

**Regulatory Board Evaluation**

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**Board of Optometry**

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**The Board of Optometry Is Necessary  
to Protect the Public**

**The Board is in Compliance With  
Most Chapter 30 Provisions of  
West Virginia Code**



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John Sylvia  
Director

December 11, 2006

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

The Honorable J.D. Beane  
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 Optometry, which will be presented to the Joint Committee on Government Operations on Monday, December 11, 2006. The issues covered herein are "The Board of Optometry Is Necessary to Protect the Public;" and "The Board is in Compliance With Most Chapter 30 Provisions of West Virginia Code."

We transmitted a draft copy of the report to the Board of Optometry on November 22, 2006. The Board of Optometry opted not to have an exit conference. We received the agency response on December 1, 2006.

Let me know if you have any questions.

Sincerely,

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

John Sylvia

JS/tlc

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*Joint Committee on Government and Finance*

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# Executive Summary

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## **Issue 1: The Board of Optometry Is Necessary to Protect the Public.**

The Legislative Auditor has determined that there is a need for the Board of Optometry. The establishment of a board to regulate the profession of optometry is necessary to protect the health and safety of the public. Without regulation, the public can be harmed through the unauthorized, unqualified or unprofessional practice of optometry. The finding of this issue is that licensing optometrists is necessary for public protection.

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*The establishment of a board to regulate the profession of optometry is necessary to protect the health and safety of the public.*

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## **Issue 2: The Board Is in Compliance With Most Chapter 30 Provisions of West Virginia Code.**

The Board of Optometry is in compliance with most Chapter 30 provisions of the West Virginia Code and other applicable laws. The Board meets at least once annually, maintains a record of its proceedings and submits an annual report. The Board maintains a register of all applicants and a roster of all licensees that is in compliance with code. The Board was not in compliance with the Open Governmental Proceedings Act until July 2006. Previously, the Board filed notices five days before the meeting, as opposed to filing notices early enough so they can be published in the State Register five days before the meeting. The Board resolves complaints in a timely manner. Continuing education is required and audited. In September 2006, the Governor appointed five members to fill expired terms on the Board. Currently, the Board has two members still serving expired terms. Reappointments should be addressed in a timely manner to ensure preservation of institutional knowledge. To ensure the safety of the public, the Board uses the National Practitioners Data Bank for background checks.

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*The Board was not in compliance with the Open Governmental Proceedings Act until July 2006. Previously, the Board filed notices five days before the meeting, as opposed to filing notices early enough so they can be published in the State Register five days before the meeting.*

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## **Recommendations**

1. *The Legislative Auditor recommends the Legislature continue the Board of Optometry.*
2. *The Legislative Auditor recommends the Board of Optometry should continue its effort to comply with the Open Government Proceedings Act §6-9A.*
3. *The Board of Optometry should take all steps available to it to have the expired terms on the Board filled.*



# Review Objective, Scope and Methodology

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## Objective

This Regulatory Board Evaluation of the Board of Optometry is authorized by the West Virginia Sunset Law, Chapter 4, Article 10 of the West Virginia Code. The evaluation is required to assess whether the public interest requires that the Board be continued; whether the Board complies with the policies and provisions of Chapter 30 of the West Virginia Code, and all other applicable laws and rules; and whether the Board follows a disciplinary procedure which observes due process rights and protects the public interest.

## Scope

This Regulatory Board Evaluation covers the period from January 2003 to November 2006. This evaluation examined the Board's compliance to Chapter 30 requirements, such as the Board's financial self-sufficiency, public accessibility, continuing education requirements and the Board's complaint process. The financial information obtained by the Legislative Auditor dates from 2003 to 2006. The Legislative Auditor reviewed complaint files from 2003 to 2006.

## Methodology

Information compiled in this evaluation was acquired from the West Virginia Code, interviews with the Board's president, meeting minutes, examination of annual reports, disciplinary complaint register, and the Digest of Revenue Sources in West Virginia. Information was also obtained from the Secretary of State's Office and the Budget Division of the Legislative Auditor's Office. Every aspect of this evaluation complied with **Generally Accepted Government Auditing Standards (GAGAS)**.



## **The Board of Optometry Is Necessary to Protect the Public.**

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*The Board is mandated to ensure that the highest quality of optometric eye and vision care is provided to the public.*

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*Optometrists examine people's eyes to diagnose vision problems and eye diseases, test patients' visual acuity, depth and color perception, and ability to focus and coordinate the eyes.*

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*All 50 states and the District of Columbia require that optometrists be licensed.*

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The West Virginia Legislature created the Board of Optometry in 1909 to regulate the profession of optometry. The Board is mandated to ensure that the highest quality of optometric eye and vision care is provided to the public. The seven-member board is appointed by the Governor and consists of five optometrists and two lay members.

