

STATE OF WEST VIRGINIA

**SUNRISE REPORT
ON THE
LICENSING OF EXERCISE PHYSIOLOGISTS**

Licensing Board for Exercise
Physiologists is Not Recommended

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

CHARLESTON, WEST VIRGINIA 25305
(304) 347-4890

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PRELIMINARY PERFORMANCE REVIEW OF THE

Licensing of Exercise Physiologists

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Sunrise Report on the Licensing of Exercise Physiologists

INTRODUCTION

A group of professional exercise physiologists practicing in the State of West Virginia have submitted an application to the Joint Committee on Government Organization proposing licensure of their profession. According to information provided by the applicants, there are approximately 166 practicing exercise physiologists in the state. These professionals are employed in hospitals, clinics, gyms, and fitness centers. If approved, licensure would protect the occupation by making it illegal for anyone to engage in the occupation without a license approved by the governing board of the occupation.

The Performance Evaluation and Research Division of the Legislative Auditor's Office is required under WVC §30-1A-3 to analyze and evaluate the application of professional and occupational groups who seek to be regulated. The analysis must be submitted to the Joint Standing Committee on Government Organization no later than the first day of July following the date the proposal is submitted to the Joint Committee.

The report submitted to the Joint Standing Committee shall include evaluation and analysis as to :

- Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public, and whether the potential for harm is easily recognizable and not remote or dependant upon tenuous argument;
- Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence; and
- Whether the public can be adequately protected by other means in a more cost-effective manner.

Definition of an Exercise Physiologist

Exercise physiologists in the state are employed in hospital cardiac rehabilitation units, clinics, gyms, and fitness centers. Table 1 displays the work locations of the exercise physiologists throughout West Virginia. In a clinical setting, an exercise physiologist reviews patient medical records, collects data concerning health history relevant to desired outcomes of the rehabilitative process and completes a health risk profile. The physiologist will develop, prescribe, and monitor exercise programs for the patient's rehabilitative goals and serve as a motivator for achieving these

goals. In addition, the exercise physiologist may attempt to educate the patient on health related issues, and behavior change counseling. A full description of exercise physiologist tasks is located in Appendix A.

Table 1
Exercise Physiologists' Work Locations

Location	Number Employed
Hospital Cardiac Rehab. Facility	53
Hospital Wellness Center	19
Personal Trainer	12
College Instructor	14
Student	5
Fitness Center Employee	19
Fitness Center Manager	4
Physical Therapy Clinic	6
Unknown	34

According to data provided by the applicants, the role of the Exercise Physiologist is:

- To improve the performance of activities of daily living.
- Increase the potential for physical, social, and economic independence.
- Reduce the risks for premature development or reoccurrence of chronic disease.
- Promote behavioral patterns consistent with health maintenance and enhancement.

In a fitness center or health club setting, the role of a physiologist is slightly different from that in a clinical setting. The physiologist in a fitness setting usually deals with a healthier individual who wishes to improve overall health and physical fitness. These physiologists usually act as personal trainers and assist on designing a fitness program catered to the client's needs, and assisting in motivating the person to achieve their goals.

Application for Board of Exercise Physiologists

The applicants have applied for a licensing board overseeing the profession of exercise physiologists. According to draft legislation (2000R297 shown in Appendix B) and provided to the committee, the board would be made up of five members appointed by the Governor. Three appointed members of the board would be currently practicing exercise physiologists, and shall have been practicing in the profession for at least five years prior to appointment. The draft legislation prescribes that the board would have the following duties:

- Establish qualifications for practicing exercise physiologists;
- Approve, withhold, deny or restrict applications, and issue licenses to qualified applicants;
- Establish guidelines and procedures for suspension, revocation, and renewal of licenses;
- Maintain a roster of licensed exercise physiologists;
- Establish and publish minimum standards of the practice of exercise physiology.

The proposed board has also set minimum requirements for licensing individuals as exercise physiologists. New licensees will be required to: have a graduate degree in exercise science curriculum with emphasis in exercise physiology from an accredited school approved by the board; and pass an examination provided by the board. Initially, plans are for a \$150 application fee, with an annual renewal rate of \$35. Current practicing exercise physiologists will not be required to meet the education requirements but will be required to pay the licensing fees to continue practicing as physiologists within the state. Marshall University and West Virginia University currently offer graduate degrees in Exercise Science.

