a legal opinion from the Legislative Services Division:

In conclusion, no, the Board's enabling statute (W. Va. Code §30-28-1, et. seq), the general provisions under W. Va. Code §30-1-1, et seq, nor the Board's rules (CSR 13-4) grant the Board explicit or implied authority to provide continuing education services at the Board's expense.

PERD identified the Board's primary powers and duties as establishing and enforcing requirements and qualifications for licensees, issuing and renewing licenses, investigating complaints, taking disciplinary action, and establishing continuing education and competency requirements. In addition, PERD found the Board's powers and duties regarding continuing education were limited to developing CE requirements and criteria, monitoring and auditing licensees, and taking disciplinary action against those who do not comply with CE requirements.

Therefore, PERD asked the Board to indicate why it provides free CE services. The Board first stated one of its purposes, to promote quality occupational therapy services to consumers. The Board further reasoned:

The Board sponsors an annual continuing education conference to provide quality CE courses for licensees to facilitate this mission...the greater purpose is to provide quality education to contribute to the development of the therapist and update competency in their occupational therapy practice, with the ultimate benefit being to the consumer of their services.

However, the Board also noted:

Although our statute does not specifically grant authority to the Board to provide a continuing education conference, we believe doing so supports our mission and is a worthwhile use of our funds. We are not aware of anything in our statute that prohibits such an activity.

The legal opinion from the Legislative Services Division addressed the Board's interpretation by emphasizing the powers and duties the Board shall and may do, none of which include offering free continuing education services:

This reading of the statute overlooks the fact that the statute (§30-28-1, et seq.), in regard to the powers and duties of the Board, states in subsection (a) that the Board has all the powers and duties established in §30-1-1, et seq.; and lists in subsection (b) what the Board shall do; and lists three things that the Board may do, none of which include providing free continuing education programs to the members. Although noble, neither these statutes nor anything in 13 CSR 1 grants this authority or creates a rule to permit this practice. In fact, continuing education is not even addressed in 13 CSR 1.

PERD found the Board's powers and duties regarding continuing education were limited to developing CE requirements and criteria, monitoring and auditing licensees, and taking disciplinary action against those who do not comply with CE requirements.

The legal opinion from the Legislative Services Division addressed the Board's interpretation by emphasizing the powers and duties the Board shall and may do, none of which include offering free continuing education services.

Thus, the legislative auditor finds that the Board should refrain from providing continuing education services to licensees at the Board's expense.

Continuing Education Services Are a Significant Expense for the Board Despite the Relatively Small Number of Licensees that Attend

Table 11 shows the amount the Board spent on continuing education services in FY 2019 through 2023. On average, the Board spent over \$16,000 per year. The expenses for the conferences include the conference venue and space, food and beverage, presentation devices, speaker fees, and promotional items such as pens and drawstring bags. During FY 2020, the Board purchased online subscriptions for licensees. Each subscription granted access to over 300 courses. During FY 2021 and 2022, the Board also purchased access to three webinars on topics relevant to the profession. As shown in the Table 11, continuing education as a percentage of all expenditures averaged around 17 percent.

On average, the Board spent over \$16,000 per year. The expenses for the conferences include the conference venue and space, food and beverage, presentation devices, speaker fees, and promotional items such as pens and drawstring bags.

Format	2019	2020	2021	2022	2023	Avg.
In-person Conference	\$12,126	\$1,111	-	\$11,981	\$15,431	-
Online Subscriptions	-	\$20,077	\$14,000	\$7,000	-	-
Total	\$12,126	\$21,189	\$14,000	\$18,981	\$15,431	\$16,345
Percentage of All Expenditures	14%	22%	15%	19%	N/A	17%

Source: PERD calculations based on OASIS Account Status report, WV-FIN-GL-062.

Table 12 shows the percentage of licensees who attended or used the services during FY 2019 through FY 2022. On average 13 percent of licensees avail themselves of the Board's continuing education services. Furthermore, the Board stated it does not limit conference attendance except during COVID when it did keep a waitlist.

Table 12
Board-provided Continuing Education
Percentage of Licensees Using Services
FY 2019 - FY 2022

Attendees	2019	2020	2021	2022	Average
Percentage of Licensees ²	12%	18%	11%	11%	13%

On average 13 percent of licensees avail themselves of the Board's continuing education services.

Source: Board-provided attendance lists and licensee count from Annual Reports .

Conclusion

Upon review of the statutory provisions set forth by the West Virginia Code, Legislative Services did not find authority granted to the Board of Occupational Therapy to provide continuing education services. The desire to offer these services to increase the competence of occupational therapy practitioners is commendable but exceeds the Board's duties and authority. Moreover, the services are a significant expense for the Board for the amount of credit hours awarded and despite the small number of licensees that attend.

Recommendation

11. *The Board of Occupational Therapy should refrain from providing free continuing education services to licensees at its expense.*

The desire to offer these services to increase the competence of occupational therapy practitioners is commendable but exceeds the Board's duties and authority.

² *This figure also includes the total number of online subscriptions available. The Board did not maintain a list of licensee subscribers so the number of unique licensees who participated could not be calculated.*

ISSUE 4

The Board's Fees Do Not Generate Excessive Revenue When Compared to the Board's Normal Expenses

Issue Summary

Pursuant to West Virginia Code §30-1-10(b)(2), when the state treasurer notifies the legislative auditor of a transfer of an excess amount from a regulatory board's special fund to the State General Revenue Fund, the legislative auditor is required to conduct a review of the board's fee structure to determine if the board's fees generate excessive revenue, when compared to the board's normal expenses. The State Treasurer's Office notified the Office of the Legislative Auditor that an excess transfer was made from the Board's special fund to the State General Revenue Fund. In reviewing the Board's fee structure, it was found the Board's fees do not generate excessive revenue when compared to its normal expenses.

