

STATE OF WEST VIRGINIA

PRELIMINARY PERFORMANCE REVIEW OF THE

BOARD OF RESPIRATORY CARE PRACTITIONERS

Active in Disciplinary Actions
Purchasing Practices
Annual Reports
Notices of Meetings Not Filed
Legislative Rules Filed in 1999

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 2000

PE00-07-165

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May 2000

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Antonio E. Jones, Ph.D.
Director

May 12, 2000

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

The Honorable Vicki 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 Preliminary Performance Review of the *Board of Respiratory Care Practitioners*, which will be presented to the Joint Committee on Government Operations on Friday, May 12, 2000. The issues covered herein are "Active in Disciplinary Actions; Purchasing Practices; Annual Reports; Notices of Meetings Not Filed; and Legislative Rules Filed in 1999."

We conducted an exit conference with the *Board of Respiratory Care Practitioners* on May 3, 2000. We received the agency response on May 5, 2000.

Let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Antonio E. Jones".

Antonio E. Jones

AEJ/wsc

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Executive Summary

Issue Area 1: The Board is More Active with Respect to Disciplinary Actions than the Corresponding Licensure Boards in all but one of the Adjacent States.

A comparison of disciplinary actions taken by the Board with licensure boards in surrounding states shows that it is less active when compared to Ohio, a much larger state with six times as many licensees. West Virginia's Board compares more favorably with the other surrounding states. All of the surrounding states have much larger numbers of respiratory therapist licensees than West Virginia, yet West Virginia generally matches or exceeds the total number of disciplinary actions conducted in the other states.

Issue Area 2: State Purchasing Policies not Practical for the Board's Needs.

The Board has reimbursed members for such expenses as office supplies and postage instead of directly paying for these expenses from the Board's funds." According to Section Seven of the Purchasing Division's Agency Purchasing Manual, "purchases of materials, supplies, and designated services which total \$1,000 or less per transaction should be made using the State Purchasing Card." The Board was ineligible for participation in the Purchasing Card Program until it hired an employee in October 1997. Another reason why the Board has reimbursed its members for the purchase of office supplies is that the Board had no funds upon its creation since it had not yet collected any licensure revenue and was not appropriated any funds for start-up costs.

The Legislative Auditor suggests two possible methods for financing newly-created licensure boards. Due to the lack of funds available to newly-created licensure boards, the State Auditor's Office and the Purchasing Division could permit licensure boards to charge purchases on purchasing cards until boards begin collecting licensure revenue and can cover expenses from their own funds. Another alternative would be for the Legislature to allocate funds to newly-created licensure boards to provide for start-up costs and other necessary expenses, while requiring the repayment of these funds after the boards begin to collect licensure revenue.

Recommendation 1:

The State Auditor's Office and the Purchasing Division should change existing purchasing policies to ensure that all State agencies, whether or not they have permanent employees, are eligible for participation in the Purchasing Card Program.

Recommendation 2:

The Legislature should consider possible ways of financing newly-created licensure boards and choose a method by which they can cover their necessary start-up costs while adhering to the State's purchasing policies.

Issue Area 3: The Board failed to produce an annual report until 1999.

From the time of the Board's creation in 1995 until 1999 the Board did not produce an annual report to the Governor as required by WVC §30-1-12. During 1999 an biennium report was prepared that covered fiscal years 1998 and 1999.

Recommendation 3:

In the future, the Board should file reports to the Governor on an annual basis.

Issue Area 4: The Board failed to file notices of public meetings with the Secretary of State's Office prior to 1999.

Beginning in April 1999, the Board began to file notices of meeting dates in accordance with the Open Governmental Meetings Act. A total of five notices were filed in 1999. One notice was filed too late to appear in the State Register at least five days prior to the meeting as required by WVC §6-9A-3.

Recommendation 4:

The Board should file notices of public meetings with the Secretary of State's Office early enough to permit five days notice in the State Register as required by WVC §6-9A-3.