Optometrists provide most primary vision care. They examine people's eyes to diagnose vision problems and eye diseases, test patients' visual acuity, depth and color perception, and ability to focus and coordinate the eyes. Optometrists prescribe eyeglasses and contact lenses and provide vision therapy and low-vision rehabilitation. Optometrists analyze test results and develop a treatment plan. They administer drugs to patients to aid in the diagnosis of vision problems and prescribe drugs to treat some eye diseases. Optometrists provide preoperative and postoperative care to cataract patients as well as to patients who have had laser vision correction or other eye surgery. They also diagnose conditions caused by systematic diseases such as diabetes and high blood pressure. Most optometrists are in general practice. Some specialize in work with the elderly, children or partially-sighted persons who need specialized visual devices. Others may specialize in contact lenses, sports vision or vision therapy. A few teach optometry, perform research, or consult.

All 50 states and the District of Columbia require that optometrists be licensed. In West Virginia, applicants for a license must have a Doctor of Optometry degree from an accredited optometry school and must pass both a written National Board examination and the State Clinical Board examination. In West Virginia there are 284 licensed optometrists. There are three types of licensure for optometrists in West Virginia. License numbers only composed of digits are not certified to use any pharmaceutical agents. An optometrist with the letter "D" after the license number signifies diagnostic and therapeutic prescriptive authority. The letters "OD" after a license number indicate diagnostic and therapeutic prescriptive authority and some oral pharmaceutical prescriptive authority. It is the opinion of the Legislative Auditor that public protection is provided by the Board of Optometry.

## **Recommendation**

1. *The Legislative Auditor recommends the Legislature continue the Board of Optometry.*



## Issue 2

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### **The Board is in Compliance with Most of Chapter 30 Provisions of West Virginia Code.**

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

- An official seal has been adopted (§30-1-4).
- The Board meets at least once annually (§30-1-5(a)).
- The Board maintains a record of its proceedings (§30-1-12(a)).
- A staff member of the Board has attended the orientation session provided by the State Auditor (§30-1-2a(b)).
- The Board's address and telephone number are listed in the State Government listing of the Charleston area telephone book (§30-1-12(c)).
- An annual report has been submitted to the Governor and Legislature describing the transactions for the preceding two years, and budget data (§30-1-12(b)).
- The Board is financially self-sufficient (§30-1-6(c)).
- Continuing education requirements are established for licensed renewals (§30-1-7(a)).
- The Board has promulgated rules that specify the investigation and resolution procedure of all complaints (§30-1-8).
- The Board has a lay member to represent the interests of the public as required for medically related boards (§30-1-4(a)).
- The Board has a register of all applicants with the appropriate information specified in code (§30-1-12(a)).

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- A roster has been prepared and maintained of all licensees which includes name and office address (§30-1-13).

### **The Board Was Not in Compliance With the Open Governmental Proceedings Act Until July 2006.**

The Open Government Proceedings Act requires the Board to file a notice of any meeting with the Secretary of State for publication in the State Register. The notice must be published at least five days prior to the date of the meeting. Since 2002, the Board has filed 23 meeting notices in accordance with the Open Governmental Proceedings Act (§6-9A). Out of the 23 notices, only seven have been filed in compliance. In the past year, 9 of the last 10 meeting notices were not in compliance. The Board was notified by the Secretary of State's Office in July 2006 regarding the open meeting violations. Previously, the Board filed notices five days before the meeting, as opposed to filing notices early enough so they could be published in the State Register five days before the meeting. The Board needs to file all meeting notices in a timely manner because decisions could be contested if meetings are not properly filed. The Board is aware of the proper procedure and is now in compliance.

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*Previously, the Board filed notices five days before the meeting, as opposed to filing notices early enough so they could be published in the State Register five days before the meeting.*

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*The Board is aware of the proper procedure and is now in compliance.*

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### **The Board Resolves Complaints in a Timely Manner.**

The complaint process of the Board results in timely resolutions to complaints filed against optometrists. According to Title 14, Series 4, upon receipt of the complaint, the Board forwards a copy of the complaint to the licensee and requires a written response within 30 days. If the licensee responds, the response is forwarded to the complainant. At any point in the investigation of a complaint, the Board may assign the matter to an ethics investigator for review and investigation. The ethics investigator has 60 days from the date of receipt of the complaint to present the Board with a report.