In reviewing the Board's fee structure, it was found the Board's fees do not generate excessive revenue when compared to its normal expenses.

Required Analysis of Board's Fee Structure

In November 2022, the State Treasurer's Office notified the legislative auditor that the Board's fund balance exceeded twice its annual budget in FY 2021, prompting a fund transfer from the Board's fund. This transfer is prompted when a board's fund balance exceeds twice its annual budget or \$10,000, whichever is the greater amount. Table 13 shows the amount transferred.

FY	Fund Transfer Amount
2021	\$1,619

Source: State Treasurer's Office.

In November 2022, the State Treasurer's Office notified the legislative auditor that the Board's fund balance exceeded twice its annual budget in FY 2021.

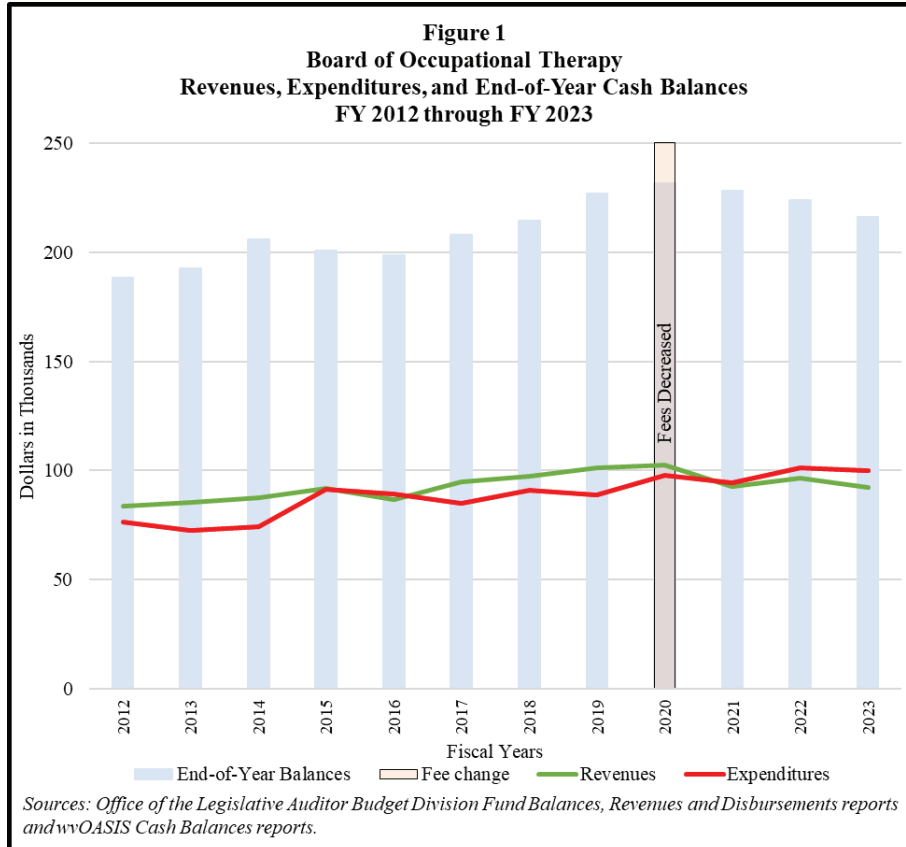
West Virginia Code §30-1-10(b)(2) requires the legislative auditor to determine if the amount of a board's fees generate excessive revenue when compared to the board's normal expenses. If the legislative auditor finds that excessive revenue is generated, those findings and recommendations on how the fees can be adjusted to generate only what the board reasonably needs to operate are to be reported to the Joint Standing Committee on Government Organization.

It should be noted that W. Va. Code §30-1-10(b)(2) requires the legislative auditor to review the fee structure of any board subject to a fund transfer within a reasonable time after the state treasurer notifies the legislative auditor. The State Treasurer's Office was supposed to notify the legislative auditor of any transfer beginning in FY 2019; however, it did not notify the legislative auditor until November 2022. This delayed the legislative auditor's review. The State Treasurer's Office, however, acknowledged the oversight and committed to properly notifying the legislative auditor going forward.

Following a Fee Decrease the Board's Revenues Began to Decline As Its Expenses Increased Slightly

Figure 1 illustrates that in most years from FY 2012 through FY 2020 the Board's revenues generally exceeded its expenditures. As a result, its end-of-year fund balances grew slightly until after the Board decreased the renewal fee for OTs and OTAs each by \$20 in FY 2020. With these fee decreases the end-of-year fund balance began to decline in FY 2021 as expenditures have increased slightly while revenues declined slightly.

W. Va. Code §30-1-10(b)(2) requires the legislative auditor to review the fee structure of any board subject to a fund transfer within a reasonable time after the state treasurer notifies the legislative auditor. It did not notify the legislative auditor until November 2022.



The legislative auditor finds that the Board's fees are currently not generating excessive revenue compared with its normal expenses. Therefore, there are no recommendations to consider for adjusting the Board's fee structure.

Conclusion

The legislative auditor finds that the Board's fees are currently not generating excessive revenue compared with its normal expenses. Therefore, there are no recommendations to consider for adjusting the Board's fee structure.

