

STATE OF WEST VIRGINIA

**REGULATORY BOARD REVIEW OF THE
BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY
AND AUDIOLOGY**

**Licensure of the Practice of Speech-Language
Pathology and Audiology Is Needed to
Protect Public Interest**

**The Board Is Complying with Applicable
Laws and Rules**

**OFFICE OF LEGISLATIVE AUDITOR
Performance Evaluation and Research Division
Building 1, Room W-314
State Capitol Complex**

**CHARLESTON, WEST VIRGINIA 25305
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May 2001

PE01-01-200

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May 2001

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John Sylvia
Director

May 6, 2001

The Honorable Edwin J. Bowman
State Senate
129 West Circle Drive
Weirton, West Virginia 26062

The Honorable Vicki V. Douglas
House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Regulatory Board Review of the *Board of Examiners for Speech-Language Pathology and Audiology*, which will be presented to the Joint Committee on Government Operations on Sunday, May 6, 2001. The issues covered herein are "Licensure of the Practice of Speech-Language Pathology and Audiology is Needed to Protect Public" and "The Board is Complying with Applicable Laws and Rules."

We conducted an exit conference with the *Board of Examiners for Speech-Language Pathology and Audiology* April 26, 2001. We received the agency response on May 1, 2001.

Let me know if you have any questions.

Sincerely,


John Sylvia

JS/wsc

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Review Objective, Scope and Methodology

This regulatory board review of the Board of Examiners for Speech-Language Pathology and Audiology was conducted in accordance with the West Virginia Sunset Law, Chapter 4, Article 10 of the *West Virginia Code* as amended. As stated in the *Code*, a regulatory board review is to determine whether 1) continuation is in the public's interest, and 2) whether the Board is operating in compliance with applicable laws and rules.

Objective

This report will assist the Joint Committee on Government Operations in making one of the following recommendations to the Legislature for its next Regular Session:

1. the agency be terminated as scheduled;
2. the agency be continued and reestablished; or
3. the agency be continued and reestablished, but statutes governing it be amended in specific ways to correct ineffective or discriminatory practices or procedures, burdensome rules and regulations, lack of protection of the public interest, overlapping of jurisdiction with other governmental entities, unwarranted exercise of authority either in law or in fact and any other deficiencies.

Scope

The regulatory board evaluation covers the period from 1998 to 2000. The Legislative Auditor examined: complaint procedures and resolutions; continuing education requirements; financial information; unemployment and workers' compensation records; meeting minutes and annual reports. The Legislative Auditor also determined if the Board was compliant with the general requirements of Chapter 30 and with the Board's specific requirements within its governing statute.

Methodology

Information compiled in this report has been acquired from the *West Virginia Code*, interviews with the Board and its staff, annual reports, meeting minutes, complaints and expenditure schedules. This review was conducted in compliance with Generally Accepted Government Auditing Standards (GAGAS).

Background

The Board of Examiners for Speech-Language Pathology and Audiology was created under Chapter 30, Article 32 of the West Virginia *Code* in 1992. As required by statute there are five board members. One is a lay person who is not associated with or financially interested in the practice or business of speech-language pathology or audiology, nor a member of an allied or related profession or occupation; two are speech-language pathologists; and two are audiologists. All are appointed by the Governor, with the advice and consent of the Senate, for three-year terms. Board members do not have term limitations and serve until the expiration of the term for which they have been appointed or until their successors have been appointed and qualified.

Persons seeking a license must: 1) make application to the board; 2) pay the board the appropriate application fee; 3) possess at least a master's degree or equivalent in speech-language pathology or audiology from an educational institution approved by the board; 4) complete supervised clinical practicum experiences; 5) complete a postgraduate professional experience; and 6) pass the national examination in speech-language pathology or audiology which is approved by the American speech-language-hearing association.

As defined in statute, §30-32-2(g), the *practice of audiology* means:

Facilitating the conservation of auditory system function, developing and implementing environmental and occupational hearing conservation programs; screening, identifying, assessing and interpreting, preventing and rehabilitating peripheral and central auditory system dysfunctions; providing and interpreting behavioral and (electro) physiological measurements of auditory function; providing vestibular assessment and balance system rehabilitation; providing neuro-physiologic intra-operative monitoring; selecting, fitting and dispensing of amplification, assistive listening and alerting devices and providing training in their use; evaluating candidacy, fitting and providing training in the use of implantable devices; and providing aural rehabilitation and related counseling services to hearing impaired individuals and their families

As defined in statute, §30-32-2(h), the *practice of speech-language pathology* means:

Screening, identifying, assessing and interpreting, diagnosing, preventing and rehabilitating disorders of speech (e.g. articulation, fluency and language); screening, identifying, assessing and interpreting, evaluating and rehabilitating disorders of oral-pharyngeal function (e.g. dysphagia) voice and related disorders; screening, identifying, assessing and interpreting, diagnosing and rehabilitating cognitive/communication disorders; assessing, selecting and developing augmentative and alternative communication systems and providing training in their use; providing aural rehabilitation and related counseling services to hearing impaired individuals and their families; and enhancing speech-language proficiency and communication effectiveness (e.g. accent reduction).