Issue Area 5: The Board has recently filed new legislative rules with the Secretary of State's Office to clarify continuing education requirements and the disciplinary process.

The Board has recently taken steps to clarify its legislative rules regarding continuing education requirements (Title 30, Series 3) and disciplinary action (Title 30, Series 4) by filing proposed changes with the Secretary of State's Office. The Board should be commended for its continuing efforts to monitor and to inform licensees regarding their CEU requirements and the standards of conduct expected of them.

Objective and Methodology

The objective of this preliminary performance review is to determine if the Board of Respiratory Care Practitioners is active enough with respect to disciplinary actions, comparing the Board to other states; the level of compliance with the requirements of the Purchasing Division' Agency Purchasing Manual; the level of compliance with the reporting requirements of professional licensure boards according to *WVC Chapter 30* and *Chapter 6*; the Board's responsiveness to the information needs of licensees; and the compatibility of various *Code* sections found within *WVC Chapter 30* regarding reimbursement for Board member's expenses.

The time period of this review covers fiscal years 1997 through 2000. Information used to complete this report was drawn from the Board's records, including annual reports, expense reimbursement records, meeting minutes, and interviews conducted with Board members and staff.

This review will assist the Joint Committee on Government Operations in making one of three 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 the 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 any other deficiencies.

Every aspect of this review complied with **Generally Accepted Government Auditing Standards**.

Background

The Board of Respiratory Care Practitioners was created by the Legislature in 1995 in order to protect the life, health, and safety of the public by requiring any person practicing as a respiratory therapist to submit evidence of qualification to practice and is licensed in the State of West Virginia. The Board is composed of seven members, appointed by the Governor with the advice and consent of the Senate. The Board includes one lay citizen member; one practicing physician member currently licensed in West Virginia, with board certification, clinical training and experience in the management of pulmonary disease; and five licensed members who have been engaged in the practice of respiratory care for five years preceding their appointment. One respiratory practitioner must be employed full-time in home respiratory care by a home medical equipment supplier. The Board must meet at least twice a year but currently meets on a monthly basis.

Until FY 2000, members were not paid a per diem for meeting attendance. Travel and other expenses were, however, reimbursed. Reimbursements for expenses is limited to \$200 per meeting by WVC §30-34-3. Currently, members are eligible for per diem payments of \$100 per meeting upon submitting expense reports.

The application fee for a new license is limited by statute to two hundred dollars. The annual fee for license renewal is limited to one hundred fifty dollars.

Licensees have been categorized into three general classes: Respiratory Care Associates, Technicians, and Therapists. Until December 31, 1997 some practitioners were grandfathered and licensed as Temporary Respiratory Care Associates (TRCA). This classification was given to practitioners who were given an opportunity to pass the examination given by the National Board of Respiratory Care (NBRC). Upon passing the exam, these practitioners were licensed as Licensed Respiratory Care Associates (LRCA). TRCA and LRCA licenses are no longer issued. Applicants are initially licensed as Temporary Respiratory Care Technicians (TRCT) if they are 1) students within 30 days of graduation waiting to take the next NBRC exam, or 2) applicants who are currently practicing or have practiced within the last twelve months in another state or country and are completing the requirements for licensing in this state. Applicants are licensed as Licensed Respiratory Therapists Certified (LRTC) upon completion of an accredited training program and passing the NBRC Certification Exam. Licensed Respiratory Therapists Registered (LRTR) have successfully completed an accredited training program and have successfully passed the NBRC Registry Exam.

The Respiratory Care Board utilizes the National Board of Respiratory Care Examinations as the licensing examinations for respiratory care practitioners in West Virginia. This national examination provides for interstate endorsement of licensees without further testing. The national entry-level examinations are offered in March, July and November.

**Table 1
Licensure Statistics**

	Grandfather Through 12/31/98	Certified	Registered	Total Licensees
FY 1997	18	275	453	746
FY 1998	29	320	469	818
FY 1999	31	404	504	939
FY 2000	0	506	543	1,049

Table 1 illustrates the trend towards a gradual, but steady increase in the number of licensees. Given the gradual increase in revenues that this trend creates, coupled with the Board's expenditure patterns, the financial situation of the Board appears to be secure for the foreseeable future.