The Applicant's Argument for Regulation

The applicant feels that with West Virginia's aging population, and with baby boomers aging, the need for exercise physiologists will probably increase. Currently, anyone can be called a personal trainer and have no credentials, and the applicant feels like licensure would protect the communities in which the physiologist is employed. The applicant also feels that the board could attempt to educate the public on some health issues. In addition, in a clinical setting exercise physiologists are the only professional staff not licensed, and may not have as much access to patient records as other professional staff because of the lack of licensure.

In their application for licensure the group states:

Licensure is needed in order to help us perform our jobs and deliver services to patients and clients in a timely and professional manner.

In the hospital setting, for example, the ability to write in the patient's chart and to take orders from doctors has been questioned due to the fact that there is not regulatory body overseeing our profession. Licensure will help clarify the identity of Exercise Physiologists. Regulation of our profession through licensure can lead to the standardization of education programs in West Virginia state colleges and universities. Licensure will further ensure the production of qualified individuals in the field of Exercise Physiology.

Question #12 on the licensure application states, "Within the usual practice of this occupation, document the physical, emotional, or financial harm to clients from failure to provide appropriate service or erroneous or incompetent service." The applicant responded to this statement that:

Exercise Physiologists working with high risk individuals must be appropriately educated and trained to recognize heart arrhythmias, hemodynamic changes and other inappropriate responses to exercise. The failure to do this may result in the injury or death of the patient. Exercise Physiologists working with day to day fitness operations must be trained on physiological to exercise, as well as properly trained techniques on cardiovascular and resistance equipment. Failure to do so may result in injury such as soft tissue injuries, head injuries, fractures, paralysis or death.

Regulation by other states

Currently, the State of Louisiana is the only state that licenses its exercise physiologists. The draft legislation is modeled after Louisiana's regulation although West Virginia's licensing fees would be higher. According to documentation provided by the applicant, groups in the States of Maryland and California have submitted legislation designed to establish licensure, while groups in Indiana and Kentucky are also attempting to obtain licensure as well.

Legislative Auditor's Findings

Finding 1: The number of practicing Exercise Physiologists in the State of West Virginia is too low to support an independent licensing board.

Currently, there are approximately 166 practicing exercise physiologists within the State of West Virginia. The Legislative Auditor feels that this number is too low to fund an independent board. The board has submitted draft legislation that proposes an initial licensing fee of \$150, annual renewal of \$35, and replacement for a lost license of \$25. Initially if all 166 exercise physiologists in the state apply for licensure then first year revenues would approximate \$24,900. Yearly renewal fees would bring in approximately \$5,810 a year. These estimates do not include those who choose not to have their license renewed and new applicants after the first year. Table 2 below displays the five year estimate of monies collected by the board.

Table 2
Approximate Five Year Revenue

Year	Fee Estimate	Revenue
1 st Year	166 new applicants @ \$150	\$24,900
2 nd Year	166 renewals @ \$35	\$5,810
3 rd Year	166 renewals @ \$35	\$5,810
4 th Year	166 renewals @ \$35	\$5,810
5 th Year	166 renewals @ \$35	\$5,810
	Estimated Total Revenue in Five Years	\$48,140

As shown in the table, in five years the estimated revenues of a licensing board would only bring in \$48,140 for an annual average revenue of \$9,628. These revenues would not be enough to cover a secretary, much less pay for office space rent, equipment, supplies, and board members per diem salaries and expenses. **Operation of a board would require a legislative appropriation and state taxpayer funding.** Members of the group applying for licensure have suggested affiliating itself with an active board to help offset costs, but have not made arrangements or approval with another board. The Legislative Auditor estimates that even affiliating itself with another board would require some legislative appropriation, since after the first year annual revenues would only approximate \$5810.

Finding 2: Since Exercise Physiologists are employed by clinics, hospitals, and fitness centers, the employer is already responsible and liable for protection of the public.

One of the analysis requirements within the West Virginia Sunrise Legislation (§30-1A-3) is to determine

whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public...

