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REGULATORY BOARD REVIEW

WEST VIRGINIA BOARD OF CHIROPRACTIC

AUDIT OVERVIEW

The West Virginia Board of Chiropractic Is Necessary to Protect the Safety of the Public

The Board of Chiropractic Needs to Improve Adherence to Its Complaint Procedure

The Board Does Not Maintain an Adequate End-of-Year Cash Balance, Shows Fluctuations in Revenue, Has Deficits in Internal Controls, and Needs to Improve Public Accountability

The Board of Chiropractic Needs to Improve Its Web Presence



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EXECUTIVE SUMMARY

The Legislative Auditor conducted a regulatory board review of the Board of Chiropractic authorized pursuant to West Virginia Code §4-10-10. The report contains the following issues:

Report Highlights

Issue 1: The West Virginia Board of Chiropractic Is Necessary to Protect the Safety of the Public.

- The public could be at risk if treated by an unqualified or incompetent individual without state licensure.
- Many citizens would not have chiropractic services covered by their health insurance provider without state licensure.

Issue 2: The Board of Chiropractic Needs to Improve Adherence to Its Complaint Procedure.

- The Board did not always comply with statute and inform licensees of complaints made against them, resulting in the Board being unable to discipline some licensees.
- The Board did not always provide statutorily-required status reports to complainants for complaints that went beyond six months.
- The Board did not always make decisions regarding complaints in Board meetings.
- In a few cases, the Board's oversight of chiropractor competency and professional conduct may be leaving the public at risk of harm.

Issue 3: The Board Does Not Maintain an Adequate End-of-Year Cash Balance, Shows Fluctuations in Revenue, Has Deficits in Internal Controls, and Needs to Improve Public Accountability.

- The Board is self sufficient although improvements could be made in the Board's financial solvency, the Board's end-of-year cash balance is 39 percent of the amount needed to cover a year's worth of expenditures
- The Board lacks internal controls related to revenue collection. The Board's single part-time employee handles all components of transactions related to finances.

- The Board has complied with some Chapter 30 requirements and partially complied with others.

Issue 4: The Board of Chiropractic Needs to Improve Its Web Presence.

- The Board's website needs increased transparency and user-friendliness to improve accountability and public accessibility.

Recommendations

1. *The Legislative Auditor determines there is a need for the Board of Chiropractic and recommends that the Legislature continue it.*
2. *The Board should make a preliminary decision as to whether probable cause exists in complaints as required by 30-16-11(e).*
3. *The Legislative Auditor recommends that the Board propose legislative rules that establish what serious consequences and formal actions may be taken with respect to a confidential letter of concern. It is advisable that the rules indicate that the Board clearly informs chiropractors that the Board could reopen a case dismissed with a letter of concern in the face of a change in circumstances.*
4. *The Legislative Auditor recommends that the Board amend its procedural rules to specify that chiropractors will be informed of complaints received against them within a specific number of days.*
5. *The Board should carefully monitor its financial condition and take steps to maintain cash reserves equivalent to or greater than its yearly expenditures.*
6. *The Board should comply with WVC §12-2-2 and deposit within 24 hours all moneys received or collected on behalf of the Board.*
7. *The Board should immediately begin utilizing the State Treasurer's lockbox bank service to establish internal financial controls.*
8. *The Legislative Auditor recommends that the Legislature consider amending state law to require a state agency to use the State Treasurer's lock box bank service if that agency does not have a sufficient number of employees to provide for segregation of duties with regard to revenue collections.*
9. *The Board should follow all provisions of WVC §6-9A in its conduct of Board business.*
10. *The Board should promulgate procedural rules that govern the notice of meetings rule as required by WVC §6-9A-3.*

11. *The Board should add all necessary information to its register including educational qualifications, the license number of each licensee and all license renewal dates as required by WVC §30-1-12 (a).*
12. *The Legislative Auditor recommends that the Board make substantial improvements to its website to increase user-friendliness and transparency.*
13. *The Board should make complaint forms, application for licensure, license renewal forms and continuing education forms downloadable.*
14. *The Legislative Auditor recommends that the Board update its website to include detailed information about each licensee.*

ISSUE 1

The West Virginia Board of Chiropractic Is Necessary to Protect the Safety of the Public.

The West Virginia Board of Chiropractic is charged with protecting the public health, safety and welfare from unprofessional, improper, incompetent or unlawful practice of chiropractic in accordance with WV Code §30-16. **The Legislative Auditor finds that the Board is necessary to protect the safety of patients and to ensure coverage by health providers.**

There Is Demonstrable Need for the Board

The West Virginia Board of Chiropractic requires the standard national examination for chiropractic licensure in West Virginia and regularly receives and investigates complaints against chiropractors. The two major national chiropractic associations are the Federation of Chiropractic Licensing Boards (FCLB) and the National Board of Chiropractic Examiners (NBCE). The FCLB serves to support state regulatory chiropractic boards. The NBCE develops, administers, scores and reports results for chiropractic exams. The necessary exam score varies among the states for licensure. Doctors of chiropractic seeking licensure in West Virginia must earn a score of 475. All 50 states license doctors of chiropractic.

The most common reason for seeking chiropractic care is back pain, and the most common treatment for this is spinal manipulation. As the spine is a sensitive and extremely vital part of the human body, regulatory mechanisms must be in place to protect the public from possible serious harm if administered by unqualified individuals. In addition, literature indicates spinal manipulation has been associated with a risk of stroke. **Without state licensure, the risk of treatment by an unqualified or incompetent individual is a threat to the public.**

Finally, medical insurance covers chiropractic services at the federal (Medicaid and Medicare) and state (Public Employees Insurance Agency) levels. However, in order for these services to be covered, the chiropractor must be licensed. The 2012 Blue Cross Blue Shield Service benefit plan for federal employees also lists chiropractors as “covered professionals when they perform services within the scope of their license or certification.” **Without state licensure, chiropractic patients would be denied chiropractic treatment by their insurance provider.**

As the spine is a sensitive and extremely vital part of the human body, regulatory mechanisms must be in place to protect the public from possible serious harm if administered by unqualified individuals.

... many citizens would not have chiropractic services covered by their health insurance provider if chiropractors are not licensed.

Conclusion

It is clear that the unregulated practice of chiropractors would place the public at risk of harm. In addition, many citizens would not have chiropractic services covered by their health insurance provider if chiropractors are not licensed. Therefore, the Legislative Auditor recommends that the Board of Chiropractic be continued.

Recommendation

- 1. The Legislative Auditor determines there is a need for the Board of Chiropractic and recommends that the Legislature continue it.*

Issue 2

The Board of Chiropractic Needs to Improve Adherence to Its Complaint Procedure.

Issue Summary

The Board of Chiropractic has a complaint procedure to provide due process for licensees, but the overall application of the complaint procedure has had instances of inadequacies. The Legislative Auditor noted incidents involving the following situations:

- The Board of Chiropractic did not report discipline actions against a chiropractor to a national database for nine months.
- The Board of Chiropractic did not investigate a report that a chiropractor could be chemically dependent.
- The Board of Chiropractic renewed a license and did not investigate a report about a chiropractor who is under federal indictment for health care fraud.
- The Board of Chiropractic did not document corrective action that it imposed on a licensee's practice.
- The Board of Chiropractic did not discipline a chiropractor whom it determined had violated the practice act.
- The Board of Chiropractic did not notify two chiropractors of complaints received against them, and failed to notify two other chiropractors of complaints received in a timely fashion.
- The Board of Chiropractic did not keep complainants informed of the status of complaints by providing status reports required by West Virginia Code §30-1-5 (c).

The Board Should Tighten Adherence to Its Complaint Procedures

The Legislative Auditor reviewed the 23 official complaints that the Board received from 2009 through 2011. The Board received six complaints in FY 2009 and in FY 2010, and 11 complaints in FY 2011. The complaints included a variety of concerns by the public. The

most frequent complaints were for misleading advertising, fee disputes, unethical conduct and not releasing medical records. There were also complaints about possible harm to the public by an incompetent licensee, an unsafe office, a licensee practicing under the influence of drugs, a licensee exceeding the scope of practice, a person practicing without a license, a licensee committing sexual battery, a licensee committing a federal Health Insurance Portability and Accountability Act violation and a licensee engaging in inappropriate touching. The Board considers all but one of these complaints closed. See Appendix C on page 41 to view a table which lists the official complaints received by the Board for the past three fiscal years. The Board's median length of time to close complaints in fiscal years 2009 through 2011 is listed in Table 1:

There were also complaints about possible harm to the public by an incompetent licensee, an unsafe office, a licensee practicing under the influence of drugs, a licensee exceeding the scope of practice . . .

Table 1
Complaint Resolution Statistics

Fiscal Year	Number of Complaints Received	Number of Complaints Closed Within 18 Months	Median Time to Resolution
2009	6	6	5 months
2010	6	6	6 months
2011	11	10*	2 months

**One complaint is still pending due to circuit court delay, and has not yet fallen outside of the 18- month timeframe.*
Source: Legislative Auditor's review of the Board of Chiropractic's complaint files.

The Board does not always follow its established rules for addressing complaints. The Legislative Auditor identified areas in which the Board did not follow its established procedures:

Licensees Unaware of Complaints

In two of the 23 official complaints, the Board never informed the licensed chiropractor of the complaint. This failure resulted in the Board being unable to discipline either licensee because the notification of the complaint was never made.

Twice the Board did not inform a licensed chiropractor of a complaint for extended periods of time.

The Board's rules do not specify the number of days it may take before informing a chiropractor of a complaint. Twice the Board did not inform a licensed chiropractor of a complaint for extended periods of time. One licensee was not informed about a complaint until 311 days (10 months) after a complaint was received. In the other instance, the Board did not inform the licensee until 241 days (8 months) after the Board received the complaint.

Licensees should always be informed when a complaint has been lodged against them. They deserve this information in a timely manner. The Legislative Auditor recommends that the Board amend its procedural rules to specify that the Board will inform a chiropractor of complaints against the chiropractor within a specific number of days.

Licensees should always be informed when a complaint has been lodged against them.