ISSUE 5

The Board of Occupational Therapy Needs to Consider What Measures It Needs to Take to Ensure Handicapped Accessibility to Its Office and Services Under the Americans with Disabilities Act

Issue Summary

PERD conducted an analysis of the Board's office to determine general handicap accessibility in relation to select Americans with Disabilities Act (ADA) requirements. PERD's review found that some portions of the building where the Board is located, including the handicap parking spot, building entrance, hallway, public restrooms, and elevator are not ADA compliant. Overall, the Board office is not generally accessible because of significant barriers to enter the building and the Board's office suite.

PERD's review found that some portions of the building where the Board is located, including the handicap parking spot, building entrance, hallway, public restrooms, and elevator are not ADA compliant.

There Are Possible Physical Barriers to Accessing the Board's Office

PERD conducted a site visit to the Board's office located at 1063 Maple Drive in Morgantown. The visit was to determine if the office and building meet select requirements of the Americans with Disabilities Act (ADA). The ADA is a federal civil rights law that prohibits discrimination against people with disabilities to ensure that people with disabilities have the same opportunities to participate in government programs. First, PERD found the building's parking lacked some accessibility features. The accessible space provided was not identified by appropriate signage and lacked an access aisle. Picture 1 also shows the spot may be confusing as it abuts a residential building next door to the office building where the Board is located.

Picture 1
Accessible Parking Spot



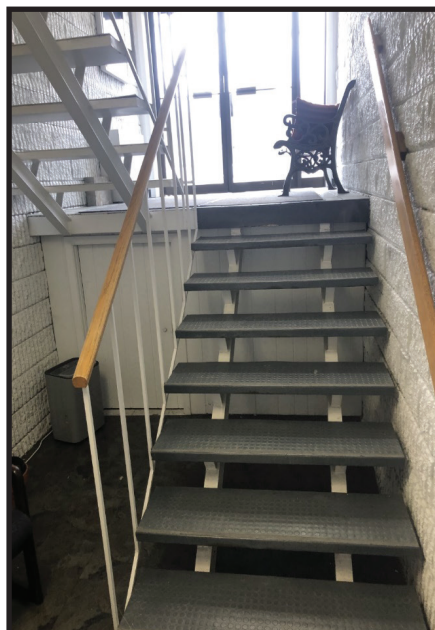
The back entrance is designated as the accessible entrance.

PERD further reviewed the entrance ways to the building where the Board is located and the ground floor hallway used to access the elevator and proceed to the Board's fourth floor suite. The main entrance is not accessible because of both exterior and interior stairs; however, the back entrance is designated as the accessible entrance. Pictures 2 and 3 show the exterior and interior stairs of the main entrance.

Picture 2
Main Entrance Exterior



Picture 3
Main Entrance Interior



PERD found the accessible, back entrance lacks the appropriate signage and the door requires significant pinching or twisting of the wrist to enter. After entry, the hallway to the elevator contains chairs, plants, and other objects jutting into the hallway that could hinder or block access for members of the public with disabilities. Pictures 4 and 5 show the accessible exterior entrance and the ground floor hallway to the elevator.

After entry, the hallway to the elevator contains chairs, plants, and other objects jutting into the hallway that could hinder or block access for members of the public with disabilities.

Picture 4

Exterior Door of Accessible Entrance



Picture 5

Ground Floor Hallway



PERD found the ground floor public toilet rooms are not handicap accessible. The clearance and space surrounding the toilet do not meet ADA guidelines and do not permit a person in a wheelchair to enter and close the door behind themselves. In addition, PERD found the faucet requires twisting of the wrist and the soap dispensers were not elevated above the lavatories or counter.

PERD found the ground floor public toilet rooms are not handicap accessible. The clearance and space surrounding the toilet do not meet ADA guidelines and do not permit a person in a wheelchair to enter and close the door behind themselves.

PERD also found the elevator is not compliant with ADA requirements. The elevator is called by using a button beside the elevator entrance which has a pull open door and a sliding interior gate. However, the elevator will not come to a given floor if the gates on any floor, are not closed. When the elevator arrives, the door must be opened, and a gate must be physically moved. Then users must cross a gap between the floor and the elevator. In addition, the elevator does not meet the 54-inch by 36-inch clearance. The small size, and the process of opening and closing the door and gate, may preclude some members of the public from using it to access the Board's fourth-floor office suite. Pictures 6, 7, and 8 show the elevator exterior, interior, and the gap to enter.

Picture 6
Elevator Exterior



Picture 7
Elevator Interior



PERD found the elevator is not compliant with ADA requirements.

Picture 8
Elevator Gap



The building entrance, ground floor hallway, the elevator, and the public restrooms may hinder physical access to the Board.

PERD found braille used inside the elevator, but the outside signage posted on the door does not include it. The restroom doors and signage in the building do not contain tactile characters or braille.

PERD's review did not assess the entire building, nor is the review intended to certify the building as ADA compliant or non-compliant. PERD used professional judgment and the ADA checklist as a guide to determine that while some portions of the building may meet ADA requirements, the building entrance, ground floor hallway, the elevator, and the public restrooms may hinder physical access to the Board. The ADA checklist includes accessibility in priority areas of Approach and Entrance, Access to Goods and Services, and Access to Public Toilet Rooms. A space that is generally accessible will provide access to the elements of the checklist that are necessary to provide services. If the location does not meet the requirements of the ADA checklist, they may also offer reasonable accommodations to make services available.

ADA non-compliance may preclude boards from hiring disabled individuals otherwise qualified for employment.