The applicant feels that an exercise physiologist could do harm to a patient/client by prescribing incorrect exercise programs although **there are no cited cases in West Virginia**. Thus, the applicant is **assuming that there is a potential risk to the public**. It is the Legislative Auditor's opinion that lack of regulation does not clearly harm or endanger the health, safety or welfare of the public. In addition, the Legislative Auditor also feels that the employers of exercise physiologists are responsible and liable for the work of the physiologists. It is the responsibility of the employer to check the credentials of an exercise physiologist and to set standards as to who they hire. For example, two of the larger hospitals in the state - Charleston Area Medical Center (CAMC) and Cabell Huntington Hospital - require physiologists to have master's degrees. The liability would lie with the employers to check the educational backgrounds of their potential employees. In a clinical setting, the patient has been referred to an exercise physiologist by a physician. The patient's rehabilitation and progress is continuously monitored by the referring physician. In addition, the clinical setting also has registered nurses present during the patient's exercise program. **So in essence the public's health and safety or patient's health and safety in this case are already protected by a layer of professionals monitoring the performance and clients of the exercise physiologist**. Thus a licensing board while it may standardize educational requirements, would not protect the health and safety of the public. The employer is already liable for the public's safety and for monitoring the performance of its physiologists.

In a gym setting, clients are usually part of the "healthy population" and wish to increase their strength or maximize their health. The exercise physiologist's role is that of a personal trainer. The Legislative Auditor feels that the employer is liable for the performance of its physiologists in this setting. The employer is responsible for deciding the criteria, such as educational requirements and work experience, by which they would hire a new physiologist, and responsible for monitoring the work of the physiologist. Thus, again the public already has a layer of protection in the employer. In contrast, an owner of a gym may choose to hire a personal trainer who is not educated in exercise sciences. Thus this board would have limited effect in a gym setting. In addition, since a licensing board prevents individuals from practicing as "exercise physiologists", a person educated in that profession could still maintain their employment, but just reclassify themselves as a "personal trainer".

Conclusion

The Legislative Auditor finds that there is not a need for an additional board to license the profession of exercise physiologists. In the Sunrise legislation, the Legislative Auditor is responsible for determining whether the public is at risk without licensure of the profession. This is not so in the case of exercise physiologists. The Legislative Auditor finds that the public is already protected by employers, and by other professionals monitoring the work of the physiologists. By evidence provided by the applicant, employers at hospitals and clinics are restricting this profession to protect clients. The applicant's main argument for licensure is to help "clarify the identity of exercise physiologists." This is not the purpose of the Sunrise process. Instead, the Sunrise process is to provide the public with protection.

In addition, the number of practicing exercise physiologists in the state is not enough to support an independent board. Currently, there are 166 physiologists in the state that would only bring in estimated total revenues of \$48,140 over the next five years which is not enough to cover the costs of staff, member expenses, rent, and office supplies.

Recommendation 1

The Performance Evaluation and Research Division recommends that a separate licensing board for Exercise Physiologists should not be created.

Recommendation 2

If the Legislature chooses to create an Exercise Physiologist licensing board, then the board should be required to affiliate itself with an existing board in order to offset costs.

APPENDIX A

Exercise Physiologist Job Description

EXERCISE PHYSIOLOGIST JOB DESCRIPTION

As Provided by the Applicant

Assessment and Testing:

The Exercise Physiologist reviews medical records, collects data concerning health history relevant to desired outcomes of the rehabilitative process and completes a health risk profile.

- Evaluates the need for health education, risk factor modification, and lifestyle adjustment.
- Stratifies individuals based on health history, risk factor profile, and probability of future events.
- Evaluates cardiopulmonary capacity and develops a rehabilitative plan to guide the individual toward optimal restoration and maintenance of functional capacity.
- Performs cardiopulmonary exercise testing and interpretation of lab data and clinical information relevant to the rehabilitative process.
- Domain include blood pressure, blood lipids, blood gases, body composition, weight, diabetic control, stress reduction/management, and smoking status.
- Identifies musculoskeletal conditions influencing or limiting exercise prescription and performance and determines neuromuscular appropriateness for exercise.
- Performs nutritional (sic) appraisal and identification of subsequent needs as related to risk factor reduction and/or general weight alteration.
- Determines individual awareness and perception of physical and psychological/emotional problems, impairments in interpersonal functioning, and assessment of level of social support.
- Assessment changes in status, evaluating signs and symptoms for appropriate action.