Complainants Not Informed

The Board did not provide required status reports to two complainants for complaints that went beyond six months. In addition, the Board has provided vague information to complainants, resulting in complainants asking the Board what was meant in communications from the Board regarding complaints. The Board closed all but one of the complaints within the required 18-month timeframe.

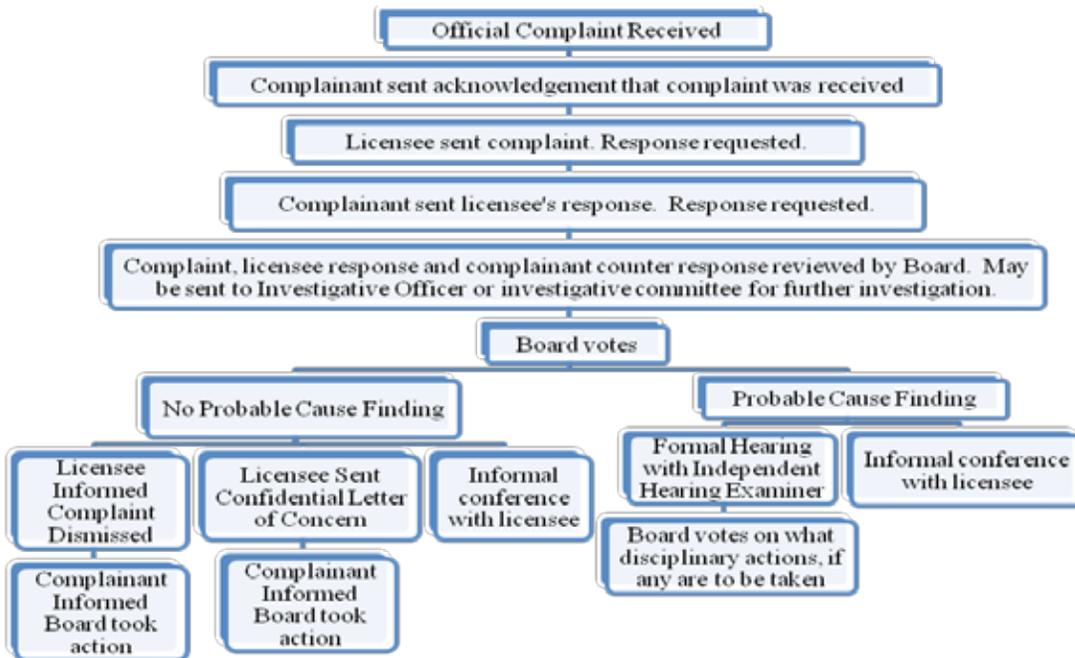
... the Board made decisions regarding nine complaints outside of Board meetings.

Disciplinary Decisions Outside of Board Meetings

In a final deviation from procedure, the Board made decisions regarding nine complaints outside of Board meetings. Because the Board did not follow state Code or established procedures, it was unable to discipline at least one licensee. This is discussed in Issue 3.

The Board's official complaint process as outlined is as follows.

Figure 1 Board of Chiropractic Complaint Process



The Board's Response In Some Complaints Is Concerning

In a few cases, the Board of Chiropractic's oversight of chiropractor competency and professional conduct may be leaving the public at risk of harm. However, it should be noted that according to the Board, it was advised by legal counsel to take the actions it took in some of these cases. Nevertheless, the Legislative Auditor is concerned with the public risk in these cases. In §30-1-1a, the Legislature explains that,

The fundamental purpose of licensure and registration is to protect the public, and any license, registration, certificate or other authorization to practice issued pursuant to this chapter is a revocable privilege.

Once a chiropractor is licensed, the Board must respond to complaints against chiropractors in a manner that protects public safety. If the Board receives information regarding incompetent or inappropriate practices of a chiropractor, the Board has authority to investigate and determine probable cause before taking any disciplinary action against a chiropractor. The Board also has the power to suspend a license if the

... the Board of Chiropractic's oversight of chiropractor competency and professional conduct may be leaving the public at risk of harm.

Board determines that the public is in immediate danger. According to §30-1-8 (e)(1):

A board is authorized to suspend or revoke a certificate, license, registration or authority prior to a hearing if the person's continuation in practice constitutes an immediate danger to the public

The Legislative Auditor identified that the Board's response in five situations has placed the public at risk, or has the potential to place the public at risk.

Previously Disciplined Chiropractor

In October 2011, the Board received a complaint against a licensee of sexual misconduct. This complaint was similar in nature to three complaints against the same chiropractor received by the Board approximately eight years earlier. The Board took disciplinary action against the licensee in 2003. When the Board received the new complaint, it considered the public to be in immediate danger and suspended the chiropractor's license in an emergency board meeting in November 2011. The next day the chiropractor responded to the Board's suspension by voluntarily surrendering his license, possibly to avoid a public hearing. The complainant was informed about the dismissal of the complaint 33 days after the complaint was made.

As of July 12, 2012, eight months after the dismissal of the complaint, the Board had not reported the emergency suspension or the surrender of the license to a national organization of chiropractors as required by §30-16-11(g). The Board told the Legislative Auditor that the Board meant to make the report when the actions took place but other work had taken priority. Subsequent to the Legislative Auditor's inquiry the Board reported the actions to the national organization. Until the Board reported the license suspension and surrender, the public could have been at risk if the chiropractor sought licensure in another state as there was no record to indicate there is a current problem. The Board reported its 2003 disciplinary action regarding this licensee to the national group. The Board needed to report the most recent disciplinary action and the surrender of license so other chiropractic licensing entities are aware of current events.

The Legislative Auditor identified that the Board's response in five situations has placed the public at risk, or has the potential to place the public at risk.

. . . eight months after the dismissal of the complaint, the Board had not reported the emergency suspension or the surrender of the license to a national organization of chiropractors as required by §30-16-11(g).

In the complaint just detailed the Board decided immediately that this chiropractor posed a threat to the public. However, in the following complaint (which is similar) the Board did not make a preliminary decision of whether probable cause exists to substantiate charges. The Board has taken no action on this complaint since informing the chiropractor of the complaint, leaving the public at risk.

The Board received a complaint against a licensee of sexual battery of a patient on April 15, 2011.

Convicted Chiropractor

The Board received a complaint against a licensee of sexual battery of a patient on April 15, 2011. A magistrate court convicted the chiropractor of sexually battering the patient on November 9, 2011. The chiropractor appealed the decision. The appeal is to be heard on July 30, 2012. The Board is waiting on a circuit court to rule before it makes a determination. It then intends to determine if probable cause exists to pursue a hearing on the complaint. In the interim period, the chiropractor remained licensed and eligible to practice until July 1, 2012. As of July 16, 2012 the Board had not received a request for licensure renewal from the chiropractor. It is possible that if the licensee does not renew the West Virginia license, the Board will close the complaint as the chiropractor is no longer under its jurisdiction. Should this chiropractor relocate and seek licensure in another state, the Board has taken no disciplinary action with regard to the license. Therefore no information will exist in the national database to alert other chiropractic boards of any problems or disciplinary actions.

In the interim period, the chiropractor remained licensed and eligible to practice until July 1, 2012.

In addition, the Board is supposed to send a status report to the individual making the complaint (§30-1-5(c)) within six months of the complaint being filed. There is no indication that the Board has sent any status report to the complainant in this matter in the nearly 15 months since the Board received the complaint. According to the complaint file, the complainant was dissatisfied with the Board's lack of action.

There is no indication that the Board has sent any status report to the complainant in this matter in the nearly 15 months since the Board received the complaint.

Sometimes the Board receives information of concern about a licensee that does not come in the form of an official complaint. The following three instances are examples of serious situations where the Board had knowledge that did not come as a complaint. All three situations are about either the questionable competency of a chiropractor and/or the potential of danger to the public from a chiropractor. In all three instances the evidence is sufficient for the Board to have officially documented the actions that it took in regard to the reports.

Chiropractor with Possible Substance Abuse Problem

In September 2011 the Board received a letter from another West Virginia health licensing board informing the Board that a licensed chiropractor had potential substance abuse problems. The other licensing board provided the chiropractor board with documentation of prescriptions that the licensee had filled. In CY 2010 the chiropractor received 31 prescriptions for hydrocodone/oxycodone issued from four different physicians and/or dentists. In each instance, the prescription was filled less than 30 days from the previously filled prescription. In November 2011, the Board met concerning this information. The Board's meeting minutes reflect that the Board directed the Board's executive secretary to contact the Drug Enforcement Agency (DEA). According to correspondence that the Board's executive secretary sent to board members about a telephone conversation with a DEA officer, the DEA officer did not state that the chiropractor was under investigation, but indicated the DEA was already aware of the information that had come to the Board. The DEA officer stated that he would notify the Board if it should be concerned. The Board asked for guidance from its Attorney General. Upon the advice of its Attorney General, the Board has taken no action. The Board has made no contact with the licensee.

The Board has not determined whether this chiropractor is impaired due to a possible substance abuse problem. According to §30-16-11 (d),

The board may require professional competency, physical, mental or chemical dependency examinations of any applicant or licensee including withdrawal and laboratory examination of bodily fluids.

Code (§30-16-12 (b) goes on to state that those who have received a license to practice chiropractic have consented to submit themselves to a chemical dependency evaluation. The Board should determine if chiropractors are unable to practice chiropractic with reasonable skill and safety. The habitual or excessive use of controlled substances has the potential to negatively affect a chiropractor's ability to practice. The Legislative Auditor is concerned that the public may be in danger from this chiropractor. The Board indicated to the Legislative Auditor that if it had required the chiropractor in this case to submit to a drug test it could possibly have interfered with the DEA. While the Legislative

In September 2011 the Board received a letter from another West Virginia health licensing board informing the Board that a licensed chiropractor had potential substance abuse problems.

Upon the advice of its Attorney General, the Board has taken no action.

The Legislative Auditor is concerned that the public may be in danger from this chiropractor.

Auditor understands the difficult position the Board is in, there is concern of allowing the chiropractor to practice without knowing whether or not the chiropractor has a chemical dependency problem.

