

**STATE OF WEST VIRGINIA**

**REGULATORY BOARD EVALUATION OF THE**

**Board of Licensed Practical Nurses**

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**Licensure of the Practice of  
Licensed Practical Nursing  
Is Needed to Protect Public Interest**

**Board Complies with the General  
Provisions of Chapter 30**

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**Performance Evaluation and Research Division**  
**Building 1, Room W-314**  
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**CHARLESTON, WEST VIRGINIA 25305**  
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**July 2001**

**PE01-08-207**

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July 2001

**WEST VIRGINIA LEGISLATURE**  
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John Sylvia  
Director

July 8, 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 Evaluation of the *Board of Licensed Practical Nurses*, which will be presented to the Joint Committee on Government Operations on Sunday, July 8, 2001. The issues covered herein are "Licensure of the Practice of Licensed Practical Nursing is Needed to Protect Public Interest" and "Board Complies with the General Provisions of Chapter 30."

PERD delivered a copy of the report to the Board on May 23, 2001. We conducted an exit conference with the *Board of Licensed Practical Nurses* on May 24, 2001. We received the agency response on May 25, 2001.

Let me know if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "John Sylvia".

John Sylvia

JS/wsc



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## EXECUTIVE SUMMARY

### **Issue 1: Licensure of the Practice of Licensed Practical Nursing Is Needed to Protect Public Interest.**

This report is a *Regulatory Board Evaluation* which requires by law a determination of whether or not the Board is necessary for the protection of public health and safety. In determining if there is a need for the Board of Examiners for Licensed Practical Nurses (LPN), a primary consideration is whether the unregulated practice of the profession would clearly endanger the health and safety of the public. **The finding of this issue is that licensing Practical Nurses is necessary for protecting the citizens of West Virginia.**

Many functions performed by a LPN require specific knowledge based on a wide range of skills and expertise. The Board of Examiners of Licensed Practical Nurses has over 7,000 individuals licensed in the State of West Virginia. The majority of licensees are working with sick and/or elderly individuals that require specific training and skills, and there is potential harm against the public if competency of LPN's is not ensured.

Nationally, all 50 states have licensing boards established for nursing. Only 5 states have separate licensing boards for Registered Professional Nurses and Licensed Practical Nurses but all states license LPN's according to the National Council of State Boards of Nursing. Those states which have separate licensing boards are California, Georgia, Louisiana, Texas and West Virginia.

#### **Recommendation 1:**

*The Legislative Auditor recommends that the Legislature continue to require Practical Nurses be licensed by the State of West Virginia.*

### **Issue 2: The Board Complies with the General Provisions of Chapter 30.**

The Board of Examiners for Licensed Practical Nurses has complied with applicable state 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 of Examiners for Licensed Practical Nurses requires continuing education. The licensees are required to submit, within thirty days of receipt of the notice of audit, legible copies of certificates of attendance at continuing education offerings, transcripts of courses taken, and verification of employment as a licensed practical nurse.

The LPN Board keeps track of all complaints received against each licensee. The Board reports that each complaint is either responded to the same day or the following day and that most complaints deal with patient abuse, practice issues, criminal convictions, failing continuing

education requirements, and practicing on an expired license. For cases reported in FY 2000, the average length of time for a resolution of cases was 79 days. Due process is provided by the Board as required in §30-1-5(b) for licensees against whom a complaint has been filed.

Financial self-sufficiency of regulatory boards is required by West Virginia Code §30-1-6(c). The LPN Board has a total budget for FY 2001 of \$341,616. The Board's licensing fees and administrative fees imposed against its licensees are remitted to the Board's special revenue fund, and the fines imposed are remitted to the State's general fund in accordance with the Code §30-1-8.



## **Review Objective, Scope and Methodology**

This regulatory board review of the Board of Examiners for Licensed Practical Nurses 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 evaluation 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 staff, annual reports, meeting minutes, complaints and expenditure schedules. This review was conducted in compliance with Generally Accepted Government Auditing Standards (GAGAS).



## **Issue 1: Licensure of the Practice of Licensed Practical Nursing Is Needed to Protect Public Interest.**

This report is a *Regulatory Board Evaluation* which requires by law a determination of whether or not the Board is necessary for the protection of public health and safety. In determining if there is a need for the Board of Examiners for Licensed Practical Nurses (LPN), a primary consideration is whether the unregulated practice of the profession would clearly endanger the health and safety of the public. **The finding of this issue is that licensing Practical Nurses is necessary for protecting the citizens of West Virginia.**

“Practical Nursing” is defined in the WV Code (§30-7A-1) as:

*... the performance for compensation of selected nursing acts in the care of the ill, injured or infirm under the direction of a registered professional nurse or a licensed physician or a licensed dentist, and not requiring the substantial specialized skill, judgment and knowledge required in professional nursing.*

Many functions performed by a LPN require specific knowledge based on a wide range of skills and expertise. According to the Executive Secretary of the West Virginia State Board of Examiners for Licensed Practical Nurses:

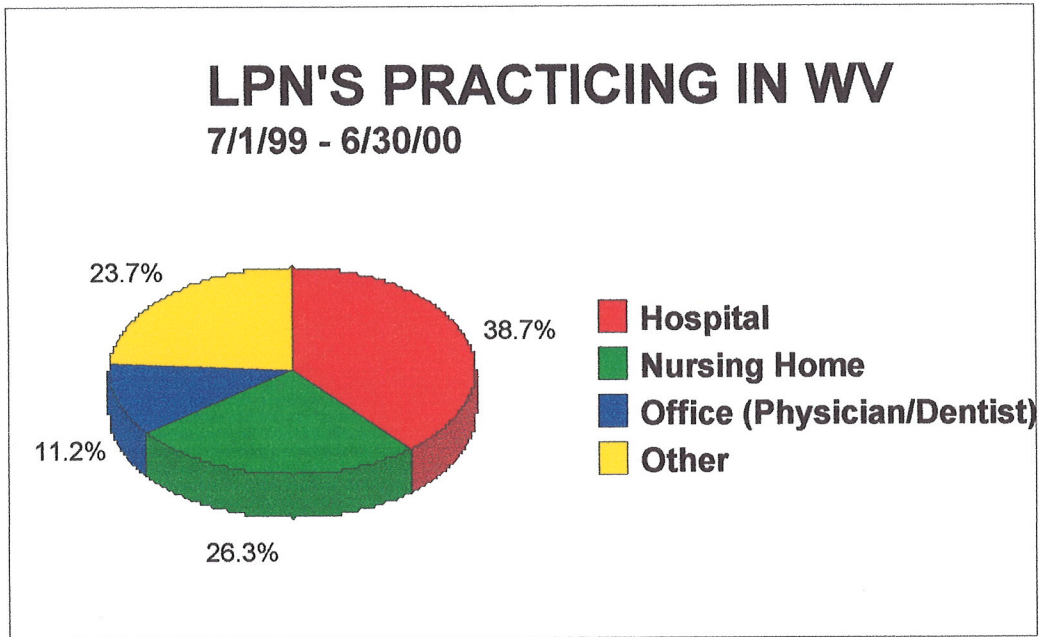
*An LPN must not only perform procedures, but must recognize common signs and symptoms of illness, deviation from previous health status to identify changes in patient condition, know effects and adverse reactions to treatments and medications administered to carry out the responsibility of reporting. Frequently the LPN is the only licensed individual on a long term care unit, especially evenings and at night.*

According to a Nursing Skills Checklist from an accredited school in West Virginia, the LPN must perform a number of varied tasks. An example of the functions included on this list are:

- Checking vital signs
- Assessing lung sounds
- Removal of staples and sutures
- Performing tube feedings
- Care of wounds and injuries
- Intravenous therapy
- Catheter insertion and removal
- Oral and nasal suctioning

The Board of Examiners of Licensed Practical Nurses has over 7,000 individuals licensed in the State of West Virginia. Figure 1 shows that between July of 1999 and June of 2000, 38.7% of LPN’s are in hospital settings and 26.3% are in nursing homes totaling 65%. Thus, the majority of licensees are working with sick and/or elderly individuals that require specific training and skills, and there is potential harm against the public if competency of LPN’s is not ensured.

Figure 1



Nationally, all 50 states have licensing boards established for nursing. Only 5 states have separate licensing boards for Registered Professional Nurses and Licensed Practical Nurses but all states license LPN's according to the National Council of State Boards of Nursing. Those states which have separate licensing boards are California, Georgia, Louisiana, Texas and West Virginia. Some states do, however, have a slight variation in nomenclature for the LPN, such as a vocational nurse or a practical nurse who perform similar tasks to the LPN.

### Conclusion

The Licensed Practical Nurse is engaged in a number of various health care settings and performs duties which have the potential for harm to the public if competency were not regulated. The majority of LPN's deal primarily with sick and elderly individuals where there is a great potential for harm. Currently, all 50 states have a licensing board which regulates the practice of practical nursing. **Therefore, it is the opinion of the Legislative Auditor that it is necessary to continue this licensing board to provide for the protection of public health and safety.**

### Recommendation 1:

*The Legislative Auditor recommends that the Legislature continue to require Practical Nurses be licensed by the State of West Virginia.*

## **Issue 2: The Board Complies with the General Provisions of Chapter 30.**

The Board of Examiners for Licensed Practical Nurses has complied with applicable state 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 section of the Charleston area telephone book;
- The Board maintains an internet site;
- 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 maintains a register of applicants;
- The Board maintains a roster of licensees; and
- The Board has set fees by rule.

### **Continuing Education Requirements**

The Board of Examiners for Licensed Practical Nurses requires continuing education. *West Virginia Code* §30-1-7a requires the Board to establish rules for continuing education and the *Code of State Rules* §10-6-3 specifies the rules adopted by the Board concerning continuing education requirements for licensee renewals. Each individual applying for license renewal must complete 24 hours of continuing education within a two-year period. The Board audits 30 licensees per month except in the month of December. The licensees are required to submit, within thirty days of receipt of the notice of audit, legible copies of certificates of attendance at continuing education offerings, transcripts of courses taken, and verification of employment as a licensed practical nurse.