**Table 2
Board Revenues, Expenditures, and Cash Balances**

	FY 1998	FY 1999
Gross Revenue	\$97,109	\$91,190
Expenditures	\$84,378	\$86,719
End of Year Cash Balance	\$207,530	\$209,854

Table 2 shows that the Board's expenditures closely match revenues. The end of year cash balance levels also closely match the amount permitted by §WVC 30-1-10. This passage states, "When the special fund of any board accumulates to an amount which exceeds twice the annual budget of the board or ten thousand dollars, whichever is greater, the excess amount shall be transferred by the state treasurer to the state general revenue fund." The Board has maintained an amount approximately equal to twice its annual budget.

Disciplinary Actions Taken by the Board

Table 3 lists disciplinary actions taken by the Board each fiscal year since its creation. The Board has maintained roughly the same level of activity throughout its history with routinely around 5 disciplinary actions each year. Ten of the twenty-one disciplinary actions taken have resulted in license denial or a cease and desist order, while six investigations discovered no violations. The two active investigations listed for FY 1999 were concluded during FY 2000 and are also listed in the FY 2000 totals. One disciplinary action resulted in a consent agreement and an active license. The Board participates in the National Respiratory Care Disciplinary Database which is a database of final disciplinary actions taken against respiratory care practitioners by 40 states. This database is used to verify an applicant's status before the Board issues a license.

**Table 3
Disciplinary Actions**

	Active Investigations	No Violation	License Refused/Cease and Desist	Consent Agreement	CEU Violations	Total Disciplinary Actions
FY 1997	0	2	3	0	0	5
FY 1998	0	2	3	0	0	5
FY 1999	2	1	3	0	12*	7
FY 2000 as of January 19	1	1	1	1	0	4
*A single disciplinary action with multiple violations from the same health care provider						

Issue Area 1: The Board is more active with respect to disciplinary actions than the corresponding licensure boards in all but one of the adjacent states.

A comparison of disciplinary actions taken by the Board with licensure boards in surrounding states (see Table 4) shows that it is less active when compared to Ohio, a much larger state with six times as many licensees. West Virginia's Board compares more favorably with the other surrounding states. All of the surrounding states have much larger numbers of respiratory therapist licensees than West Virginia, yet West Virginia generally matches or exceeds the total number of disciplinary actions conducted in the other states. As a proportion of total licensees, the number of disciplinary actions conducted in West Virginia is only exceeded by Ohio. Given that the state with the 2nd lowest number of licensees, Virginia, still has almost three times the number of licensees as West Virginia, the level of disciplinary activity maintained by the West Virginia Board is high relative to the State's number of licensees.

It should be noted that Pennsylvania and Virginia currently do not have continuing education requirements, therefore, the licensure boards in these states do not have to monitor and enforce such requirements. West Virginia's Board has devoted a considerable amount of its attention to licensees who have failed to fulfill continuing education requirements. Five hospitals were audited in FY 1999 for the continuing education units (CEUs) they provided and their CEUs were compared for consistency with those submitted by their staffs to the Board. Thirteen licensees were cited for failing to complete the required number of CEUs in FY 1998. They were permitted an extension until the end of calendar year 1999 to complete their FY 1998 CEUs. Four failed to complete the CEU requirement by the end of 1999 and, as was decided during the June 1999 Board meeting, their licenses have expired.