West Virginia Code Does Not Currently Require ADA Compliance

As the findings of this issue show, access to the Board's office is restrictive for those with disabilities. Moreover, ADA non-compliance may preclude boards from hiring disabled individuals otherwise qualified for employment. However, this finding is not unique to the Board of Occupational Therapy. In conducting performance audits of state agencies each year, PERD routinely evaluates the buildings for ADA compliance. PERD has encountered several agencies over the years in which their buildings present access challenges for people with disabilities. In 2013, PERD evaluated the Department of Veterans Assistance and found field offices that had ADA compliance issues, such as narrow hallways and corridors that presented difficulties in accommodating disabled veterans in motorized wheelchairs. Fortunately, a 2016 update report found that the department rectified all ADA issues by relocating or renovating seven field offices. More recently, PERD's regulatory board reviews have found four regulatory boards are not ADA compliant. PERD recommended the following boards consider measures they need to make to improve handicap accessibility to offices and services: 1) the Board of Examiners in Counseling (2021), 2) the Board of Physical Therapy (2023), 3) the Board of Chiropractic (2023), and 4) the Board of Occupational Therapy (2023). **Therefore, the legislative auditor's recommends that all buildings, offices, or other spaces required by any department, agency, or institution of state government should be in full compliance with ADA standards on or before July 1, 2025.**

The legislative auditor's recommends that all buildings, offices, or other spaces required by any department, agency, or institution of state government should be in full compliance with ADA standards on or before July 1, 2025.

West Virginia Code §5A-1-11(c)(8) requires the Office of Equal Opportunity (OEO) to be **available to inspect** and advise the leasing section of the Division of Purchasing on purchases of physical properties

for compliance with the ADA. However, code does not require the OEO **to inspect** physical properties owned or leased by the State of West Virginia. **Therefore, the legislative auditor recommends that the Legislature consider amending W. Va. Code §5A-1-11(c)(8) to specify the OEO inspect physical properties, owned or leased by the State, and approve compliance with ADA standards.**

Furthermore, West Virginia Code §5A-10-2(a) regarding the Real Estate Division, states no state agency may lease any physical properties except in accordance with the provisions of §5A-10-2 and §5A-3-1 et seq. However, these code sections do not specify state agencies must comply with ADA requirements found in 42 U.S.C. §12101, et seq. **The legislative auditor recommends the Legislature consider amending W. Va. Code §5A-10-et seq. to require state agency properties comply with ADA requirements under 42 U.S.C. §12101, et seq.**

Similarly, West Virginia Code §5A-10-4 authorizes the Real Estate Division's executive director to lease physical properties required by any institution of state government and to delegate authority. However, code does not require the executive director consider ADA requirements and approval from the OEO for any lease approval. **The legislative auditor recommends the Legislature consider amending W. Va. Code §5A-10-et seq to require the Real Estate Division Executive Director receive approval by the OEO coordinator prior to entering any lease or renewal of a lease of physical properties.**

The legislative auditor recommends the Legislature consider amending W. Va. Code §5A-10-et seq to require the Real Estate Division Executive Director receive approval by the OEO coordinator prior to entering any lease or renewal of a lease of physical properties.

Conclusion

Overall, the Board is not generally accessible because of the deficiencies with parking, building entrance, toilet rooms, and the elevator. **Therefore, the Board of Occupational Therapy should consider the measures it needs to take to improve handicap accessibility to its office and services under the Americans with Disabilities Act, including the possibility of relocating its office.**

Recommendation

12. *The Board of Occupational Therapy should consider what measures it needs to take to improve handicap accessibility to its office and services under the Americans with Disabilities Act.*
13. *The Legislature should consider amending W. Va. Code §5A-1-11(c)(8) to specify the Office Equal Opportunity inspect physical properties, owned or leased by the state, and approve compliance with Americans with Disabilities Act standards.*

14. *The Legislature should consider amending W. Va. Code §5A-10-et seq. to require that state agency properties comply with the Americans with Disabilities Act under the provisions of 42 U.S.C. §12101, et seq.*

15. *The Legislature should consider amending W. Va. Code §5A-10-et seq to require the Real Estate Division executive director receive approval by the OEO coordinator prior to entering any lease or renewal of a lease of physical properties.*

ISSUE 6

The Board’s Website Needs Modest Improvement Overall to Enhance User-Friendliness and Transparency

Issue Summary

In order to actively engage with a state agency online, citizens must first be able to access and comprehend the information on government websites. Every website should include some elements, such as a search tool and contact information including the physical and email address, telephone number, and the names of administrative officials. Other elements such as social media links, and graphics may not be necessary or practical for some state agencies. Table 14 shows the Board integrates 54 percent of the checklist items in its website. This measure indicates that the Board needs to make modest improvements overall in the user-friendliness and transparency of its website.

The Board integrates 54 percent of the checklist items in its website. This measure indicates that the Board needs to make modest improvements overall in the user-friendliness and transparency of its website.