Indicted Chiropractor

In August 2011 a grand jury indicted a chiropractor on 33 counts of health care fraud, 4 counts of tax evasion and 1 count of interfering with the Internal Revenue Service. The Board's November 2011 meeting minutes reflect the Board's knowledge of this indictment. The Board has not received a complaint against this chiropractor, has not initiated a complaint against the chiropractor and has not initiated its own investigation. As stated in the meeting minutes, the Board plans to take no action until after the federal investigation is complete. The trial date is October 16, 2012, which is 13 months following the grand jury indictment. Following the indictment, the license of this chiropractor was renewed for the 2012-2013 cycle. The chiropractor is allowed to practice during this time period with no restrictions.

In August 2011 a grand jury indicted a chiropractor on 33 counts of health care fraud, 4 counts of tax evasion and 1 count of interfering with the Internal Revenue Service.

Statute permits the Board to assess whether a licensee is of good moral character and requires that licensed chiropractors be of good moral character. A federal indictment for fraud suggests to the Legislative Auditor some question regarding the character of the chiropractor. The Board's minutes do not indicate that the Board made any contact with the chiropractor regarding the indictment including sending a letter of concern or requesting the chiropractor to provide a copy of the indictment.

The Board's actions indicate that it did not think the chiropractor was competently practicing and that the chiropractor's conduct could lead to serious consequences.

Concern of a Chiropractor's X-Ray Competency

Early in 2009, the Board was concerned with a chiropractor's advertisement that referenced patient testimonials. Subsequently, the Board requested that the chiropractor send the patient files to the Board. The Board became concerned with the diagnostic quality of patient x-rays in these files. The Board suggested that the chiropractor obtain additional continuing education in how to take x-rays. The chiropractor also requested that imaging consultants inspect and review x-rays. The Board met informally with the chiropractor in calendar year 2009 to review x-rays.

The Board's actions indicate that it did not think the chiropractor was competently practicing and that the chiropractor's conduct could lead to serious consequences. Therefore, the Board's actions were corrective

by nature and should have been treated as such, which would require the official actions to be a part of public record (WVC §6-9A). **The Board meeting minutes make no mention of the Board receiving information about this situation or the official actions it took.** If there are future reports concerning this chiropractor's practice there is no record for the public to consult.

The previous three situations involving chiropractors all have merit. The Board's responses suggest that the Board did not want to officially initiate a complaint and investigation against these licensees. The Board needs to be on record in its meeting minutes, complaint files and with other forms of documentation about actions it takes with regard to licensees.

The Board's responses suggest that the Board did not want to officially initiate a complaint and investigation against these licensees.

The Board Can Issue a Letter of Concern

One way to document the Board's response to reports of serious problems with licensees is through issuing a confidential letter of concern to the chiropractor. As stated in §30-16-11(c),

The board may issue a confidential letter of concern to a licensee when, though evidence does not warrant formal proceedings, the board has noted indications of possible misconduct of a licensee that could lead to serious consequences and formal action. In the letter of concern, the board is also authorized at its discretion to request clarifying information from the licensee.

One way to document the Board's response to reports of serious problems with licensees is through issuing a confidential letter of concern to the chiropractor.

The Board sends a confidential letter of concern when it notes indications of possible misconduct by a chiropractor that could lead to serious consequences, but the evidence does not warrant formal proceedings. In a letter of concern, the Board may request clarifying information from the chiropractor. The Board should inform chiropractors that the Board could reopen a case dismissed with a letter of concern if there is a change in circumstances. The Legislative Auditor recommends that the Board revise its rules to include how in future circumstances a confidential letter of concern may be considered.

Conclusion

The Board of Chiropractic's actions have some inconsistencies with its complaint procedures. The Board is not being accountable to either the public making complaints, or the chiropractors who have complaints lodged against them, when timely information regarding the status of complaints is not issued. This has resulted in the Board's inability to discipline two chiropractors within the last three years. Further, the Board has not made timely decisions, and has not documented the actions that it has taken. The Board is not documenting information about licensees through complaint investigations, confidential letters of concern or timely notifications to its national databank. As a result the public could be at risk.

The Board is not documenting information about licensees through complaint investigations, confidential letters of concern or timely notifications to its national databank.

Recommendations

2. *The Board should make a preliminary decision as to whether probable cause exists in complaints as required by 30-16-11(e).*
3. *The Legislative Auditor recommends that the Board propose legislative rules that establish what serious consequences and formal actions may be taken with respect to a confidential letter of concern. It is advisable that the rules indicate that the Board clearly informs chiropractors that the Board could reopen a case dismissed with a letter of concern in the face of a change in circumstances.*
4. *The Legislative Auditor recommends that the Board amend its procedural rules to specify that chiropractors will be informed of complaints received against them within a specific number of days.*

Issue 3

The Board Does Not Maintain an Adequate End-of-Year Cash Balance, Shows Fluctuations in Revenue, Has Deficits in Internal Controls, and Needs to Improve Public Accountability.

Issue Summary

The Legislative Auditor found the following in the overall functioning of the Board:

- The Board has complied with some Chapter 30 requirements and partially complied with others.
- The Board's end-of-year cash balance is 39 percent of the amount needed to cover a year's worth of expenditures.
- The Board's revenue fluctuates significantly year-to-year.
- The Board lacks internal controls related to revenue collection.
- The Board appears to have made decisions outside of meetings.
- The Board requires initial licensure applicants to personally obtain a background check from the Federal Bureau of Investigations (FBI).

Chapter 30 Compliance

The Board has complied with some of the requirements set forth in Chapter 30 of the *West Virginia Code*. The Board complies with the following general provisions of Chapter 30:

- The Board has adopted an official seal (§30-1-4).
- The Board has met at least once annually (§30-1-5(a)).
- The Board has established continuing education requirements as prerequisite to license renewal (§30-1-7a).
- Procedural rules have been promulgated specifying the investigation and resolution procedure of all complaints (§30-1-8(k)).

- The Board has prepared and maintained a roster of all chiropractors that includes name and office address (§30-1-13).
- A Board employee has attended the orientation session conducted by the State Auditor as required (§30-1-2a (b)).

The Board has partially complied with the following general provisions of Chapter 30:

- The Board's register of all applicants does not have all the information specified in Code including educational qualifications, chiropractor numbers, and all license renewal dates (§30-1-12(a)).
- The Board's address is not published in the Charleston area telephone directory (§30-1-12(c)).

The Board has maintained a low end-of-year cash balance since 2007.

The Board's Financial Situation Is Weakening

The Board has maintained a low end-of-year cash balance since 2007. Regulatory boards should strive to maintain end-of-year cash reserves equivalent to at least one year of expenditures. Over the past six years, the Board's expenditures averaged \$87,674. The Board's cash reserves dropped from 54 percent of a year's expenses in FY 2007 to about 39 percent of a year's expenses in FY 2012. Unexpected expenditures could deplete the Board's cash reserves. Table 2 shows the fiscal year, beginning cash balance, revenues, expenses, and end-of-year cash balance.

Table 2
Board's Financial Data
FY 2007-2012

FY	Beginning Cash Balance	Revenues	Expenses	End-of-Year Cash Balance
2007	\$46,375	\$89,716	\$88,594	\$47,497
2008	\$47,497	\$87,378	\$82,154	\$52,721
2009	\$52,721	\$93,370	\$86,281	\$59,809
2010	\$59,809	\$68,643	\$82,246	\$46,205
2011	\$46,205	\$78,066	\$91,057	\$33,215
2012	\$33,215	\$99,924	\$95,712	\$37,427

Sources: Legislative Auditors Office, Digest of Revenue Sources in West Virginia, WV FIMS.

The Board receives most of its revenue from fees paid by licensees for initial applications, license renewals, continuing education and fees for corporations. The Board's primary revenue source comes from its annual licensure renewal. As of FY 2012, the Board reported 341 licensed chiropractors. Based on an average number of chiropractors per year, the Board's license renewal revenue should be about \$58,580 each year. However, renewal revenue reported by the Board has fluctuated above and below this amount in the last five fiscal years. Table 3 compares the reported license renewal revenue to the amount of revenue expected to be collected based on the number of chiropractors.

... renewal revenue reported by the Board has fluctuated ... in the last five fiscal years.

Table 3
Board's Annual License Renewal Collections
FY 2008-2012

FY	In-State Chiropractors (\$200)	Out-of State Chiropractors (\$100)	Projected Revenue	Board Recorded Renewal Revenue	Revenue Difference
2008	253	73	\$57,900	\$52,100	(\$5,800)
2009	251	80	\$58,200	\$65,100	\$6,900
2010	252	80	\$58,400	\$45,000	(\$13,400)
2011	256	74	\$58,600	\$55,900	(\$2,700)
2012	257	84	\$59,800	\$72,000	\$12,200
Overall			\$292,900	\$290,100	(\$2,800)

Source: Board's Annual Reports and board recorded data.

The Legislative Auditor did not review individual license renewal amounts posted by the Board because the Board does not keep historical renewal information in a database. Previous year renewals exist only as copies of checks which may or may not indicate the purpose of the payment.

The fluctuating license renewal revenues can be attributed to:

1. renewal revenue recorded by the Board that was coming from another fee source, or
2. renewal revenue recorded by the Board in one fiscal year that was deposited into a different fiscal year's revenues.

Board renewals must be postmarked by July 1st which coincides with the beginning of the state's fiscal year. This means the Board will receive, and deposit, license renewals for the same renewal cycle in different fiscal years. Table 3 suggests that the large license renewal revenue amounts in FY 2009 and FY 2012 are partially attributable to when revenue is received and when the revenue is posted.