**Table 4
Comparison of Total Licensees With the Number of Disciplinary Actions
(Disciplinary Actions per 500 Licensees)**

	Ohio		Kentucky*		Virginia**		Pennsylvania***		West Virginia	
FY 1997	6,020	96 (8.0)	N/A	2 (N/A)	1,995	1 (0.3)	5,681	0 (0)	746	5 (3.4)
FY 1998	6,488	76 (5.9)	N/A	8 (N/A)	2419	1 (0.2)	5,260	5 (0.5)	818	5 (3.1)
FY 1999	6,200	93 (7.5)	2,957	6 (1.0)	2,600	1 (0.2)	5,936	4 (0.3)	939	7 (3.7)
*Totals for disciplinary actions do not include continuing education violations. Number of licensees given for FY 1999 is actually the total as of January 2000 because the actual numbers for FY 1997-1999 were not available. **Number of licensees given for FY 1999 is actually the total as of January 2000. ***Data is organized by calendar year instead of fiscal year. N/A: Data Not Available										

Issue Area 2: State Purchasing Policies not Practical for the Board's Needs.

The Board has frequently reimbursed members for such expenses as office supplies and postage instead of directly paying for these expenses from the Board's funds. According to Section Seven of the Purchasing Division's Agency Purchasing Manual, "purchases of materials, supplies, and designated services which total \$1,000 or less per transaction should be made using the State Purchasing Card." The Board was ineligible for participation in the Purchasing Card Program until it hired an employee in October 1997. According to the Auditor's State Purchasing Card Program Policies and Procedures Guide, a "cardholder must be an employee of the Spending Unit. Cards will not be issued to temporary, contract, or volunteer employees." This means that Board members were ineligible to be cardholders because they were not employees of the Board, but the secretary eventually hired by the Board was. This situation is not unusual among the State's licensure boards since some boards routinely operate without any permanent employees and board members themselves handle all administrative functions.

Transactions using the State Purchasing Card are authorized by VISA for official state purchases. Some items cannot be purchased with the card, such as:

...alcoholic beverages; firearms; gasoline purchased while in travel status; tax reportable services; temporary help; cash advances; travel and related expenses; legal services; insurance; association dues/membership; all fleet vehicle expenses.

The Purchasing Card Program eliminates the need to process some of the paperwork that has been completed for reimbursements while reducing the risk of fraud by improving management controls over spending. This coupled with the convenience of using a VISA card for official state purchases makes the procurement of office supplies and services more convenient for the Board.

Another reason why the Board has reimbursed its members for the purchase of office supplies is that the Board had no funds upon its creation. Since the Board had not yet collected any licensure revenue and was not appropriated any funds when it was created, the only means by which start-up costs and necessary supplies could be financed was by reimbursing Board members for making necessary purchases out of their own personal funds.

The Legislative Auditor suggests two possible methods for financing newly-created licensure boards. Due to the lack of funds available to newly-created licensure boards, the State Auditor's Office and the Purchasing Division could permit licensure boards to charge purchases on purchasing cards until boards begin collecting licensure revenue and can cover expenses from their own funds. Another alternative would be for the Legislature to allocate funds to newly-created licensure boards to provide for start-up costs and other necessary expenses, while requiring the repayment of these funds after the boards begin to collect licensure revenue.

Recommendation 1:

The State Auditor's Office and the Purchasing Division should change existing purchasing policies to ensure that all State agencies, whether or not they have permanent employees, are eligible for participation in the Purchasing Card Program.

Recommendation 2:

The Legislature should consider possible ways of financing newly-created licensure boards and choose a method by which they can cover their necessary start-up costs while adhering to the State's purchasing policies.

Issue Area 3: The Board Failed to Produce an Annual Report Until 1999.

From the time of the Board's creation in 1995 until 1999 the Board did not produce an annual report to the Governor as required by WVC §30-1-12. During 1999 an biennium report was prepared that covered fiscal years 1998 and 1999. This report also included some data, such as the number of licensees and disciplinary actions, for previous years. The Board plans to produce reports on an annual basis in the future.

The Board had difficulty fulfilling data reporting requirements until it hired a full-time staff member in October 1997 and began to maintain better organized records in a centralized location. The Board also opened its own office in 1997.

The Board began to use the State's Financial Information Management System (FIMS) in February 1997. With the incorporation of the Board into FIMS, more organized financial records began to be kept, which greatly facilitated data reporting. Prior to this, the Board's records were maintained in separate locations by Board members at their private offices. A computerized system for maintaining financial records was not maintained by the Board before FIMS.