The Board currently licenses 502 speech language pathologists, audiologists and assistants.

Issue 1: Licensure of the Practice of Speech-Language Pathology and Audiology Is Needed to Protect Public Interest.

This report is a *Regulatory Board Review* which requires by law a determination of whether or not the Board is necessary for the protection of public health and safety. The finding of this report is that licensing the practice of speech-language pathology and audiology is necessary for public protection. In determining if there is a need for the Board of Examiners for Speech-Language Pathology and Audiology, a primary consideration is whether the unregulated practice of the profession would clearly endanger the health and safety of the public. Table 1 identifies potential harm from improperly performed assessments and treatments.

**Table 1
Harm from Improper Assessments or Treatment Procedures**

	Error	Potential Harm
Audiology	1. Improper insertion of objects in the ear such as ear molds, impedance probes and probe tube microphones.	1. Damage to the ear canal and tympanic membrane. Inaccurate test results leading to misdiagnosis.
	2. Incorrect usage of impedance in an ear with an open tympanic membrane and a perilymphatic fistula.	2. Meningitis, possible death.
	3. Improper insertion of needle electrodes for electrophysiological testing.	3. Extension of needle into the brain causing infection and possible brain damage. Inaccurate test results leading to misdiagnosis.
	4. Assigination of hearing aid with too much gain for the recorded loss.	4. Further hearing loss. Painfully loud sounds resulting in rejection of the hearing aid and the help it can offer.
Speech-Language Pathology	1. Initiation of feeding too soon or inserting objects into the mouth for thermal stimulation during dysphagia treatment.	1. Patient choking and/or aspirating leading to aspiration pneumonia and possible death.
	2. Improper placement, adjustment or monitoring of oral prostheses such as palatal lifts or obturators.	2. Tissue breakdown secondary to pressure. Or device could weaken over time, break and fall into the airway.
	3. Improper insertion of speaking devices for patients on respirators.	3. Reduction in air flow.
	4. Incorrect choice of augmentative devices for non-verbal patients.	4. Limitation of communication competence if choice is below the patient's abilities. Frustration, withdrawal, decreased motivation to attempt communication or rejection of subsequent devices if choice is above the patient's abilities. Inappropriate educational and vocational placement.
	5. Improper usage of facilitating techniques in the treatment of voice disorders.	5. Vocal nodules.

The scope of practice for speech language pathologists and audiologists has been expanding. Since regulation was first enacted, new technologies have allowed for more specialized diagnosis and treatment, including invasive procedures. Approximately 75% of the individuals typically treated by speech-language pathologists and audiologists nationwide are under age 11 or over age 65. Children and older persons may be more vulnerable to incompetent professionals they may encounter.

Nationwide, 47 states regulate the practice of audiology and 44 regulate speech pathology. All but three states regulate by licensure, as opposed to certification or registration. Other states have also examined the need for regulation of speech-language pathologists and audiologists. The findings are illustrated below:

- South Carolina determined that *the Board should be continued. Termination of regulation of speech pathology and audiology would pose a threat to public health, safety and welfare.*
- Hawaii determined that *the practices of speech pathology and audiology require special skills and technical knowledge and that potential harm exists from incompetently performed assessments and/or treatment procedures...*

It is the opinion of the Legislative Auditor that the professions of speech-language pathology and audiology require regulation to protect the public. Therefore, this Board should be continued.

Issue 2: The Board Is Complying with Applicable Laws and Rules.

The Board of Examiners for Speech-Language Pathology and Audiology has complied with applicable laws and rules. These laws and rules, primarily found within the Board's own article of Code and in the general provisions of Chapter 30, are important in the effective operation of a licensing board. The Board has complied with the following requirements:

- The Board is listed in the state government listing of the Charleston area telephone book;
- A representative of the Board has attended the orientation session provided by the State Auditor's Office;
- The Board meets at least once annually;
- The Board maintains a record of its proceedings;
- The Board files meeting notices as required by the Open Governmental Proceedings Act;
- The Board submits annual reports to the Governor and the Legislature;
- The Board has established continuing education requirements as a prerequisite to license renewal;
- The Board maintains a register of applicants;
- The Board has set fees by rule.

The Board of Examiners for Speech-Language Pathology and Audiology requires continuing education. *West Virginia Code* §30-32-10(3) allows the Board to establish rules for continuing education and the *Code of State Rules* §29-1-6(c) requires those applying for license renewal to complete 10 hours of continuing education in a two year period. The Board intends to increase this requirement to 20 hours. Individuals are required to provide continuing education report forms.