To Improve Its Financial Situation the Board Needs To Collect All Authorized Fees, Cut Expenses and Consider Raising License Renewal Fees

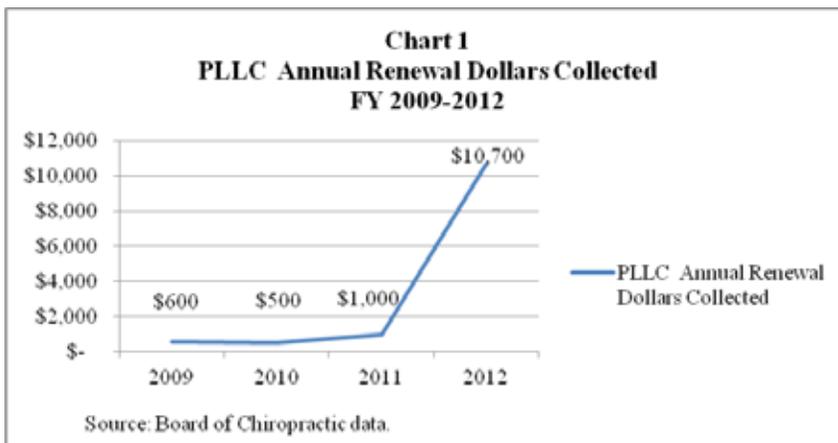
The Legislative Auditor notes that the expenditures of the Board are rising and the end-of-year cash reserves are falling. The Legislative Auditor suggests three options that would increase revenue. Should the Board exercise these options it may still find itself falling short of maintaining an end-of-year balance that is equal to one year's amount of expenditures. Options are:

- collect all authorized fees,
- reduce expenses, and
- raise renewal fees.

The Legislative Auditor notes that the expenditures of the Board are rising and the end-of-year cash reserves are falling.

Collect All Authorized Fees

Until February 2012, the Board did not enforce the collection of the chiropractic corporations and professional limited liability company renewal fee. The initial filing fee and annual renewal fee for corporations and companies is \$100. By not enforcing this collection, the Board has lost thousands of dollars of revenue.



This is just one fee that the Board did not collect until February 2012. There may be other authorized fees that the Board is not collecting.

Reduce Expenses

Fifty-three percent of the Board's expenses in FY 2012 were for payroll. Travel and board member per diems composed another 24 percent of the expenses. (See Appendix D for expenses.) Most of the travel and member per diems are a result of Board members attending national meetings of a chiropractic organization. Given the Board's financial position, it should decide whether the benefit to the state justifies the expense of sending multiple board members to this organization's out-of-state meetings.

Raise License Renewal Fees

A license renewal fee increase is another option to increase revenue. The Board has not changed its fees since at least 1999. West Virginia Code §30-1-6(c) states that the Board may set fees that,

. . . shall be sufficient to enable the board to carry out effectively their responsibilities of licensure or registration and discipline of individuals subject to their authority.

A license renewal fee increase is another option to increase revenue.

The Legislative Auditor calculated that a raise of \$100 for in-state renewal fees would increase revenues by \$25,700. If the Board increases renewal fees, maintains a carry-over of \$37,427, continues to collect professional licensing fees of \$10,700, and reduces travel expenses to \$9,000, this combination of actions would bring the Board into an end-of-the year reserve position that is close to healthy at 94 percent of the average yearly expenditure. **The Legislative Auditor recommends that the Board conduct a review of its financial situation and take necessary steps toward ensuring that the Board remains financially self-sufficient.**

Board's Current Fees Are Comparable to Other Chiropractic Licensing Boards With Similar Numbers of Licensees

The Legislative Auditor found that the Board's licensing fees are comparable to other chiropractic licensing boards with a similar number of licensees, although most of these chiropractic licensing boards do not operate as stand-alone boards. These boards operate under the umbrella of other agencies that share operating costs. In some states, legislative appropriations augment the fee revenues. See Appendix E on page 45 for a table of fees.

One of these boards is in a worse financial situation than West Virginia. It is the Mississippi Board of Chiropractic Examiners. Like West Virginia, Mississippi is a stand-alone board, shares no operating costs and operates only on fees it collects. Mississippi has a comparable number of chiropractors but its annual renewal fee is half the amount of the West Virginia fee. Mississippi's end-of-year cash balance is much lower than West Virginia's. See Appendix F on page 47.

The Legislative Auditor compared the Board's fees to those of West Virginia's neighboring states. All of West Virginia's neighboring states have more chiropractors, in some cases a significantly higher number of chiropractors. With the exception of Pennsylvania, neighboring states charge a higher initial licensing fee. Kentucky, Maryland and Ohio charge a higher renewal fee. See Appendix G on page 49.

The Board's procedure for financial management lacks controls with respect to segregation of duties.

Financial Internal Controls Need to Be Established

The Board's procedure for financial management lacks controls with respect to segregation of duties. Segregating duties is necessary to establish internal controls, but is not possible when a board has only one employee. The Board's single part-time employee handles all components of transactions related to finances. The board employee receives all revenue, images and deposits all checks, and informs the West Virginia Office of the State Treasurer (State Treasurer) of the deposit amounts and the source of the revenue. The State Treasurer enters the board data into West Virginia's Financial Information Management System (WVFIMS). The same Board employee reconciles the bank statements of the deposits received and recorded. Code §12-2-2(a) requires that agencies deposit revenue within 24 hours. This Board does not deposit all revenue within 24 hours. Compliance with the 24-hour deposit requirement is difficult for larger boards, and not possible for a board with one part-time employee who will take time off for the usual reasons such as sickness or vacation.

The Board's single part-time employee handles all components of transactions related to finances.

This Board does not deposit all revenue within 24 hours.

The Legislative Auditor recommends that the Board immediately begin utilizing the State Treasurer's lockbox. Use of the lockbox would establish the segregation of financial duties, and allow all deposits to be made within the statutory time frame. The State Treasurer offers lockbox banking to state agencies for a nominal cost. This change would require that the Board's licensees mail fees directly to a post office box accessible only by the State Treasurer. (See Appendix H for a description of the lockbox service.)

The Board Should Comply With the Open Governmental Proceedings Act

The Open Governmental Proceedings Act (Code §6-9A) requires that decisions that become official actions be made in public meetings. In a departure from compliance with this law, **the Board made decisions regarding complaints and took disciplinary action outside of Board meetings.** The meeting minutes do not reflect the decisions made on any of the six official complaints received in 2009, or on decisions made on three complaints in 2010. The Legislative Auditor found that four of the six 2009 complaints had probable cause decisions reached *outside* of Board meetings. Individual facsimiles from Board members to the Board staff member indicated that Board members agreed that probable cause existed in each complaint. In the Board's enabling statute, the Board must make a preliminary determination about whether probable cause exists in order to take disciplinary action. In three of the 2009 complaints, a letter of concern was sent; in the fourth, a letter of reprimand was drafted but never sent.

In making disciplinary decisions outside of Board meetings, the Board has violated the concept of public accountability. It also appears from the Board's complaint files that the Board did not issue a reprimand to one licensee because the decision was not made in an open meeting. Thus, the Board's actions hampered its ability to function as a regulatory board.

A second area of non-compliance is the lack of a procedural rule regarding meeting notices. While the Board is in compliance with submitting notices for all scheduled board meetings to the West Virginia Secretary of State's Office five days prior to meetings as required by Code, the Board has not adopted a procedural rule regarding the notice of meetings as mandated by §6-9A-3:

Each governing body shall promulgate rules by which the date, time, place and agenda of all regularly scheduled meetings and the date, time, place and purpose of all special meetings are made available, in advance, to the public and news media, except in the event of an emergency requiring immediate official action.

The Board should comply with all provisions of Code §6-9A, in conduct of Board business and through the adoption of a meeting notice procedural rule.

The Legislative Auditor found that four of the six 2009 complaints had probable cause decisions reached outside of Board meetings.

In making disciplinary decisions outside of Board meetings, the Board has violated the concept of public accountability.

The Board Has Established Continuing Education Requirements

The Board has established continuing education requirements for chiropractors. The number of continuing education hours required for annual renewal is comparable to most of West Virginia's neighboring states.¹ Chiropractors must earn 18 classroom hours of continuing education annually in order to qualify for license renewal. The Board may mandate that six of these hours be in a specific subject matter such as record keeping. The meeting minutes generally reflect the topic(s) to be covered in mandated hours for the renewal cycle and how the Board will inform chiropractors of that mandated topic. Table 4 displays the continuing education requirements for West Virginia and neighboring states.

The number of continuing education hours required for annual renewal is comparable to most of West Virginia's neighboring states.

State	CE Hours	Renewal Period
National Average	19	Annual
Kentucky	12	Annual
Maryland	48 (24)	Biennial
Ohio	36 (18)	Biennial
Pennsylvania	24 (12)	Biennial
Virginia	60 (30)	Biennial
West Virginia	18	Annual

Source: States board websites and the Federation of Chiropractic Licensing Boards' website.

The number of annual continuing education hours of all states ranges from 10 to 50, but the national annual average is 19 hours. The Board's mandatory 18 hours of continuing education is comparable to the national average.

The Board Requires Licensure Applicants to Submit a Sealed, FBI Criminal History Background Check

The Board requires initial licensure applicants to submit a personal sealed FBI criminal history background check (background check) to the Board. The Legislative Auditor requested a legal opinion from the division of Legislative Services because neither Code nor state rules authorize the background check. The legal opinion noted that:

The Board requires initial licensure applicants to submit a personal sealed FBI criminal history background check to the Board.

¹ *The number of hours required by the states of Maryland and Virginia exceeds both the national average and the number of hours required by West Virginia.*

W.Va. Code §30-16-5(a)(3)(A) provides that the WV Chiropractic Board may propose rules that “delineate qualifications for licensure.” However, in addition, W. Va. Code §30-16-6(a) provides certain requirements for licensure, including: “(6) A list of all sanctions, judgments, awards, settlements or convictions against the applicant in any jurisdiction, United States or foreign”

The legal opinion further stated that:

Although the West Virginia Code and legislative rules do not specifically require applicants for licensure by the Chiropractic Board to obtain and submit an FBI background check to the board, the code clearly requires applicants to provide a list of “sanctions, judgments, awards, settlements or convictions,” all of which would be contained in FBI background check, and thus ... could reasonably be required by the board to fulfill this statutory requirement.

The legal opinion concluded:

... there are no federal or state statutory prohibitions against the board requiring an applicant to supply an FBI background check to the Board in order to fulfill the requirements for licensure.

Thus, through asking applicants for licensure to personally obtain and submit the results of an FBI background check, the Board is satisfying the requirements in §30-16-6(a) (6). The Legislative Auditor has recommended in other regulatory board reviews that boards request legal authority to conduct federal criminal background checks during the licensure application and renewal process. Conducting a criminal background check enables boards to know if individuals with a criminal history are applying for licensure and/or licensure renewal.

Thus, through asking applicants for licensure to personally obtain and submit the results of an FBI background check, the Board is satisfying the requirements in §30-16-6(a) (6).