## Complaint Process

The LPN Board keeps track of all complaints received against each licensee. The Board reports that each complaint is either responded to the same day or the following day and that most complaints deal with patient abuse, practice issues, criminal convictions, failing continuing education requirements, and practicing on an expired license. Most complaints are reported by the employer, but some are reported by patients, etc. Oftentimes, the employer has already suspended or fired the licensee but reports the person to the Board to prevent further employment by another facility. The Board is not required by Code nor Legislative Rules to resolve complaints in a specified time frame. For cases reported in FY 2000, the average length of time for a resolution of cases was 79 days. This average includes those who may have had a complaint filed against them and then allowed their license to lapse before resolution. Upon reapplying for their license, the complaint still must be resolved, thus causing the average to be higher. Table 1 shows the number of complaints logged for the past 4 years.

**Table 1**  
**Complaints Filed 1998 - 2001**

Year	# of Complaints	Assessed Fines	# of Fines	Suspensions	Probations	Revocations
1998	129	\$2,550	16	10	17	4
1999	146	\$1,981	24	6	19	4
2000	168	\$4,886	40	8	19	3
2001*	154	\$8,659	41	4	15	1

\* as of 4/18/01

Due process is provided by the Board as required in §30-1-5(b) for licensees against whom a complaint has been filed. A brochure is mailed to the licensee with a notice of complaint outlining the Board's disciplinary procedures. The licensee is informed of his/her rights for responding to the complaint, a description of the process, and the possible timeliness of the final order. Allegations can be denied by the licensee, and a hearing can be brought before members of the Board and/or a hearings officer. Licensees are given the right to subpoena witnesses or documentation on their behalf.

## Financial Self-Sufficiency

Financial self-sufficiency of regulatory boards is required by West Virginia Code §30-1-6(c). The LPN Board has a total budget for FY 2001 of \$341,616. The Board's licensing fees and administrative fees imposed against its licensees are remitted to the Board's special revenue fund, and the fines imposed are remitted to the State's general fund in accordance with the Code §30-1-8.

As shown in Table 2, the Board is self-sufficient through its licensing fees.

**Table 2**  
**Board Revenues and Expenses (1998 - 2000)**

	<b>FY 1998</b>	<b>FY 1999</b>	<b>FY 2000</b>
<b>Revenues</b>	\$332,289	\$375,422	\$343,902
<b>Expenditures</b>	\$300,031	\$299,015	\$350,442
<b>EOY Cash Bal.</b>	<b>\$388,049</b>	<b>\$464,456</b>	<b>\$457,916</b>

## **Conclusion**

The Board of Examiners for Licensed Practical Nurses has complied with the general provisions of Chapter 30 of the West Virginia Code. The Board is accessible to the public through its various pamphlets, its telephone listing and its well-maintained website. The Board meets regularly and maintains adequate records of its meetings. In addition, the Board requires and verifies continuing education of its licensees, responds to licensee complaints, provides due process to licensees against whom a complaint has been filed, and maintains financial stability and independence.





**APPENDIX A**

**Transmittal Letter to Agency**



**WEST VIRGINIA LEGISLATURE**  
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John Sylvia  
Director

May 24, 2001

Ms. Nancy R. Wilson, R.N., Executive Secretary  
Board of Licensed Practical Nurses  
101 Dee Street  
Charleston, West Virginia 25311-1620

Dear Ms. Wilson:

This is to transmit a draft copy of the Regulatory Board Review of the Board of Licensed Practical Nurses. We would appreciate your written response to the report by May 31, 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

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*Joint Committee on Government and Finance*

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**APPENDIX B**  
**Agency Response**



WEST VIRGINIA  
STATE BOARD OF EXAMINERS  
FOR LICENSED PRACTICAL NURSES

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May 24, 2001

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

Dear Mr. Sylvia:

The West Virginia State Board of Examiners for Licensed Practical Nurses has received and reviewed the draft of the "Regulatory Board Review of the Board of Licensed Practical Nurses". We too believe that the agency is in compliance with all requirements of Chapter 30 and take very seriously the public protection responsibilities inherent in licensure. Our commitment to assuring public access and strong desire to provide prompt, accurate, friendly response to every inquiry are genuine. We appreciate the opportunity to share some of our accomplishments.

I will retire June 30, 2001, after twenty-six years with the board. Lanette Anderson, J.D., R.N., will become Executive Secretary on July 1, 2001, and will represent the board at the Joint Committee on Government Operations in July when this report is to be reviewed. Mrs. Anderson has been an employee of the board for nine years and is extremely competent and very knowledgeable about all aspects of the board's operations.

I would like to commend staff in the Performance Evaluation and Research Division for their assistance in completing this regulatory review. Dennis Rhodes, Senior Research Analyst and Joseph M. Gray, Research Analyst were courteous and very helpful in providing direction regarding data needed to evaluate agency performance.

We are available to respond to questions or provide additional information that may be requested to complete the regulatory review process.

Sincerely Yours,

A handwritten signature in cursive script that reads "Nancy R. Wilson".

Nancy R. Wilson  
Executive Secretary

NRW/n