*Complaints filed against optometrists primarily are customer service oriented, such as problems with corrective glasses or contacts.*

<b>Table 1</b>	
<b>Complaints Received by the Board</b>	
<b>Calendar Year</b>	<b>Number of Complaints</b>
2003	1
2004	7
2005	14
2006*	2
<b>Total</b>	<b>24</b>

*\*as of October 23, 2006*  
*Source: Board of Optometry Complaint Log 2003-2006*

Of the 24 cases examined by the Legislative Auditor (see Table 1), there were no violations of optometric law. On the average, complaints are resolved in 33 days. Two cases have lasted longer than three months. Complaints filed against optometrists primarily are customer service oriented, such as problems with corrective glasses or contacts. Table 2 shows the disposition of complaints from 2003-2006.

*The Board randomly selects about 10% of licensees to audit continuing education during the biennial license renewal period.*

<b>Table 2</b>	
<b>Disposition of Complaints 2003-2006</b>	
No Jurisdiction	6
Customer Service	11
No Violation	7
<b>Total</b>	<b>24</b>

*Source: Board of Optometry Complaint Log 2003-2006*

### **Continuing Education Is Required and Audited.**

The Board refined its continuing education requirement, CSR14-1, in 2004. The Board added that a minimum of 12 of the 40 biennial continuing education units (CEU) be in pharmacology or therapeutics courses. A maximum of 6 hours of study may be taken in practice management and a maximum of 10 hours of CEUs must be taken by correspondence or via the internet during the biennial period. The Board randomly selects about 10% of licensees to audit continuing education during the biennial license renewal period. The Board identified one violation during the audit period. In 2003, one licensee failed to produce proof of his continuing education hours for the licensing period. The Board entered into a consent decree with the licensee and agreed upon a monetary fine.

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## The Board Is Financially Self-Sufficient.

Chapter 30 Boards are required by WVC§30-1-6(c) to set fees that are sufficient to enable boards to effectively carry out their responsibilities. The Board of Optometry has set its fees by rules and is financially self-sufficient. Table 3 shows the revenue, expenditures and cash balance for the Board.

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*The Board of Optometry has set its fees by rules and is financially self-sufficient.*

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<b>Fiscal Year</b>	<b>Revenue</b>	<b>Expenditures</b>	<b>End-of-Year Cash Balances</b>
2003	\$148,919	\$100,892	\$141,780
2004	\$56,427	\$100,514	\$97,693
2005	\$124,606	\$118,333	\$103,965
2006	\$99,585	\$117,437	\$86,113

*Source: West Virginia State Auditor's Office as of November 8, 2006*

## The Board Has Two Appointments That Need to Be Made.

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*The Governor made five appointments to the Board in September 2006. The Board still has two members serving expired terms; one optometrist and one lay member.*

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Members are appointed to the Board for a three year term and can be reappointed with no term limits. The Governor made five appointments to the Board in September 2006. The Board still has two members serving expired terms; one optometrist and one lay member. One of the expired terms will be filled once the optometrist fulfills his previous commitments with another optometric association. Term limits allow new people to serve on the board, while staggering board appointments ensure the preservation of institutional knowledge. If reappointments are not addressed in a timely manner, the preservation of institutional knowledge of the Board could be compromised.

## The Board Uses the National Practitioners Data Bank for Background Checks.

A function of any board is to protect the well-being of the public. The Board does not use the West Virginia State Police Criminal background checks. It is the opinion of the Board that the process of obtaining permission, fingerprint cards, providing payment and the wait for the return of the information was too expensive, cumbersome and time consuming. The time delay would have required a change in legislative rules regard-

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*The Board of Optometry conducts background checks on licensees by using the National Practitioner Data Bank (NPDB) and, the Healthcare Integrity Data Bank (HIPDB).*

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*Both NPDB and HIPDB are primarily alert or flagging systems that intend to facilitate a comprehensive review of health care practitioners' professional credentials. The data found are intended to augment, not replace traditional forms of review.*