Exercise Prescription and Leadership:

- Develops, implements, and modifies the exercise prescription and rehabilitation goals based on evaluation and presentation.
- Direct supervision of rehabilitation/exercise programs, including cardiovascular endurance, exercise testing, progressive resistance, range of motion activities, functional activities involving healthy individuals or patients with disease and/or physical impairment.
- Evaluates appropriateness of exercise response.
- Documents assessments, diagnoses, expected outcomes, and interventions planned to meet identified needs.
- Monitors and documents patient responses to interventional prescriptions and protocols.
- Evaluates individuals and families ability to continue rehabilitative care after program discharge, and develops appropriate post-care, self-management exercise programs.
- Prepares summary reports concerning progress and performance.
- Requests diagnostic/comparative test information or refers to other disciplines as indicated by individual needs or behavior.
- Supervises cardiopulmonary emergencies, with proper training.

Patient Education and Behavior Change Counseling:

- Uses education and counseling techniques to facilitate increased habitual physical activity and adoption of health behaviors that reduce risk for development or reoccurrence of chronic disease or musculoskeletal injury.
- Plans and conducts education programs for health promotion and disease prevention.
- Provides preoperative and discharge instructions, including activity guidelines, sign/symptom recognition, and medication management.
- Supervises and conducts support group programs encouraging effective disease management and health promotion.
- Support group may include but not limited to smoking cessation, weight management, stress management, etc..

Program Evaluation:

- Collects and compare objective data in exercise programs.
- Evaluates important outcomes such as, functional capacity, resting heart rate, blood pressure, lipid test results, exercise time and body weight in order to improve the quality of the program.
- Formulates procedure for continuing quality improvement.
- Evaluates staff performance measures and explains ratings with employees.
- Reviews patient surveys upon completion of program to evaluate quality of services rendered and patient experience.
- Develops emergency procedures and regularly schedules mock codes to ensure that the staff meets expectations in all areas.

Roles of the Exercise Physiologist:

- To improve the performance of activities of daily living.
- Increasing the potential for physical, social, and economic independence (sic).
- Reducing risks for premature development or reoccurrence of chronic disease, decreasing or reversing impairment, if possible.
- Promoting behavioral patterns consistent with health maintenance and enhancement.

APPENDIX B

Draft Legislation for Licensing Exercise Physiologists

**H. B. **

(By Delegate Hunt)
 [Introduced ; referred to the
 Committee on .]

A BILL to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-eight, relating to exercise physiologists; providing for the licensing and regulating of exercise physiologists by the West Virginia board of exercise physiologists; defining terms; creating board and providing for powers and duties; providing qualifications for licensure and license renewal; providing for the licensing of current practitioners; requiring and providing for the examination for licensure; specifying fees; allowing for license denial, revocation and suspension and disciplinary actions; specifying prohibition; providing criminal violation and penalty; specifying exemptions; and allowing injunctive relief.

Be it enacted by the Legislature of West Virginia:

That chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirty-eight, to read as follows:

ARTICLE 38. EXERCISE PHYSIOLOGISTS.

§30-38-1. Short title.

This article may be cited as "West Virginia Exercise Physiologist Licensing Act."

§30-38-2. Definitions.

As used in this article the following terms have the meanings ascribed to them unless the context clearly indicates otherwise:

(a) "Board" means the West Virginia board of exercise physiologists.

(b) "Licensed exercise physiologist" means a person, with the approval and collaboration of a licensed physician if the situation warrants, who formulates, develops and implements exercise protocols and programs; administers functional and diagnostic exercise tests; applies exercise principles to groups such as geriatric, pediatric, and obstetric populations, and to the general public in preventive activities; and provides counseling and education regarding such exercise programs and tests to individuals for whom such services are necessary. Individuals for whom such services are necessary may include, but are not limited to, those with cardiovascular, pulmonary, metabolic, immunologic, inflammatory, orthopedic and neuromuscular diseases and conditions. This list of qualifying diseases and conditions may be modified by the board as indication and procedures of applications are further developed and matured.

(c) "Exercise protocols and programs" means the intensity, duration, frequency and mode of activity to improve the patient's functional ability.