Conducting a criminal background check enables boards to know if individuals with a criminal history are applying for licensure and/or licensure renewal.

Conclusion

The West Virginia Board of Chiropractic can improve its compliance with the general provisions of Chapter 30 and the Open Governmental Proceedings Act. The Board needs to improve its end-of-year cash reserves through an analysis of its expenditures, fee collection and assessment of its revenue from renewal fees. The Board needs to initiate internal controls relating to cash management. Finally, the Board needs to record its decisions in meeting minutes so that its decisions are transparent to the public.

Recommendations

5. *The Board should carefully monitor its financial condition and take steps to maintain cash reserves equivalent to or greater than its yearly expenditures.*
6. *The Board should comply with WVC §12-2-2 and deposit within 24 hours all moneys received or collected on behalf of the Board.*
7. *The Board should immediately begin utilizing the State Treasurer's lockbox bank service to establish internal financial controls.*
8. *The Legislative Auditor recommends that the Legislature consider amending state law to require a state agency to use the State Treasurer's lock box bank service if that agency does not have a sufficient number of employees to provide for segregation of duties with regard to revenue collections.*
9. *The Board should follow all provisions of WVC §6-9A in its conduct of Board business.*
10. *The Board should promulgate procedural rules that govern the notice of meetings rule as required by WVC §6-9A-3.*
11. *The Board should add all necessary information to its register including educational qualifications, the license number of each licensee and all license renewal dates as required by WVC §30-1-12 (a).*

Issue 4

The Board of Chiropractic Needs to Improve Its Web Presence

Issue Summary

The Legislative Auditor’s Office conducted a literature review on assessments of governmental websites and developed an assessment tool to evaluate West Virginia’s state agency websites (see Appendix I). The assessment tool lists several website elements. Some elements should be included in every website, while other elements such as social media links, graphics and audio/video features may not be necessary or practical for state agencies. Table 5 indicates that the Board of Chiropractors integrates 22 percent of the checklist items in its website. This measure shows that the Board needs to make substantial improvement in the user-friendliness and transparency of its website.

... the Board needs to make substantial improvement in the user-friendliness and transparency of its website.

Substantial Improvement Needed	More Improvement Needed	Modest Improvement Needed	Little or No Improvement Needed
0-25%	26-50%	51-75%	76-100%
BOC 22%			

Source: The Legislative Auditor’s review of the Board of Chiropractic’s website.

The Board’s Website Scores Low in User-Friendliness and Transparency

In order for citizens to engage with a board online they should be able to gain access to the website and to comprehend the information posted there. A user-friendly website employs up-to-date software applications; is readable, well-organized and intuitive; provides a thorough description of the organization’s role; displays contact information prominently and allows citizens to understand the organization of the board. Governmental websites should also include budget information and income sources to maintain transparency and the trust of citizens. The Legislative Auditor reviewed the Board’s website for both user-friendliness and transparency. As illustrated below in Table 6, the website is neither user-friendly nor transparent. **The Board should consider making major website improvements to provide a better online experience for the public and for its chiropractors.**

Table 6
West Virginia BOC Website Evaluation Score

Type	Possible Points	Agency Points	Percentage
User-Friendly	18	3	17
Transparent	32	8	25
Total	50	11	22

Sources: Legislative Auditor's review of information provided on the Board of Chiropractic's website and the Legislative Auditor's Standard Website Assessment Form.

The Board of Chiropractic's Website Is Not User-Friendly

Navigation of the Board's website is difficult. The Board's website is currently running with an out-of-date software connection. In some browsers with high security settings, it may be impossible for site visitors to interpret the menu options if they cannot make the software connect to their browser. Given this problem, the content of the website may not be accessible to all site visitors.

Picture icons allow for navigation between the pages of the website, but without visible text, many readers may have to guess what content to expect based on the small picture. However, the Board's website does include three aspects that make up a user-friendly website. These include agency contact information, navigation back to the homepage from all pages, and an easy-to-read font.

The reading level of the text on the website meets the criteria for user-friendliness. According to a Brookings' Institute report government websites should be written at the 8th grade reading level because that facilitates readability. The Board's homepage reads at an approximate 5th grade reading level, making it understandable for the average citizen.

User-Friendly Considerations

The following are some key attributes that comprise a user-friendly website the Board should consider in improving the user-friendliness of its website:

- **Search Tool** - A search box to allow users to search for the specific information they seek.

Picture icons allow for navigation between the pages of the website, but without visible text, many readers may have to guess what content to expect based on the small picture.

The Board's homepage reads at an approximate 5th grade reading level, making it understandable for the average citizen.

- **Help Link** – A link that allows users to access a FAQ section and agency contact information on a single page. The link’s text 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?”)
- **Site Functionality** – The website should include buttons to adjust the font size, and resizing of text should not distort site graphics or text.
- **FAQ Section** – A page that lists the agency’s most frequently asked questions and responses.
- **Feedback Options**- A page where users can voluntarily submit feedback about the website or particular section of the website.

... the application for licensure, license renewal forms and continuing education forms cannot be downloaded.

The Board of Chiropractic’s Website Lacks Transparency

A transparent website will have elements such as email contact information, the location of the Board, the Board’s telephone number, public records, the Board’s budget, and performance measures. A transparent website will also allow for citizen engagement so that government can make policies based on the information shared. Appendix I shows that the Board’s website has elements that are necessary for a general understanding of the Board, including items such as email contact information, the location and telephone number of the Board and a complaint form enabling citizens to communicate with the Board. However, the application for licensure, license renewal forms and continuing education forms cannot be downloaded. The Legislative Auditor recommends that the Board update its website so that it is possible for chiropractors and the public to view and download these forms.

Several other elements are also necessary to provide a transparent website. The following are a few attributes that could be beneficial to the Board in increasing its transparency:

- **Public Records**- The agency’s website should contain applicable public records such as statutes, Rules and/ or Regulations, contracts, audits, grants, and meeting minutes.

- **Calendar of Events**- The Board's website should contain information on events, meetings, etc. ideally imbedded using a calendar program.
- **Organizational Chart**- The agency's website should contain a narrative describing the agency organization, preferably in a pictorial representation such as a hierarchy/ organizational chart.
- **Complaint Form**- A specific page that contains a form to file a complaint, preferably online.
- **Budget**- Budget data should be available at the checkbook level, ideally in a searchable database.
- **FOIA Information**- Information on how to submit at FOIA request, ideally with an online submission form.

The Board can also improve public transparency by providing detailed information for each chiropractor.

The Board can also improve public transparency by providing detailed information for each chiropractor. Currently, the Board's website provides only the number of chiropractors in each county of the state. The Board should emulate the Board of Medicine and include (at a minimum) such information as the chiropractor's name, work address, education, disciplinary actions taken by the Board against the chiropractor, pending and resolved malpractice cases and licensure dates. Search features by chiropractor name, license number and work location would make obtaining information about chiropractors easy for the public. Based on the results of this website evaluation, **the Legislative Auditor recommends that Board make improvements to its website to increase user-friendliness and transparency.**

Conclusion

The Board's website lacks most of the features that promote user-friendliness and transparency. Website users cannot find a general search tool, a FAQ section or a sitemap. There are no links to relevant public records. Users of the Board of Chiropractic website will not find budget information, information on how to submit a FOIA, or information on licensees. Providing website users with this information would greatly improve transparency. In order to increase transparency and public

accountability, the Board of Chiropractic should provide the following on its website: downloadable forms (complaint, initial and renewal application forms, and continuing education submission forms); Board meeting dates and locations; and other public records such as disciplinary actions taken and complaint resolution information on its website.

Recommendations

12. *The Legislative Auditor recommends that the Board make substantial improvements to its website to increase user-friendliness and transparency.*
13. *The Board should make complaint forms, application for licensure, license renewal forms and continuing education forms downloadable.*
14. *The Legislative Auditor recommends that the Board update its website to include detailed information about each licensee.*

Appendix A: Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

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



John Sylvia
Director

August 21, 2012

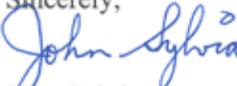
Peggy Kiser-Crouch, Chairman
Board of Chiropractic
415 ½ D Street, Suite #6
South Charleston, WV 25303

Dear Chairman Kiser-Crouch:

This is to transmit a draft copy of the Regulatory Board Review of the Board of Chiropractic. This report is scheduled to be presented during the September 10-12, 2012 interim meeting of the Joint Committee on Government Organization, and the Joint Committee on Government Operations. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any committee questions.

Please contact me by Friday, August 24, 2012 to schedule an exit conference to discuss any concerns you may have with the report. We need your written response by noon on Thursday, August 30, 2012 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 Wednesday, September 5, 2012 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

John Sylvia

C: Barbara Johnson, Executive Secretary

Joint Committee on Government and Finance

Appendix B: Objective, 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 Chiropractic 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 of Chiropractic, as established in West Virginia Code §30-16, is to protect the public interest through its license process and to be the regulatory and disciplinary body for doctors of chiropractic throughout the state.

Objective

The purpose of this review is 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, and other applicable rules and laws such as the Open Governmental Proceedings (WVC §6-9A), and purchasing requirements. Finally, it was the objective of the Legislative Auditor to assess the Board's website for user-friendliness and transparency.

Scope

PERD evaluated the need for the Board by determining if there would be adverse effects to the public if regulations of the chiropractic profession were discontinued. The evaluation also included a review of the Board's internal controls, policy and procedures, meeting minutes, complaint files from 2009-2012, complaint-resolution process, disciplinary procedures and actions, revenues and expenditures for the period of FY 2007 through 2012, continuing education requirements and verification, the Board's compliance with the general statutory provisions for regulatory boards and other applicable laws, and key features of the Board's website. Auditors did not review license renewal receipts at the individual detail level because the Board only retains current fiscal year detail.

Methodology

PERD staff visited the Board's office in South Charleston and met with its staff. Some information gathered for this review included interviews with the Board's staff, and staff of other agencies, which included the Auditor of State, the State Treasurer's Office, the Legislative Auditor's Budget Office Division, the Federation of Chiropractic Licensing Boards. Interviews and verbal comments made by these agencies were confirmed by written statements and in many cases were confirmed by corroborating evidence as well.