Table 14 Board of Occupational Therapy Website Evaluation Score			
Substantial Improvement Needed	More Improvement Needed	Modest Improvement Needed	Little or No Improvement Needed
0-25%	26-50%	51-75%	76-100%
		Board 54%	
<i>Source: PERD’s review of the Board of Occupational Therapy website as of May 25, 2023.</i>			

The Board’s Website Needs More Improvement in User-Friendliness and Scores Moderately High in Transparency

It has become common and expected that governments convey to the public what they are doing through website technology. Therefore, government websites should be designed to be user-friendly. A user-friendly website is understandable and easy to navigate from page to page. Government websites should also provide transparency of an agency’s operation to promote accountability and trust. Several organizations have developed assessment criteria to evaluate federal and state government websites for transparency and user-friendliness. The Office of the Legislative Auditor conducted a literature review on assessments of governmental websites and developed an assessment checklist to evaluate West Virginia’s state agency websites (Appendix C). The assessment checklist lists several website elements including a search

tool, public records, budget data, mission statement, an organizational chart, Freedom of Information request, agency history, and website update status. An agency can score a total of 50 points on the checklist, 18 in user-friendliness and 32 in transparency. As illustrated in Table 15, the Board’s website scored a total of 27 points. This total comprises 8 points, or 44 percent, for user-friendliness and 19 points, or 59 percent, of the possible points for transparency. This means the website needs only modest enhancements overall. **The Board should consider adding some elements to provide a more user-friendly experience for the public.**

An agency can score a total of 50 points on the checklist, 18 in user-friendliness and 32 in transparency. The Board’s website scored a total of 27 points.

Category	Possible Points	Agency Points	Percentage
User-Friendly	18	8	44%
Transparency	32	19	59%
Total	50	27	54%

Source: PERD’s review of the Board of Occupational Therapy website as of May 25, 2023.

The Board’s Website Is Navigable, But Additional User-Friendly Features Should Be Considered

The Board’s website is easy to navigate. The website home page displays pages relevant to licensees and the public. Furthermore, it has a search box on the home page, a frequently-asked-questions link, mobile access, and sections for feedback. However, there are other checklist items the Board should consider incorporating, such as: site functionality, a search box on every page, foreign language accessibility, and RSS feeds. Moreover, the site map was not working correctly during the audit. According to the Flesch-Kincaid Reading Test, the average readability of the website pages meets the recommended 7th grade level for readability.

The Board’s website is easy to navigate.

User-Friendly Considerations

Although some items may not be practical for this board, the following are attributes that could improve user-friendliness:

- **Search tool** – The website should include a search tool on every page.
- **Foreign Language Accessibility** – A link to translate all webpages into languages other than English.
- **Site Functionality** – The website should include buttons to adjust the font size and resizing the text should not distort site graphics or text.
- **Online survey/poll** – A short survey that pops up and requests users to evaluate the website.
- **Social Media Links** – The website should contain buttons that allow users to post an agency’s content to social media pages such as Facebook and Twitter.
- **RSS Feeds** – RSS stands for “Really Simple Syndication” and allows subscribers to receive regularly updated work (i.e., blog posts, news stories, audio/video, etc.) in a standardized format.

The Board’s website contains important transparency features including its email, physical address, telephone number, names and contact information for administrators, and public records such as statutes, rules, and meeting minutes.

The Website Has Several Transparency Features but Some Improvements Can Be Made

A website that is transparent should promote accountability and provide information for citizens about how well the Board is performing, as well as encouraging public participation. The Board’s website contains important transparency features including its email, physical address, telephone number, names and contact information for administrators, and public records such as statutes, rules, and meeting minutes. Moreover, the Board’s website displays the Board’s policy stances, privacy policy, and links to occupational therapy videos and associated organizations. However, the Board should consider implementing several checklist items listed below.

The Board should consider providing additional elements to the website to improve the board’s transparency.

Transparency Considerations

The Board should consider providing additional elements to the website to improve the board’s transparency. The following are attributes that could be beneficial:

- **Budget** – Budget data should be available at the checkbook level, ideally in a searchable database.
- **FOIA Information** – Information on how to submit a FOIA request, ideally with an online submission form.
- **Agency History** – The agency’s website should include a page

explaining how the agency was created, what it has done, and how, if applicable, has its mission changed over time.

- **Performance measures/outcomes** – A page linked to the homepage explaining the agencies performance measures and outcomes.
- **Website Updates** – The website should have a website update status on screen and ideally for every page.

The Board’s Website is Not Identifiable as a Government Website

Moreover, government websites should be easily identifiable. However, the Board’s website is “.org” and not “.gov” making it harder to identify as a government website. The United States General Services Administration’s DotGov Program (DotGov) makes the “.gov” domain available to US-based government organizations. DotGov works to recommend security best practices so that users have confidence in a secure site. **The Board should consider registering for a “.gov” domain.**

The Board’s website is “.org” and not “.gov” making it harder to identify as a government website. The United States General Services Administration’s DotGov Program (DotGov) makes the “.gov” domain available to US-based government organizations.

Conclusion

The legislative auditor finds that modest improvements are needed to the Board’s website overall. The website can benefit from incorporating several common features. The Board has pertinent public information on its website including its contact information, rules, state code, board members, upcoming meetings, and a complaint form. However, providing website users with additional elements and capabilities, as suggested in the report, would increase user-friendliness and transparency.

The legislative auditor finds that modest improvements are needed to the Board’s website overall.

Recommendations

16. *The Board should consider improving the user-friendliness and transparency of its website by incorporating more of the website elements identified.*
17. *The Board should consider registering for a “.gov” domain.*

Appendix A Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

1900 Kanawha Blvd. East
Building 1, Room W-314
Charleston, WV 25305-0610
(304) 347-4890



John Sylvia
Director

September 21, 2023

Vonda Malnikoff, Executive Secretary
Board of Occupational Therapy
1063 Maple Drive, Suite 4B
Morgantown, WV 26505

Dear Mrs. Malnikoff:

This is to transmit a draft copy of the regulatory board review of the Board of Occupational Therapy. This report is tentatively scheduled to be presented during the October 15-17, 2023, interim meeting of the Joint Committee on Government Organization. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to answer any questions committee members may have during or after the meeting.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us by Monday, September 25, 2023. In addition, we will need your written response by Thursday, October 5, 2023, 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 304-340-3192 by Thursday, October 12, 2023, to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. However, the Legislative Auditor advises that you inform any non-state government entity of the content of this report if that entity is unfavorably described, and request that it not disclose the content of the report to anyone unaffiliated with its organization. Thank you for your cooperation.