(d) "Licensed physician" means a person who is licensed by the West Virginia state board of medical examiners to practice medicine in this state or is licensed to practice medicine in another state.

§30-38-3. Board created; number and appointment of members; eligibility; terms; filling vacancies; limitations on number of terms; duties and powers of the board.

(a) There is hereby created the West Virginia board of exercise physiologists. The board is appointed by the governor with the advice and consent of the Senate and is composed of five members; two to serve until the thirtieth day of June, two thousand one; two to serve until the thirtieth day of June, two thousand two; one to serve until the thirtieth day of June, two thousand three. At least three board members shall be exercise physiologists, each of which shall have been engaged in practice as an exercise physiologist for at least five years prior to appointment. As the terms of office, respectively, of the board members expire by limitation, the governor shall appoint to fill the vacancy a qualified person whose term is for five years from the day on which the term of his or her immediate predecessor expired. All interim vacancies occurring on the board shall be filled for the unexpired term by the governor.

(b) No person is eligible to serve on the board for or during more than two successive terms.

(c) The governor may remove any member of the board for misconduct, incapacity or neglect of duty. The governor is the sole judge of the sufficiency of the cause of removal. The governor shall report every such removal promptly to the Legislature if it is in session; otherwise at the beginning of the next session thereof.

(d) The board shall:

- (1) Establish qualifications for practicing exercise physiology;
- (2) Approve, withhold, deny or restrict each application, as appropriate; and issue a license to any qualified applicant;
- (3) Establish guidelines and procedures for revocation, suspension and renewal of licenses. Upon notice and for cause, the board may revoke or suspend any license;
- (4) Renew the license of any licensee in good standing;
- (5) Maintain a record of its proceedings regarding the regulation and licensing of exercise physiologists in a file maintained solely for that purpose;
- (6) Maintain a roster of all licensed exercise physiologists. The board shall annually prepare a roster of names and addresses of all current licensees. A copy of the roster shall be made available to any person requesting it upon payment of a fee established by the board as sufficient to cover the cost of the roster;
- (7) Adopt a code of professional ethics and examination procedures and propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, as it may consider necessary to implement this article in accordance with the state administrative procedure act in chapter twenty-nine-a of this code;
- (8) Establish and publish minimum standards of practice of exercise physiology in accordance with those developed and accepted by the profession;
- (9) Take appropriate administrative actions to regulate the practice of exercise physiology.

§30-38-4. License required.

Within ninety days of the confirmation of the members of the board by the Senate, no person may practice exercise physiology or in any way represent himself or herself as a licensed exercise physiologist unless he or she is licensed to do so pursuant to the provisions of this article or is exempt therefrom.

§30-38-5. Qualifications for licensure; renewal.

(a) The board shall issue a license to each applicant who files an application upon a form and in such manner as the board prescribes, accompanied by the fee as set by the board, and who furnishes satisfactory evidence to the board that he or she:

- (1) Is at least twenty-one years of age;
- (2) Is of good moral character;
- (3) Is not in violation of this article and the legislative rules promulgated hereunder;
- (4) Has a minimum of a graduate degree in an exercise science curriculum with emphasis in exercise physiology from an accredited school approved by the board, and has successfully completed an internship of three hundred hours in exercise physiology under supervision of a licensed exercise physiologist;
- (5) Has passed an examination to the satisfaction of the board; and
- (6) Has completed certain course work as required by the board.

(b) The board shall license and renew annually the license to practice exercise physiology for any person who presents satisfactory evidence of qualifications as specified in this section and under the legislative rules governing exercise physiology.

(c) No license may be denied any applicant based upon the applicant's race, religion, creed, national origin, sex or physical impairment.

(d) Licenses shall be renewed annually for members in good standing according to procedures adopted by the board.

(e) The board may require continuing education course work as a condition of license renewal.

§30-38-6. Licensing of current practitioners.