The passage of House Bill 4062 during the 2000 Regular Legislative session required licensure boards to promulgate legislative rules detailing procedures for the investigation and resolution of complaints against licensees. The Board's rules (*Code of State Rules* §29-4) do detail these procedures. Upon receipt of the complaint, the Board informs the licensee by certified mail. The licensee must submit a written response to the Board within thirty (30) days. The Board then sends a copy of the response to the complainant. The investigator has sixty (60) days to review the complaint and report findings to the Board. Then the Board may either dismiss the complaint or suspend the license if it determines there is cause. The Board may refuse to renew a license or may suspend a license if it determines there is probable cause to believe that the speech-language pathologist's or audiologist's conduct, practices or acts constitute an immediate danger to the public.

In FY 1999, the Board received one complaint which was closed after being reviewed by the Board. In FY 2000, the Board investigated a complaint alleging that an individual was practicing audiology in West Virginia without a license. The Board investigated and denied an application for licensure in the state due to a violation of rules governing the practice of audiology. A review of complaints indicate that the Board provides the fundamental components of “due process” by giving notice and the opportunity for a hearing. The complaint form provided by the Board is available in Appendix C. Table 2 indicates that West Virginia is similar to other states when the number of complaints received is measured as a percent of the total number of licensees.

**Table 2
Comparison of Complaints**

State	#Licensees	#Complaints
Kentucky	1920	2
Maryland	2161	17
Virginia	2221	5
Pennsylvania	5273	16
Ohio	4900	19
West Virginia	631	3

The number of complaints and the number of licensees are taken from Calendar or Fiscal Year 2000, depending on how different states report the information.

Financial independence and accountability are necessary for the effective operation of a licensure board. Receipts collected from licensure fees are deposited in a special revenue account, and the Board’s expenses are disbursed from and charged to this account, as required by §30-1-10. Table 3 shows that the Board is self-sufficient and able to carry out its licensing responsibilities as required by law, WVC §30-1-6(c).

**Table 3
Board Revenues, Expenditures and Cash Balances**

	FY 1998	FY 1999	FY 2000
Revenue	\$7680	\$50,380	\$10,176
Expenditures	\$24,829	\$38,497	\$42,848
End of Year Cash Balance	\$72,818	\$84,700	\$52,028

Source: 2001 PERD Analysis of Fund # 8646

Conclusion

The Board of Examiners for Speech-Language Pathology and Audiology has significantly improved its performance since a 1998 *Preliminary Performance Review* identified six areas of concern to the Legislative Auditor. The Board is accessible to the public and is in compliance with the provisions of Chapter 30 of the *West Virginia Code*. Through its licensure requirements, the Board assures the public that its members are competent to practice the professions and, therefore, serves to protect society's more vulnerable members from incompetent and unscrupulous providers.

Recommendation 1:

The Legislature should consider continuing the Board of Examiners for Speech-Language Pathology and Audiology.

APPENDIX A

Transmittal Letter to Agency

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

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

April 13, 2001

Ms. Vicky Mathess, Administrative Services Manager
West Virginia Board of Examiners for Speech-Language
Pathology and Audiology
HC 78 Box 9-A
Troy, West Virginia 26443-9707

Dear Ms. Mathess:

This is to transmit a draft copy of the Regulatory Board Review of the Board of Examiners for Speech-Language Pathology and Audiology. If you have questions related to factual errors or need clarification on any part of the report, please let me know at the Exit Conference scheduled for April 26, 2001 at 2:00 P.M., in our Conference Room W-330. We would appreciate your written response to the report by April 30, 2001 in order for it to be included in the final report.

Thank you for your cooperation.

Sincerely,

Handwritten signature of John Sylvia in cursive script.
John Sylvia

JS/wsc

c: Vicki H. Pullins, Speech Pathology
3721 Staunton Avenue
Charleston, WV 25304

Joint Committee on Government and Finance

APPENDIX B
Agency Response

West Virginia Board of Examiners
For
Speech-Language Pathology and Audiology

Board Members

Michael Zagarella, Audiologist, Chairman
Gary Vandevander, Audiologist
Cinda Shaver, Speech Pathologist, Secretary
Vickie Pullins, Speech Pathologist
Thelma J. Gibson, Lay person

Vicki Mathess, Administrative Services Manager

May 1, 2001

West Virginia Legislature
Performance Evaluation and Research Division
Building 1, Room W-314
Charleston, WV 25305-0610

Response of WVBESLPA to Regulatory Board Review

The Board has no disagreements with the review of May, 2001.

Issue 1: *Licensure of the Practice of Speech-Language Pathology and Audiology is Needed to Protect Public Interest.*

The Performance Evaluation and Research Division feels that continued licensure of Speech-Language Pathologists and Audiologists is necessary to protect the public. The Board fully agrees with this decision.

Issue 2: *The Board is Complying with Applicable Laws and Rules.*

The Performance Evaluation and Research Division found that the Board is in full compliance on all issues. All areas of deficiency which were noted in the *Preliminary Performance Review* in 1998 have been corrected to their satisfaction.

Recommendation 1: *The Legislature should consider continuing the Board of Examiners for Speech-Language Pathology and Audiology.*

The Board is pleased with the review team's recommendation and appreciates the help they were given in getting us into compliance.

For the WVBESLPA,



Michael J. Zagarella, MA
Chairman

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