Sincerely,

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

John Sylvia

Appendix B

Objectives, Scope and Methodology

The Performance Evaluation and Research Division (PERD) within the Office of the Legislative Auditor conducted this Regulatory Board Review of the Board of Occupational Therapy (Board) as required and authorized by the West Virginia Performance Review Act, Chapter 4, Article 10, of the *West Virginia Code*, as amended. The purpose of the Board, as established in West Virginia Code §30-28-et al., is to protect the public through its license process, and to be the regulatory and disciplinary body for occupational therapists and occupational therapy assistants throughout the state.

Objectives

The objectives of this review are to determine if the Board should be continued, consolidated, or terminated, and if conditions warrant a change in the degree of regulations. In addition, this review is intended to assess the Board's compliance with the general provisions of Chapter 30, Article 1 of the *West Virginia Code*, the Board's enabling statute §30-28-et al., and other applicable rules and laws such as the Open Governmental Proceedings (WVC §6-9A) and purchasing requirements. The third objective resulted from whether the Board had the authority to offer free continuing education services to licensees. A fourth objective was to determine if the Board's fees generate excessive revenue when compared to the Board's normal expenses. The fifth objective was to assess the general accessibility of the Board's office with respect to the Americans with Disabilities Act. Finally, it is the objective of the legislative auditor to assess the Board's website for user-friendliness and transparency.

Scope

The evaluation included a review of the Board's internal controls, policy and procedures, meeting minutes, complaint files from fiscal years 2020 through 2022, complaint-resolution process, disciplinary procedures and actions, revenues and expenditures for the period of fiscal years 2020 through 2022, continuing education requirements and verification, the Board's compliance with the general statutory provisions (WVC §30-1) for regulatory boards and other applicable laws, and key features of the Board's website. The scope also included the accessibility of the Board's office as it relates to the American with Disabilities Act (ADA).

Methodology

PERD gathered and analyzed several sources of information and conducted audit procedures to assess the sufficiency and appropriateness of the information used as audit evidence. The information gathered and audit procedures are described below.

PERD staff visited the Board's office in Morgantown and met with its staff. Testimonial evidence gathered for this review through interviews with the Board's staff to gain a better understanding of the Board's internal controls, policies, and procedures. All testimonial evidence were confirmed by written statements and in some cases by corroborating evidence.

To determine if the Board complies with the general provisions of W.Va. Code §30-1, its enabling statute (W. Va. Code §30-28), the Board's rules, and other applicable laws, PERD collected and analyzed the Board's complaint files, meeting minutes, annual reports, budget information, procedures for investigating and resolving complaints, and continuing education verification procedures. PERD also obtained information

from the State Auditor's Office, Secretary of State's Office, the State Treasurer's Office, the Ethics Commission, and the Department of Administration's Purchasing Division. This information was assessed against statutory requirements in §30-1 and §6-9A of the West Virginia Code as well as the Board's enabling statute §30-28-et al. to determine the Board's compliance with such laws. Some information was also used as supporting evidence to determine the sufficiency and appropriateness of the overall evidence.

To assess potential harm to the public from the profession, PERD collected and analyzed data from the National Board for Certification in Occupational Therapy (NBCOT), the United States Department of Health & Human Services' Health Resources and Services Administration's National Practitioners Data Bank (NPDB), and other states to determine the need for the Board. From NBCOT's website, the team retrieved the requirements for certification and data on complaints and disciplinary actions. From the NPDB, the team retrieved data on adverse action reports and malpractice reports, reported by hospitals, licensing authorities, other health care entities, and insurance providers across the nation, pertaining to occupational therapy practitioners.

PERD compared the Board's actual revenues to expected revenues in order to assess the risk of fraud, and to obtain reasonable assurance that revenue figures were sufficient and appropriate. Expected revenues were approximated by applying license fees to the number of licensees for the period of fiscal years 2020 through 2022. The number of licensees and actual revenues were relatively consistent during the scope of the review. Therefore, our evaluation of expected and actual revenues allowed us to conclude that the risk of fraud on the revenue side was at a reasonable level and would not affect the audit objectives, and actual revenues were sufficient and appropriate.

PERD also tested the Board's expenditures for fiscal years 2020 through 2022 to assess the risk of fraud on the expenditure side. The test involved determining if required and expected expenditures were at least 90 percent of total expenditures. Required and expected expenditures include salaries and benefits, per diem payments, travel reimbursement, board-member compensation, insurance, office rent, and utilities. PERD determined that during the scope of the review, required and expected expenses were between 78 and 85 percent of total expenditures. These percentages did not give reasonable assurance that the risk of fraud was low. To provide reasonable assurance that fraud did not occur, PERD sought to identify the non-required and non-expected expenses that led to a ratio less than 90 percent. PERD identified the main expenses to be those related to the Board providing continuing education services for licenses. PERD then examined the purchasing processes behind the expenditures and asked for Board's rationale for providing the services. PERD determined that the expenditures were likely legitimate; however, the team questioned the authority of the Board to provide these services.