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ing the deadlines for applications. The Board of Optometry conducts background checks on licensees by using the National Practitioner Data Bank (NPDB), and the Healthcare Integrity Data Bank (HIPDB). The creation of the NPDB was a result of the increasing occurrence of medical malpractice litigation, and the need to improve the quality of medical care had become a nationwide problem that warranted greater efforts than any individual state could undertake. The intent is to improve the quality of health care by encouraging state licensing boards and other health care entities, and professional societies to identify and discipline those who engage in unprofessional behavior; and to restrict the ability of incompetent physicians, dentists and other health care practitioners to move from state to state without disclosure or discovery of previous medical malpractice payment and adverse action history. HIPDB was created to combat fraud and abuse in health insurance and health care delivery. Health care fraud burdens the nation with enormous financial costs and threatens the quality of health care and patient safety. Both NPDB and HIPDB are primarily alert or flagging systems that intend to facilitate a comprehensive review of health care practitioners' professional credentials. NPDB and HIPDB information is not available to the general public. The data found are intended to augment, not replace traditional forms of review. The response is posted to the Board's account within hours. The longest the Board has waited for data is 24 hours.

## **Conclusion**

The Board of Optometry complies with most general provisions of Chapter 30 of the West Virginia Code. The Board is accessible to the public through its office, telephone listing and website. The Board's website allows approved agencies access to a list containing West Virginia Licensed Optometrists, their license number and practice address. The Board meets regularly, maintains adequate records of meetings, and submits an annual report. The Board was not in compliance with the Open Governmental Proceedings until July 2006. The Board resolves complaints in a timely manner. Continuing education is required for license renewal but only a random sample of licensees are audited by the Board. The Board is financially self-sufficient. The Board uses the National Practitioner Data Base to conduct background checks on licensees to ensure the protection of the public.

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## **Recommendations**

2. *The Legislative Auditor recommends the Board of Optometry should continue its effort to comply with the Open Government Proceedings Act §6-9A.*
3. *The Board of Optometry should take all steps available to it to have the expired terms on the Board filled.*

# Appendix A: Transmittal Letter

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1900 Kanawha Boulevard, East  
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John Sylvia  
Director

November 22, 2006

Pam Carper, Executive Administrator  
723 Kanawha Blvd., Suite 804  
Charleston, WV 25301-2733

Dear Ms. Carper:

This is to transmit a draft copy of the Regulatory Board Evaluation of the Board of Optometry. This report is scheduled to be presented during the December 10-12, 2006 interim meeting of 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 questions the committee may have.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us by November 29, 2006. We need your written response by noon on December 1, 2006 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 340-3192 by Thursday, December 7, 2006 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,

Handwritten signature of Brian Armentrout in cursive script.  
Brian Armentrout

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*Joint Committee on Government and Finance*

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# Appendix B: Agency Response

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## WEST VIRGINIA BOARD OF OPTOMETRY

723 Kanawha Blvd., Suite 804  
Charleston, WV 25301

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December 1, 2006

Mr. Brian Armentrout  
West Virginia Legislature  
Performance Evaluation and Research Division  
Building 1, Room W-314  
Charleston, WV 25305

RECEIVED  
DEC 01 2006

PERFORMANCE EVALUATION AND  
RESEARCH DIVISION

Dear Mr. Armentrout:

The West Virginia Board of Optometry thanks you for your thorough review of the Board and its procedures. We want to make every effort to ensure the best vision care and service for our citizens.

The report cites violations of the Open Meetings Law. Please be aware that there was no intent to discourage visitors or attendance by the public. The Board has been in compliance with the law since the Secretary of State's Office advised us of the proper interpretation of the publishing rule. The Board guarantees that the required schedule for publishing Board meetings will be followed.

Dr. Glenn Bailey has been appointed by the Governor to replace Dr. Boggs on the Board. One member, Ms. Sharon Rubin, Consumer Representative, continues to serve past her appointment expiration date. The Board has contacted the Governor's Office regarding Ms. Rubin's replacement, and Mr. Scott Cosco is continuing to search for a new consumer representative.

The Board's Executive Administrator, Ms. Pam Carper, wishes to thank Ms. Miranda Nabors, Legislative Analyst, for her professionalism and efficiency in obtaining information and analyzing the procedures of the Board. Her interview technique was friendly yet precise. Her focus and organizational skills enhanced the audit experience.

Thank you for recommending that the West Virginia Board of Optometry be continued. Please know that the Board is dedicated to its vision printed below. We will be happy to provide additional information or act as a resource as needed by the West Virginia Legislature and its constituents.

Respectfully yours,

Handwritten signature of Clifton Hyre in cursive.

Clifton Hyre, O.D.  
President

### MISSION STATEMENT

To ensure that all applicants for licensure and all Doctors of Optometry currently licensed, practice their profession in a manner that benefits and protects the public, and to ensure that the highest quality optometric eye and vision care is provided in a professional, competent, and ethical manner.