PERD collected and analyzed the Board's complaint files, meeting minutes, annual reports, budget information, licensee roster, procedures for investigating and resolving complaints, procedures regarding background checks and continuing education. 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 §30-16 to determine the Board's compliance with such laws. In the case of the Board requiring applicants to obtain criminal background checks for initial licensure, there is no specific statutory authority. Therefore, PERD requested a legal opinion from the Legislative Auditor's Legislative Services division.

The legal opinion determined that the Board's prerequisite for an initial license was within the legal parameters of its enabling statute.

The Legislative Auditor noticed that the Board's revenues fluctuated from one fiscal year to another, and the Board did not keep historical data spreadsheets on individual revenue collections. This created inconsistencies between revenues and the number of licensees. In order to obtain reasonable assurance that revenue figures were sufficient and appropriate, PERD obtained from the State Treasurer the Board's deposits into the State's Financial Information and Management System (FIMS) for fiscal years 2009 through 2012. The Legislative Auditor concluded from the examination of deposits that the renewal date for licensees coincided with the end of the State's fiscal year, and a significant amount of license renewal revenue was deposited in the month of July, which would be recorded in the next fiscal year. Over a six-year period, the total amount of revenue coincided with the total number of licensees for the same period with close approximation. Therefore, revenue figures were judged to be sufficient and appropriate.

The Legislative Auditor tested the Board's expenditures for fiscal years 2007 through 2012 to reduce audit risk. The test involved determining if verifiable expenditures were at least 90 percent of total expenditures. Verifiable expenditures include: salaries and benefits, per diem payments, travel reimbursement, board-member compensation, insurance, office rent and utilities, printing and binding costs, rental fees, telecommunication costs, and contractual agreements. The Legislative Auditor determined that during the scope of the review, verifiable expenses were between 88 and 91 percent of total expenditures. These percentages gave reasonable assurance that the audit risk was reduced to a satisfactory level with regards to expenditures.

This performance audit was conducted in accordance with generally accepted government auditing standards. Those standards require that the audit is planned and performed to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. The Legislative Auditor believes that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

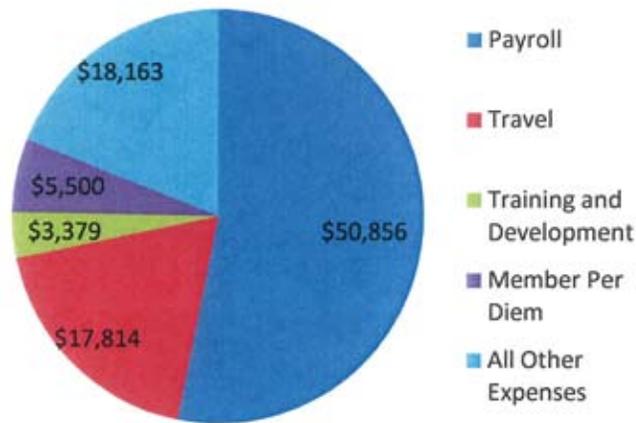
Appendix C: Board of Chiropractic Complaints

Official Complaints CY 2009 through 2011			
FY	Nature of complaints received	Decision	Time to close
2009	Misleading advertising	No probable cause	1 month
	Misleading advertising	Probable cause, confidential letter of concern	8 months*
	Misleading advertising	Probable cause, chiropractor not informed of Board's decision, reprimand letter never sent because no hearing was held or consent agreement reached	4 months
	Non-release of medical records	Confidential letter of concern	6 months
	Non-release of medical records	Board did not decide, Doctor released records	1 month
	Practicing under the influence of drugs	No probable cause, confidential letter of concern sent, chiropractor not told of complaint for 241 days	12 months**
2010	Misleading advertising	Probable cause, chiropractor never told Board initiated complaint	8 months**
	Fee dispute	No probable cause	7 months*
	Fee dispute	No probable cause	4 months
	Unethical conduct	No probable cause, chiropractor not told of complaint for 311 days	14 months**
	Unethical conduct	No probable cause	2 months
	Exceeding scope of practice	No probable cause	2 months
2011	Unethical conduct	No probable cause	1 month
	Unsafe office	No probable cause, chiropractor never informed	3 months
	Incompetent	No probable cause	2 months
	Misleading advertising	No probable cause	4 months
	Misleading advertising	No probable cause	4 months
	Sexual battery	No decision pending circuit court ruling	
	Practicing without a license	No probable cause	1 month
	Fee dispute	No probable cause	6 months
	Inappropriate touch	Temporarily surrendered license pending further investigation, chiropractor then voluntarily surrendered license so Board considered complaint closed	1 month
	Inappropriate touch	No probable cause	2 months
HIPAA violation	No probable cause	2 months	

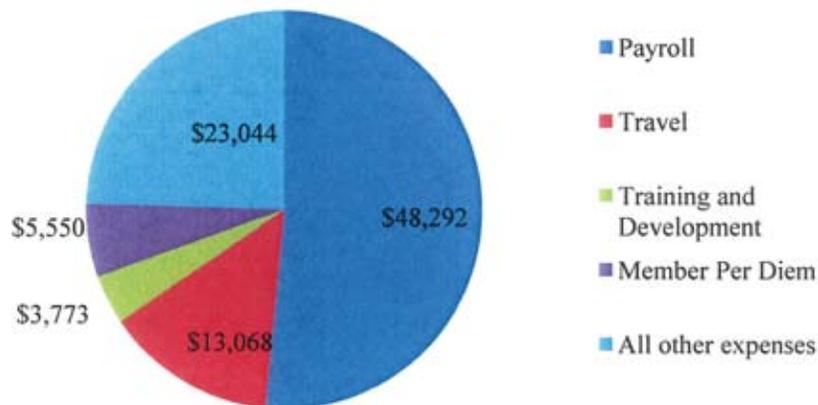
Source: Legislative Auditor's analysis of Board's complaint files.
***Six month status report not sent to complainant.**
****Anonymous complainant so no way to send status report to complainant.**

Appendix D: Board Expenses

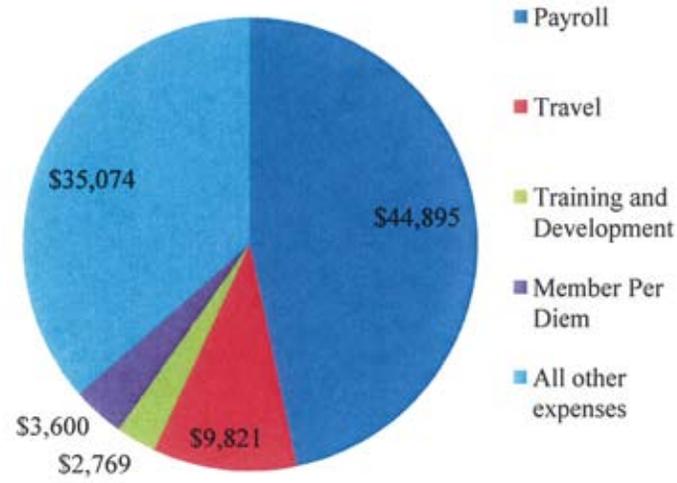
FY 2012 Expenses



FY 2011 Expenses



FY 2010 Expenses



Appendix E: Fee Structure In Similar Sized Chiropractic Boards

Chiropractic Licensing Boards Similar Number of Active Licensees				
State	Active licensees	Status	Initial licensure fee	Renewal fee
WY	196	Umbrella	\$500	\$200 annual
WV	330	Independent	\$175	\$200 annual
VT	247	Umbrella	\$200	\$365 biennial
SD	384	Umbrella	\$200	\$200 annual
RI	272	Umbrella	\$90	\$170 annual
ND	334	Independent	\$200	\$200 annual
NH	415	Umbrella	\$350	\$385 biennial
MT	390	Umbrella	\$300	\$200 annual
MS	356	Independent	\$300	\$100 annual
DE	339	Umbrella	\$172	Not posted
AK	283	Umbrella	\$550	\$450 biennial
Source: Federation of Chiropractic Licensing Boards				

Appendix F: Mississippi Board of Chiropractic Examiners Revenues, Expenditures and End-of-Year Balances

Mississippi Board of Chiropractic Examiners FY 2008 through FY2012			
	Revenues	Expenditures	Remaining Balance
2008	\$58,776	\$53,169	\$5,607
2009	\$60,377	\$58,938	\$1,439
2010	\$60,252	\$61,997	-\$1,745
2011	\$60,600	\$55,974	\$4,626
2012*	\$65,745	\$51,907	\$13,838
Source: State of Mississippi Transparency website *As of June 27, 2012			