PERD then sought a legal opinion from the Legislative Services Division within the Office of the Legislative Auditor to determine if the Board has the authority to provide continuing education services free of cost to licensees. The legal opinion examined the Board's enabling statute, the General Provisions under W. Va. Code §30-1, and the Board's rules. The legal opinion concluded that the Board does not have explicit or implied legal authority to provide free continuing education.

PERD reviewed the Board's fee structure including all amendments to its fees occurring since the last PERD review. This included examining the reason(s) that initiated the need for the fee amendments. PERD assessed the end-of-year cash balances compared to expenditures at the time of the fee changes, and examined all fees to determine when they were increased, decreased, stayed the same, were added, or deleted and by how much. Specific fees were examined by calculating the changes in revenue generated over the scope of the review, identify the fees that were the major sources of revenue growth or decline and calculating if revenues have a trend that is flat, decreasing, or increasing including the average annual growth in revenues. PERD

then examined the trends in total expenditures and end-of-year cash balances to determine if each had a trend that was flat, decreasing, or increasing.

In order to evaluate state agency websites, the legislative auditor conducted a literature review of government website studies, reviewed top-ranked government websites, and reviewed the work of groups that rate government websites in order to establish a master list of essential website elements. The Brookings Institute's "2008 State and Federal E-Government in the United States" and the Rutgers University's 2008 "U.S. States E-Governance Survey (2008): An Assessment of State Websites" helped identify the top ranked states in regards to e-government. The legislative auditor identified three states (Indiana, Maine and Massachusetts) that were ranked in the top 10 in both studies and reviewed all 3 states' main portals for trends and common elements in transparency and open government. The legislative auditor also reviewed a 2010 report from the West Virginia Center on Budget and Policy that was useful in identifying a group of core elements from the master list that should be considered for state websites to increase their transparency and e-governance. It is understood that not every item listed in the master list is to be found in a department or agency website because some of the technology may not be practical or useful for some state agencies. Therefore, the legislative auditor compared the Board's website to the established criteria for user-friendliness and transparency so that the Board can determine if it is progressing in step with the e-government movement and if improvements to its website should be made.

To assess the Board's general compliance with the Americans with Disability Act (ADA), PERD utilized portions of the ADA checklist with respect to the Board's office located at 1063 Maple Drive, Suite 4B in Morgantown on March 28, 2023. The ADA assessment included interviews with Board staff about accessibility, and measurements and photographs of areas listed in the ADA checklist. These areas include the parking lot, the building entrance and hallways, elevator, office doorway, conference room, and bathrooms. PERD compared the measurements and photographs against the ADA checklist.

The Office of the Legislative Auditor reviews the statewide single audit and the Division of Highways financial audit annually with regards to any issues related to the State's financial system known as the West Virginia Our Advanced Solution with Integrated Systems (OASIS). The legislative auditor's staff requests and reviews on a quarterly basis any external or internal audit of OASIS. In addition, through its numerous audits, the Office of the Legislative Auditor continuously tests the OASIS financial information. Also, at the start of each audit, PERD asks audited agencies if they have encountered any issues of accuracy with OASIS data. Based on these actions, along with the audit tests conducted on audited agencies, it is our professional judgement that the information in OASIS is reasonably accurate for auditing purposes under the 2018 Government Auditing Standards (Yellowbook). However, in no manner should this statement be construed as a statement that 100 percent of the information in OASIS is accurate.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix C

Chapter 30 Healthcare Licensing Boards

Chapter 30 Healthcare Licensing Boards

1. Board of Medicine (article 3)
2. Board of Dental Examiners (article 4)
3. Board of Pharmacy (article 5)
4. Board of Funeral Service Examiners (article 6)
5. Board of Examiners for Registered Professional Nurses (article 7)
6. Board of Examiners for Licensed Practical Nurses (article 7A)
7. Board of Optometry (article 8)
8. Board of Veterinary Medicine (article 10)
9. Board of Osteopathic Medicine (article 14)
10. Board of Chiropractic (article 16)
11. Board of Physical Therapy (article 20)
12. Board of Examiners of Psychologists (article 21)
13. Medical Imaging and Radiation Therapy Technology Board of Examiners (article 23)
14. Board of Occupational Therapy (article 28)
15. Board of Social Work (article 30)
16. Board of Examiners in Counseling (article 31)
17. Board of Examiners in Speech-Language Pathology and Audiology (article 32)
18. Board of Respiratory Care (article 34)
19. Board of Dietitians (article 35)
20. Acupuncture Board (article 36)
21. Massage Therapy Licensure Board (article 37)

Appendix D

Website Criteria Checklist and Points System

Website Criteria Checklist and Points System			
User-Friendly	Description	Total Points Possible	Total Agency Points
Criteria	The ease of navigation from page to page along with the usefulness of the website.	18	8
		Individual Points Possible	Individual Agency Points
Search Tool	The website should contain a search box (1), preferably on every page (1).	2 points	1
Help Link	There should be a link that allows users to access a FAQ section (1) and agency contact information (1) on a single page. The link's text does not have to contain the word help, but it should contain language that clearly indicates that the user can find assistance by clicking the link (i.e. "How do I...", "Questions?" or "Need assistance?")	2 points	2
Foreign language accessibility	A link to translate all webpages into languages other than English.	1 point	0
Content Readability	The website should be written on a 6 th -7 th grade reading level. The Flesch-Kincaid Test is widely used by Federal and State agencies to measure readability.	No points, see narrative	6 of 7
Site Functionality	The website should use sans serif fonts (1), the website should include buttons to adjust the font size (1), and resizing of text should not distort site graphics or text (1).	3 points	0
Site Map	A list of pages contained in a website that can be accessed by web crawlers and users. The Site Map acts as an index of the entire website and a link to the department's entire site should be located on the bottom of every page.	1 point	0
Mobile Functionality	The agency's website is available in a mobile version (1) and/or the agency has created mobile applications (apps) (1).	2 points	1