Recommendation 3:

In the future, the Board should file reports to the Governor on an annual basis.

Issue Area 4: The Board Failed to File Notices of Public Meetings with the Secretary of State's Office Prior to 1999.

Beginning in April 1999, the Board began to file notices of meeting dates in accordance with the Open Governmental Meetings Act. A total of five notices were filed in 1999. One notice was filed too late to appear in the State Register at least five days prior to the meeting as required by WVC §6-9A-3. The Board has, with this exception, remained in compliance with this requirement since it began filing notices.

Recommendation 4:

The Board should file notices of public meetings with the Secretary of State's Office early enough to permit five days notice in the State Register as required by WVC §6-9A-3.

Issue Area 5: The Board Filed new Legislative Rules on November 8, 1999 with the Secretary of State's Office to Clarify Continuing Education Requirements and the Disciplinary Process.

The Board clarified its legislative rules regarding continuing education requirements (Title 30, Series 3) and disciplinary action (Title 30, Series 4) by filing proposed changes with the Secretary of State's Office on November 8, 1999. As discussed earlier, the Board has had difficulties in the past with licensees who inadequately fulfill continuing education unit (CEU) requirements. In response to concerns voiced by licensees, some of whom appealed Board rulings on CEUs submitted, that continuing education requirements were vaguely described in the *Code* and existing rules, more detailed information was added to Title 30, Series 3. This includes numbers of credits required, reporting requirements for licensees, and descriptions of approved programs. The disciplinary action process is outlined in Title 30, Series 4. The disciplinary rule includes the investigation process, the range of possible disciplinary actions, and a detailed definition of professional misconduct.

The Board requires 20 contact hours (one contact hour equals 50 consecutive minutes of instruction) of continuing education each year. As the number of CEU violations (12) in Table 3 illustrates, there were sufficient difficulties with licensees failing to meet CEU requirements to warrant clarification of the Board's standards. The Board should be commended for its efforts to monitor and to inform licensees regarding their CEU requirements and the standards of conduct expected of them.

Conclusion

A comparison of disciplinary actions taken by the Board with licensure boards in surrounding states shows that it is less active when compared to Ohio, a much larger state with six times as many licensees. West Virginia's Board compares more favorably with the other surrounding states. All of the surrounding states have much larger numbers of respiratory therapist licensees than West Virginia, yet West Virginia generally matches or exceeds the total number of disciplinary actions conducted in the other states.

The Board has reimbursed members for such expenses as office supplies and postage instead of directly paying for these expenses from the Board's funds." According to Section Seven of the Purchasing Division's Agency Purchasing Manual, "purchases of materials, supplies, and designated services which total \$1,000 or less per transaction should be made using the State Purchasing Card." The Board was ineligible for participation in the Purchasing Card Program until it hired a permanent employee. The Board also lacked funds for start-up costs and other necessary expenses upon its creation. The State Auditor's Office and the Purchasing Division should change existing purchasing policies to ensure that all State agencies are eligible for participation in the Purchasing Card Program. Alternative ways of financing newly-created licensure boards exist and should be considered by the Legislature.

From the time of the Board's creation in 1995 until 1999 the Board did not produce an annual report to the Governor as required by WVC §30-1-12. During 1999 an biennium report was prepared that covered fiscal years 1998 and 1999. The Board plans to file reports on an annual basis in the future.

Beginning in April 1999, the Board began to file notices of meeting dates in accordance with the Open Governmental Meetings Act. A total of five notices were filed in 1999. One notice was filed too late to appear in the State Register at least five days prior to the meeting as required by WVC §6-9A-3. This is the only occasion on which the Board has failed to file a timely notice since it began to do so in 1999.

The Board has recently taken steps to clarify its legislative rules regarding continuing education requirements (Title 30, Series 3) and disciplinary action (Title 30, Series 4) by filing proposed changes with the Secretary of State's Office. The Board should be commended for its continuing efforts to monitor and to inform licensees regarding their CEU requirements and the standards of conduct expected of them.