Appendix G: Licensure Fees of West Virginia and Neighboring States

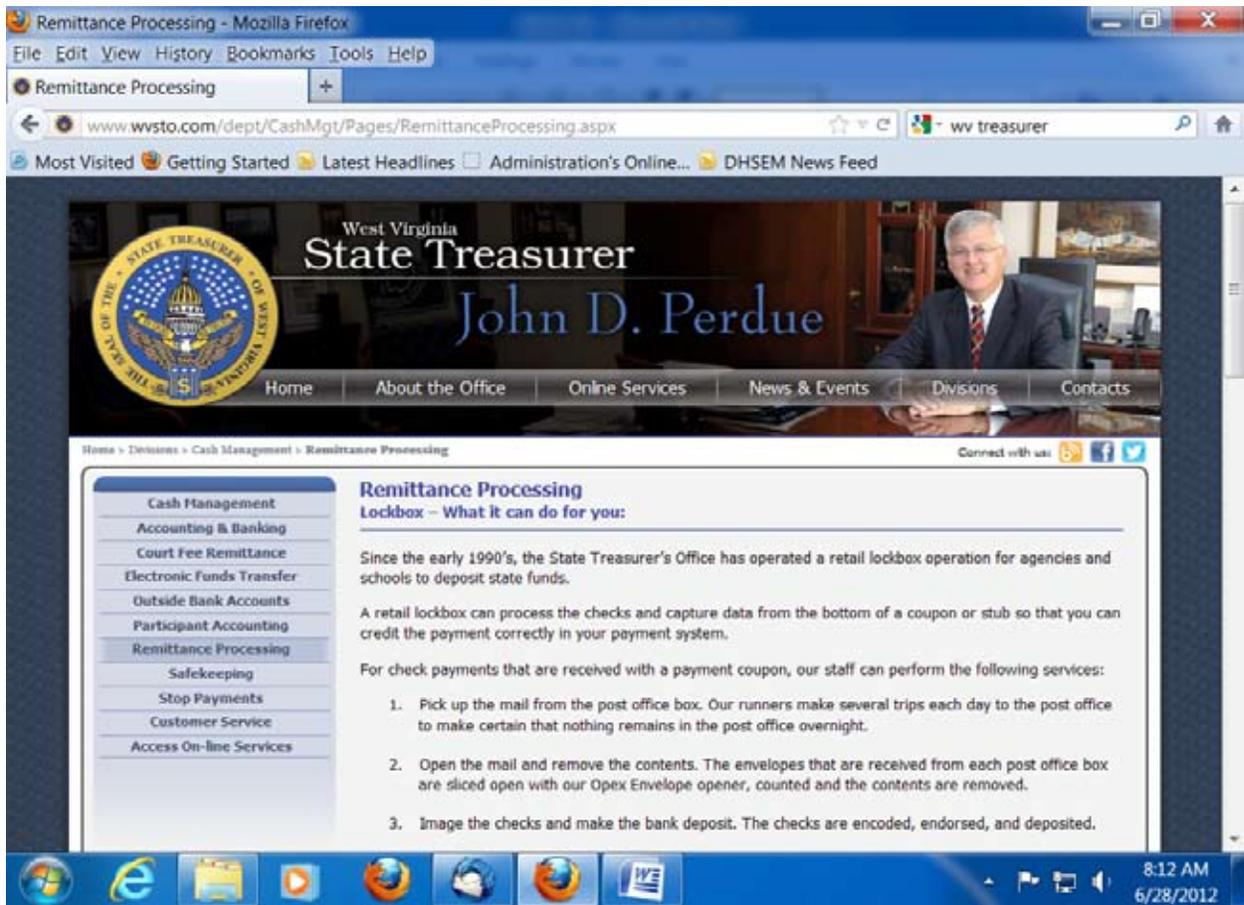
Current Licensure Fees of West Virginia and Neighboring States

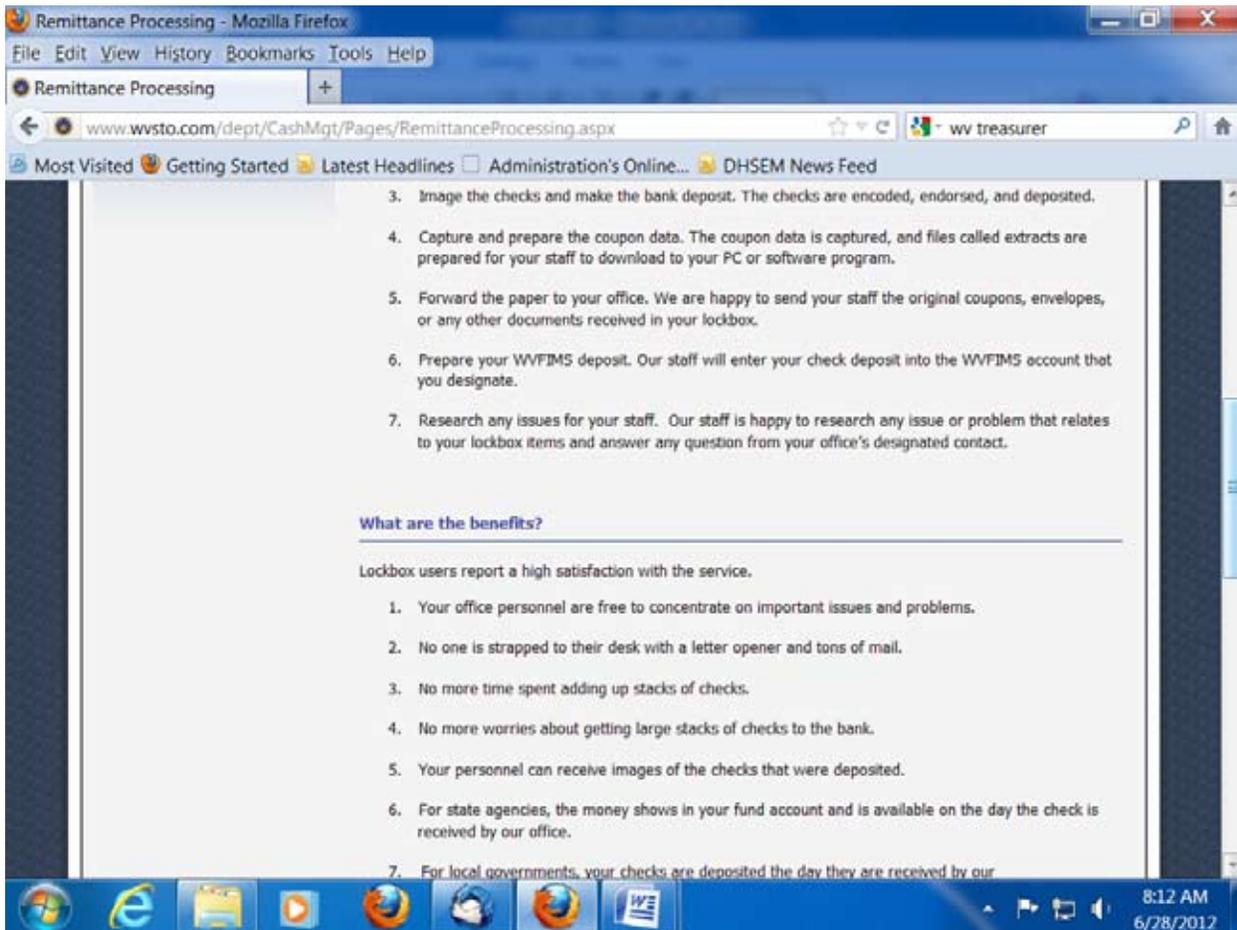
State	Active licensees*	Initial Fee	Licensure	Renewal Fee	Renewal Period
Kentucky	905	350		250	Annual
Maryland	764	700		700	Biennial
Ohio	2,479	250		500	Biennial
Pennsylvania	4,239	112		210	Biennial
Virginia	1,468	277		312	Biennial
West Virginia	330	175		200	Annual

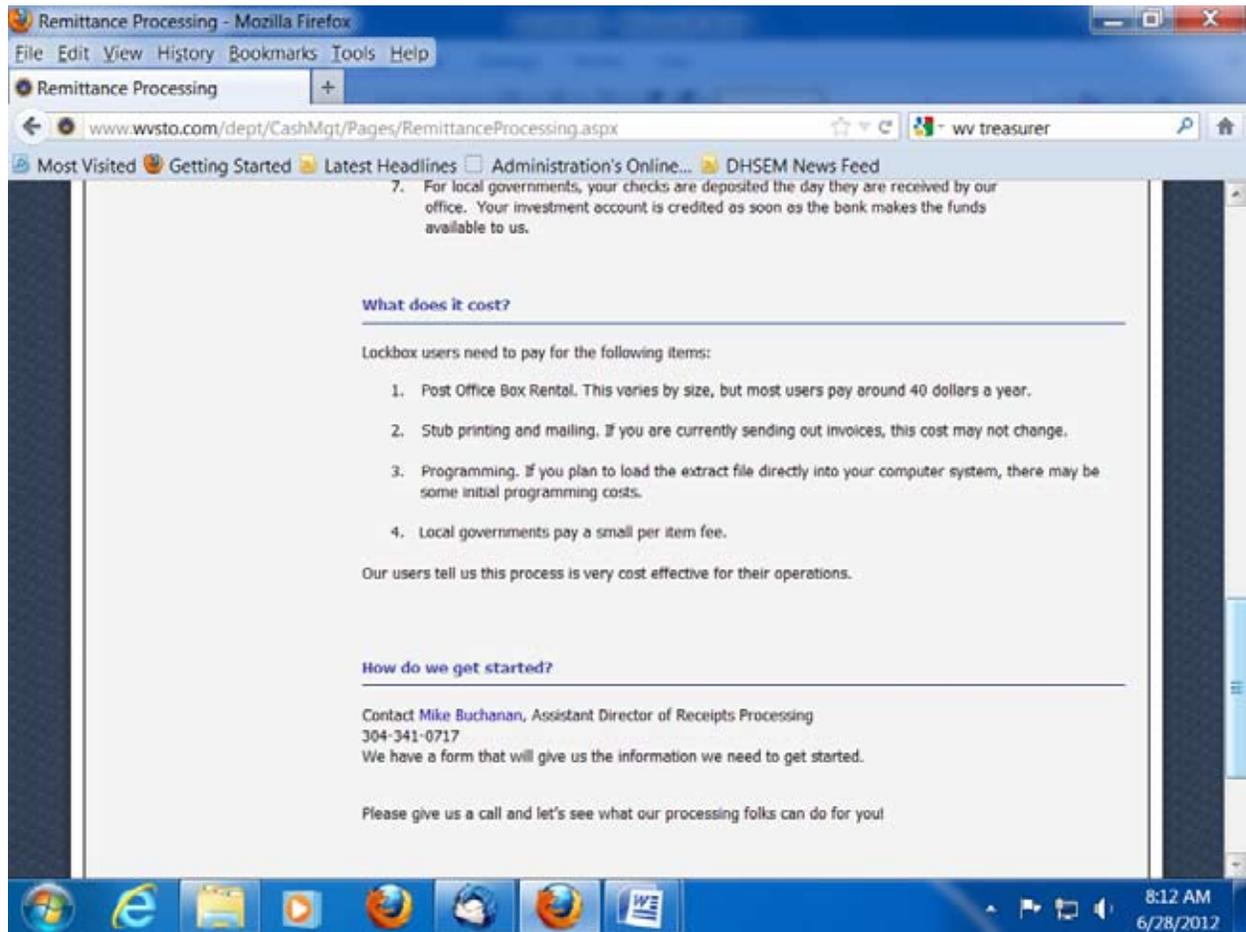
Sources: State Board Websites.