Website Criteria Checklist and Points System			
Navigation	Every page should be linked to the agency's homepage (1) and should have a navigation bar at the top of every page (1).	2 points	2
FAQ Section	A page that lists the agency's most frequent asked questions and responses.	1 point	1
Feedback Options	A page where users can voluntarily submit feedback about the website or particular section of the website.	1 point	1
Online survey/poll	A short survey that pops up and requests users to evaluate the website.	1 point	0
Social Media Links	The website should contain buttons that allow users to post an agency's content to social media pages such as Facebook and Twitter.	1 point	0
RSS Feeds	RSS stands for "Really Simple Syndication" and allows subscribers to receive regularly updated work (i.e. blog posts, news stories, audio/video, etc.) in a standardized format.	1 point	0
Transparency	Description	Total Points Possible	Total Agency Points
Criteria	A website which promotes accountability and provides information for citizens about what the agency is doing. It encourages public participation while also utilizing tools and methods to collaborate across all levels of government.	32	19
		Individual Points Possible	Individual Agency Points
Email	General website contact.	1 point	1
Physical Address	General address of stage agency.	1 point	1
Telephone Number	Correct telephone number of state agency.	1 point	1
Location of Agency Headquarters	The agency's contact page should include an embedded map that shows the agency's location.	1 point	1
Administrative officials	Names (1) and contact information (1) of administrative officials.	2 points	1

Website Criteria Checklist and Points System			
Administrator(s) biography	A biography explaining the administrator(s) professional qualifications and experience.	1 point	1
Privacy policy	A clear explanation of the agency/state's online privacy policy.	1 point	1
Complaint form	A specific page that contains a form to file a complaint (1), preferably an online form (1).	2 points	2
Budget	Budget data is available (1) at the checkbook level (1), ideally in a searchable database (1).	3 points	1
FOIA information	Information on how to submit a FOIA request (1), ideally with an online submission form (1).	2 points	0
Calendar of events	Information on events, meetings, etc. (1) ideally imbedded using a calendar program (1).	2 points	1
Mission statement	The agency's mission statement should be located on the homepage.	1 point	1
Agency history	The agency's website should include a page explaining how the agency was created, what it has done, and how, if applicable, has its mission changed over time.	1 point	0
Public Records	The website should contain all applicable public records relating to the agency's function. If the website contains more than one of the following criteria the agency will receive two points: <ul style="list-style-type: none"> • Statutes • Rules and/or regulations • Contracts • Permits/licensees • Audits • Violations/disciplinary actions • Meeting Minutes • Grants 	2 points	2
e-Publications	Agency publications should be online (1) and downloadable (1).	2 points	2

Website Criteria Checklist and Points System			
Agency Organizational Chart	A narrative describing the agency organization (1), preferably in a pictorial representation such as a hierarchy/ organizational chart (1).	2 points	1
Graphic capabilities	Allows users to access relevant graphics such as maps, diagrams, etc.	1 point	1
Audio/video features	Allows users to access and download relevant audio and video content.	1 point	1
Performance measures/outcomes	A page linked to the homepage explaining the agencies performance measures and outcomes.	1 point	0
Website updates	The website should have a website update status on screen (1) and ideally for every page (1).	2 points	0
Job Postings/links to Personnel Division website	The agency should have a section on homepage for open job postings (1) and a link to the application page Personnel Division (1).	2 points	0

Appendix E Agency Response

WEST VIRGINIA BOARD OF OCCUPATIONAL THERAPY



1063 Maple Dr., Suite 4B
Morgantown, WV 26505
304-285-3150 (fax & phone)
www.wvbot.org

October 4, 2023

VIA EMAIL ONLY

John Sylvia, Director
WV Legislative Performance Evaluation and Research Division
John.sylvia@wvlegislature.gov

RE: West Virginia Board of Occupational Therapy
Response to 2023 PERD Report

Dear Mr. Sylvia,

Please accept this letter as the West Virginia Board of Occupational Therapy's response to the Performance Evaluation and Research Division's draft report of the regulatory board review conducted this year. The Board appreciates the opportunity to review and comment on PERD's report and audit findings.


As the state agency charged with protecting the health and safety of the public through the licensure and regulation of occupational therapists and occupational therapy assistants, the Board appreciates this process and PERD's efforts to identify areas where the Board is fulfilling its responsibilities and making recommendations for opportunities to improve our services.

The Board has reviewed the report and agree that the findings and recommendations are accurate and reasonable, and will consider how it can implement the recommendations. In some cases, actions have already been taken to make the recommended improvements, such as the transition to a wv.gov website. This process has been underway for the past several months, with the new website scheduled to go live in October.

Again, thank you for the opportunity to review and respond to the report. I will make every effort to be present at the October 2023 interim meeting to address any questions from the Legislature regarding the report.

Please contact me if I can be of any further assistance.

Sincerely,


Vonda Malnikoff
Executive Secretary
West Virginia Board of Occupational Therapy



WEST VIRGINIA OFFICE OF THE 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