(a) Any person currently practicing as an exercise physiologist for a period of twelve consecutive months prior to the effective date of this article shall be licensed as an exercise physiologist upon application and payment of the applicable licensing fee if he or she meets the qualifications established by the board and the following criteria:

- (1) Is at least twenty-one years of age;
- (2) Is of good moral character;
- (3) Is not in violation of this article and the legislative rules promulgated hereunder; and
- (4) Has a minimum of a bachelors degree in an exercise studies curriculum with emphasis in exercise physiology from an accredited school and meets any two of the following criteria:
 - (A) Has one-year experience as an exercise physiologist in a clinical setting, after receiving degree;
 - (B) Is certified as an exercise specialist by the American college of sports medicine;

(C) Has successfully completed an exercise physiology internship of two hundred hours in a clinical setting, or in lieu of the internship, the applicant must have an additional five-years experience as an exercise physiologist.

(b) After a period of one year from the effective date of this article no person may be licensed under the provisions of this section.

§30-38-7. Examination.

(a) The board shall select examinations prepared by established associations representing exercise physiologist disciplines. The board shall prepare and publish a listing of acceptable examinations annually.

(b) The examination shall test the applicant's knowledge of subjects the board considers useful in determining the applicant's fitness to practice exercise physiology.

(c) An applicant shall successfully pass an examination to the satisfaction of the board to be eligible for licensure as an exercise physiologist. Any applicant who fails an examination and is as a result denied licensure may retake the examination upon application and payment of an additional examination fee.

§30-38-8. Fees.

(a) The board shall collect the following fees:

(1) Application fee -- \$150.00;

(2) Renewal fee -- \$35.00;

(3) Reissuance for lost or destroyed license -- \$25.00.

(b) In addition to the fees provided in subsection (a) of this section, the applicant shall pass an examination as determined by the board, and the applicant shall incur the cost of the examination.

(c) Each applicant who applies for the renewal of a license after his or her license has expired shall pay a late fee of twenty-five dollars for each late application.

(d) The fees established in this section are not refundable except under such conditions as the board may establish.

§30-38-9. Denial, revocation or suspension of licenses.

(a) As provided in this article the board may withhold, suspend, restrict, revoke or refuse to issue or renew any license issued or applied for. The board may otherwise discipline a licensed exercise physiologist after notice and opportunity for hearing pursuant to the administrative procedures act in chapter twenty-nine-a of this code, upon proof that the applicant or licensed exercise physiologist:

(1) Has been convicted in a court of competent jurisdiction of a felony or any offense involving moral turpitude, the record of conviction being conclusive evidence thereof;

(2) Has violated the code of professional ethics of licensed exercise physiologists adopted by the board;

(3) Has used any narcotic or alcoholic beverage to an extent or in a manner that is dangerous to any other person or to an extent that the use impairs his or her ability to perform the work of a licensed exercise physiologist;

(4) Has impersonated another person holding an exercise physiologist license or allowed another person to use his or her license;

(5) Has used fraud or deception in applying for a license;

(6) Has allowed his or her name or license issued under this article to be used in connection with any person who performs exercise physiology services outside of the scope of his or her training, experience or competence;

(7) Is legally adjudicated mentally incompetent, the record of the adjudication being conclusive evidence thereof; or

(8) Has willfully or negligently violated any provision of this article.

(b) Notice of license denial, revocation or suspension or disciplinary action shall be sent to the applicant or licensee by registered or certified mail or served personally on the applicant or licensee. The notice shall state the particular reasons for the proposed action and shall set a date at which time the applicant or licensee will be given the opportunity for a prompt and fair hearing. The written notice shall be sent to the person's last known address, but the nonappearance of the person may not prevent such a hearing. For the purpose of the hearing, the board may subpoena on its own behalf persons, books and papers of the applicant or licensee. The applicant or licensee may appear by counsel or personally in his or her own behalf.

(c) On the basis of any hearing or upon failure to appear of the applicant or licensee, the board shall make a determination specifying its findings of fact and conclusion of law. A copy of the determination shall be sent by registered or certified mail or served personally upon the applicant or licensee. The decision of the board denying, revoking or suspending the license shall become final thirty days after being mailed or served unless within such period the applicant or licensee appeals the decision as provided by the administrative procedures act in chapter twenty-nine-a of this code. No appeal while pending appropriate court action may supersede denial, revocation or suspension. All proceedings and evidence presented at hearings before the board are admissible during appellate proceedings.

(d) Every order and judgment of the board shall take effect immediately on its promulgation unless the board in the order or judgment sets a probationary period for the applicant or licensee. The order and judgment shall continue in effect until expiration of any specified time period or termination by a court of competent jurisdiction. The board shall notify all licensees of any action taken against a licensee and may make public its orders and judgments in such manner and form as it considers proper.