Federation of Chiropractic Licensing Boards

Appendix H: WV Treasurer Lockbox Service







Appendix I: Website Criteria Checklist and Points System

Board of Chiropractic			
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	3
		Individual Points Possible	Individual Agency Points
Search Tool	The website should contain a search box (1), preferably on every page (1).	2 points	0 points
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	1 point
Foreign language accessibility	A link to translate all webpages into languages other than English.	1 point	0 points
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	
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	1 point
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 points
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	0 points
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	1 point
FAQ Section	A page that lists the agency's most frequent asked questions and responses.	1 point	0 points

Board of Chiropractic			
Feedback Options	A page where users can voluntarily submit feedback about the website or particular section of the website.	1 point	0 points
Online survey/poll	A short survey that pops up and requests users to evaluate the website.	1 point	0 points
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 points
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 points
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	8
		Individual Points Possible	Individual Agency Points
Email	General website contact.	1 point	1 point
Physical Address	General address of stage agency.	1 point	1 point
Phone Number	Correct phone number of state agency.	1 point	1 point
Location of Agency Headquarters	The agency's contact page should include an embedded map that shows the agency's location.	1 point	0 points
Administrative officials	Names (1) and contact information (1) of administrative officials.	2 points	2 points
Administrator(s) biography	A biography explaining the administrator(s) professional qualifications and experience.	1 point	0 points
Privacy policy	A clear explanation of the agency/state's online privacy policy.	1 point	0 points

Board of Chiropractic			
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	0 points
Complaint form	A specific page that contains a form to file a complaint (1), preferably an online form (1).	2 points	0 points
Budget	Budget data is available (1) at the checkbook level (1), ideally in a searchable database (1).	3 points	0 points
Mission statement	The agency's mission statement should be located on the homepage.	1 point	1 point
Calendar of events	Information on events, meetings, etc. (1) ideally imbedded using a calendar program (1).	2 points	1 point
e-Publications	Agency publications should be online (1) and downloadable (1).	2 points	0 points
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 point
Graphic capabilities	Allows users to access relevant graphics such as maps, diagrams, etc.	1 point	0 points
Audio/video features	Allows users to access and download relevant audio and video content.	1 point	0 points
FOIA information	Information on how to submit a FOIA request (1), ideally with an online submission form (1).	2 points	0 points
Performance measures/outcomes	A page linked to the homepage explaining the agencies performance measures and outcomes.	1 point	0 points
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 points

Board of Chiropractic			
Website updates	The website should have a website update status on screen (1) and ideally for every page (1).	2 points	0 points
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 points

Appendix J: Agency Response

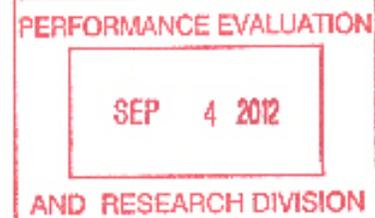


STATE OF WEST VIRGINIA Board of Chiropractic

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September 4, 2012

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



Dear Mr. Sylvia:

Attached is our response to the Performance Review that you provided on August 21, 2012.

Please feel free to contact me if you have questions regarding our response.

Sincerely,

A handwritten signature in blue ink, appearing to read "Barbara L. Johnson".

Barbara L. Johnson
Executive Secretary

/blj

Enclosure

West Virginia Board of Chiropractic

Response to West Virginia Legislature Performance Review

September 4, 2012

1. The Legislative Auditor determines there is a need for the Board of Chiropractic and recommends that the Legislature continue it.

The West Virginia Board of Chiropractic is empowered to enforce the rules and regulations of the Board and to exercise full discretion and authority with respect to disciplinary actions. The mission of this Board is to ensure that the public will have access to competent, safe, and ethical practitioners in the profession, and the Board strives to protect the public by insuring its licensees' due process rights are adequately protected. This Board has obtained members of integrity who are knowledgeable about ethical and legal responsibilities and act with professional expertise, along with the Board's legal counsel.

2. The Board should make a preliminary decision as to whether probable cause exists in complaints as required by §30-16-11(e).

The Board agrees and will continue the practice of determining probable cause.

3. The Legislative Auditor recommends that the Board propose legislative rules that establish what serious consequences and formal action may be taken with respect to a confidential letter of concern. It is advisable that the rules indicate that the Board clearly informs chiropractors that the Board could reopen a case dismissed with a letter of concern in the face of a change in circumstances.

The Board acknowledges that Article 16 provides for a confidential letter of concern; however, the Board has received advice from its legal counsel which questions the wisdom of exercising that authority. Specifically, the Board's legal counsel was involved in a letter of concern/letter of warning being issued to three licensees resulting in that agency being sued, losing that suit, and being required to pay a healthy amount of attorney fees.

4. The Legislative Auditor recommends that the Board amend its procedural rules to specify that chiropractors will be informed of complaints received against them within a specific number of days.

Procedural rule provides that licensees be informed of complaints immediately. While the Board may have deviated from this requirement in the past, as of July 2010, this is no longer the Board's practice. Never was there a time when there was a risk to the public that we didn't take action and never was the public unprotected.

The Board Should Tighten Its Adherence to Its Complaint Procedures:

Licensees Unaware of Complaints

In two of the 23 official complaints, the Board never informed the licensed chiropractor of the complaint.

The two complaints referenced above were received by the Board anonymously. There was no substance to either complaint and the Board determined no probable cause. In order to inform the licensee the Board would be required to initiate a complaint. Because of no credibility to the complaints, the licensees were not notified.

Complainants Not Informed

The Board agrees and no longer practices this effective July 2010.

Disciplinary Decisions Outside of Board Meetings

The Board agrees and no longer practices this due to changes in complaint procedures effective July 2010.

The Board's Response in Some Complaints is Concerning:

Previously Disciplined Chiropractor

This doctor is 75 years of age. The Board was informed he had no intention of relocating to another state and permanently surrendered his license; therefore, the Board did not feel that his "possible" relocation to another state created an imminent danger outside of West Virginia.

Convicted Chiropractor

This doctor was very ill spending weeks at a time in the hospital. Because of his illness he retired and sold his practice. The Board spoke to the doctor buying this practice and he confirmed that the doctor was no longer practicing. Notification of his retirement and closure of his practice was posted in the newspaper allowing his patients to pick-up their medical records. Due to the seriousness of his illness, this doctor was not practicing and not considered a threat to the public. This doctor is now deceased.

Chiropractor with Possible Substance Abuse Problem

The Board acted upon the advice of its Attorney General in this matter. The Board did not pursue violations of rule in the interest of jeopardizing any criminal investigation by federal and state authorities. The Board received no other indication that this doctor was impaired while practicing chiropractic. This matter was reported to the DEA and the Board was told it would be notified should there be a concern.

Indicted Chiropractor

This doctor has been indicted but not convicted. Upon the advice of its Attorney General, the Board does not believe that an indictment, in and of itself, is cause for the Board to initiate proceedings. A criminal hearing is scheduled for October 16, 2012.

Concern of a Chiropractor's X-Ray Competency

The Board initiated quality control by requesting this chiropractor improve the diagnostic quality of her x-rays. There was no threat to the public. The Board met with this doctor quarterly for one year to review this doctor's x-rays for improvement and it was determined that the x-rays were of good quality, no artifacts were noted, and x-ray reports were excellent. Documentation is in this doctor's file.

5. The Board should carefully monitor its financial condition and take steps to maintain cash reserves equivalent to or greater than its yearly expenditures.

The Board will monitor its financial condition and take steps to maintain cash reserves. Financial restraints are due to inflation and the Board's proactive approach to protecting the public. The Board is now collecting all authorized fees and, by collecting the PLLC and Corporation \$100 annual renewal fee, resulted in approximately \$11,000. Since our renewal fees are in line with other states, we will explore and take into consideration raising non-licensing fees which would generate more revenue. We will look into options of reducing travel for meetings and more economic ways to decrease expenses. However, by Board members attending the FCLB Annual Educational Conference for state and provincial regulators from the United States, Australia, Canada, and New Zealand helps board members, staff, and representatives from the offices of the Attorneys General to identify emerging problems and solutions in healthcare regulation. Our Board is recognized as being one of the most proactive Boards in the nation. As a result of our Board's presence, the Board finds itself as being more progressive at the meetings.

6. The Board should comply with WVC §12-2-2 and deposit within 24 hours all moneys received or collected on behalf of the Board.

The Board will comply and deposit within 24 hours all moneys received or collected on behalf of the Board.

7. The Board should immediately begin utilizing the State Treasurer's lockbox bank service to establish internal financial controls.

The Board has concerns of delays in issuing license renewals and feels it can maintain tighter controls. By maintaining control within the Board, we are better able to protect the public. The Board does not accept cash and does not write checks. Copies are made of all checks deposited and deposits are electronically mailed to the Treasurer's office.

8. The Legislative Auditor recommends that the Legislature consider amending state law to require a state agency to use the State Treasurer's lock box service if that agency does not have a sufficient number of employees to provide for segregation of duties with regard to revenue collections.

If this law is amended, the Board will use the lock box service.

9. The Board should follow all provisions of WVC §6-9A in its conduct of Board business.

The Board will follow all provisions in its conduct of Board business.

10. The Board should promulgate procedural rules that govern the notice of meetings rule as required by WVC §6-9A-3.

The Board will include the notice of meetings rule as required by WVC §6-9A3 upon opening our procedural rules for changes.

11. The Board should add all necessary information to its register including educational qualifications, the license number of each licensee and all license renewal dates as required by WVC §30-1-12(a).

The Board maintains a register of all applicants, with name, address, telephone number, email address, date requested, and how requested. Effective immediately, the Board will include all requirements as specified in §30-1-12(a). Licensees' information is contained within their files and also included on the Board's database for easy reference.

12. The Legislative Auditor recommends that the Board make substantial improvements to its website to increase user-friendliness and transparency.

The Board agrees and has already initiated proceedings to improve the website.

13. The Board should make complaint forms, application for licensure, license renewal forms and continuing education forms downloadable.

The Board agrees and will include all recommendations.

14. The Legislative Auditor recommends that the Board update its website to include detailed information about each licensee.

The Board agrees and will include all recommendations.



WEST VIRGINIA LEGISLATIVE AUDITOR

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