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
(304) 347-4939 FAX



Antonio E. Jones, Ph.D.
Director

April 27, 2000

Ms. Karen Stewart, Chairperson
West Virginia Board of Respiratory Care Practitioners
106 Dee Drive, Suite 1
Charleston, WV 25311

Dear Ms. Stewart:

This letter confirms the date of the exit conference for the Preliminary Performance Review of the Board of Respiratory Care Practitioners for Monday May 3, 2000 at 11:00 a.m. As you discussed with Russell Kitchen this morning, the meeting will be held in the Joint Committee Conference Room, Room W-330, located adjacent to our office in the West Wing of the Main Capital Building.

If you have any questions please contact Russell Kitchen, Research Analyst, or myself. Thank you for your continued cooperation as we complete our review.

Sincerely,

A handwritten signature in cursive script that reads "Brian Armentrout".

Brian Armentrout,
Research Manager

Joint Committee on Government and Finance

APPENDIX B
Agency Response



State of West Virginia
Board of Respiratory Care
106 Dee Drive, Suite 1
Charleston, WV 25311

Cecil Underwood
Governor

RECEIVED

Phone: (304) 558-1382
Fax: (304) 558-1383

MAY 5 2000

RESEARCH AND PERFORMANCE
EVALUATION DIVISION

May 2, 2000

State of West Virginia
Office of Legislative Auditor
Performance Evaluation and Research Division
Building 1, Room W-314
State Capitol Complex
Charleston, West Virginia 25305

Dear Sirs,

The West Virginia Board of Respiratory Care is hereby providing a response to the issues presented in the preliminary performance review of the Board.

The Board of Respiratory Care appreciates the efforts of the Office of the Legislative Auditor in the preparation of this report. The Board will address any deficiencies that are noted and will take any and all corrective action to maintain its compliance with state policies and statutes.

Issue 1 - Disciplinary Actions

The Board appreciates the recognition of its activity in protecting the public and its ability to ensure quality practitioners to the State of West Virginia.

Issue 2 - State Purchasing Policies

The Board has made every attempt to follow the policies as established by the State of West Virginia. The Board was created in the 1995 Legislative session and was created to be a self supporting Board. In the early development of this Board, two Board members were responsible for the initial start up activities. These Board members did personally incur the start up expenses of the Board including the purchase of office supplies and were later reimbursed. After the Board discovered the ability to obtain office supplies from the Central warehouse, the activity of purchasing office supplies and obtaining reimbursement ceased.

May 2, 2000

Page 2

Upon the invitation of training for the West Virginia Purchasing Card, the Chairperson of the Board attended one of the first training sessions. It was then discovered that policy of the Purchasing Department dictated that only full time employees of the state could obtain the purchasing card. Upon the full time employment of the Executive Secretary, October 1997, the Board contacted the Purchasing Department on several occasions to request the training to enable obtaining the Board Purchasing Card. At this time, regularly scheduled training classes were not held until enough people were required to fill a class. The Board was able to obtain the necessary training in July of 1999 and obtained the Purchasing Card in August of 1999. The Board is and will continue to be in full compliance with state purchasing procedures.

Issue 3 - Annual Report

The Board was unaware of the requirement of an annual report until attending the Training Seminar for State Licensing Boards on June 10, 1999. After attending the training session the Board recognized the requirement and created its first annual report in 1999 that contained information for all years since the establishment of the Board. The Board is now in compliance and will remain in compliance.


Issue 4 - Notice Filing

The Board was unaware of the requirement to file notice of meetings until March of 1999. The Board recognized this error and is now in full compliance with the statute.

Issue 5 - Legislative Rules

The Board has recognized the need to maintain activity regarding the filing of rules and updates to the statute to remain current in it's ability to protect the citizens of West Virginia and will continue to strive to maintain the activity level as necessary.

Respectfully submitted,


Karen J. Stewart, MS, RRT, LRTR
Chairperson

KJS/nm