§30-38-10. Violation; penalty.

(a) After the effective date of this article no person may assume or use the title or designation "licensed exercise physiologist" unless he or she has in his or her possession a valid license issued by the board under the authority of this article.

(b) Any person who violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars.

§30-38-11. Injunction; penalty; attorney's fees; costs.

(a) The board may initiate an action in any competent court requesting an injunction to enjoin any person from practicing as an exercise physiologist as defined in section two of this article until the person becomes licensed under the provisions of this article. Such an injunction is not subject to release upon bond.

(b) If it is proven in court that the defendant has violated the provisions of this article, the court shall enter an order enjoining the defendant from such actions.

(c) In case of violation of any injunction issued under the provisions of this section, the court may summarily charge the offender with contempt of court.

(d) The injunctive proceedings are in addition to, and not in lieu of, all other penalties and remedies provided for in this article.

(e) In the action for an injunction, the board may demand of the defendant a penalty of not more than five hundred dollars and attorney's fees not to exceed one hundred dollars, in addition to the costs of court. A judgment for penalty, attorney's fees and costs may be rendered in the same judgment in which the injunction is made absolute.

(f) The proceedings for injunction shall be summary and by the judge without a jury.

§30-38-12. Exemptions.

The following persons and their activities are exempt from the licensing requirements of this article:

(a) Any person directly supervised by a licensed physician whose primary duty it is to provide graded exercise testing within the confines of the physician's office. Neither person may represent himself or herself to the public as a licensed exercise physiologist;

(b) Any student in an accredited educational institution performing functions as part of the prescribed course of study under the supervision of a licensed exercise physiologist. A student may only represent himself or herself as an unlicensed student of the profession in which he or she is being trained;

(c) Any person employed as an exercise physiologist by any federal or state agency when the person's activities constitute duties for which he or she is employed and are performed solely within the confines of the employing agency;

(d) Any natural person licensed as a health care provider under any other provision of law while acting within the scope of that licensure.

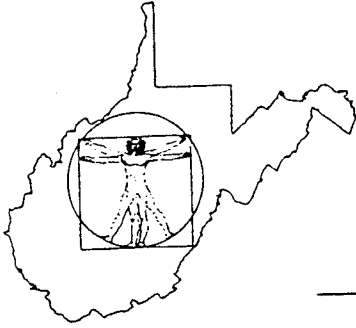
§30-38-13. Prohibition.

Nothing in this article allows a licensed exercise physiologist to practice physical therapy as defined in section two, article twenty, chapter thirty of this code, or to represent himself or herself as a physical therapist or a physical therapist assistant.

NOTE: The purpose of this bill is to require licensing of exercise physiologists.

This article is new; therefore, strike-throughs and underscoring have been omitted.

APPENDIX C
Agency Response



West Virginia Association of Exercise Physiologists

PO Box 6721
Charleston, WV 25362-0721
July 3, 2000

Honorable Members of the Joint Committee on Government Organization:

This letter is in response to the Sunrise Report on the Licensing of Exercise Physiologists in the State of West Virginia.

I will respond to the Legislative Auditors' findings that recommend against licensing of exercise physiologists.

Finding #1 is considering the low numbers of exercise physiologists in the State and revenue to operate a board to oversee licensure of the profession. If you will see attached letter from William P. Marley, Ph.D., which offers office space at Marshall University at no charge, and basic office furniture. He also provides that graduates assistants could help with some office duties. Please see attached letter.

Another oversight in this area is the planning of students that will graduate over the next five years and will want to be licensed, which would increase revenue. Another part of this finding that is in error is an oversight by myself and the other physiologist preparing the Sunrise Application. On a list to the Legislative Auditors office of exercise physiologists working in the state, there were only five students listed, which are doctoral students at West Virginia University. In addition to this is the 20-30 master's level graduates from WVU and Marshall University, plus 40-50 undergraduates from both universities who will want to be licensed, thereby increasing revenue.

We will also propose to increase our renewal fees up to \$50.00 per year instead of the \$35.00 currently in the bill.

My last statement to the revenue part of the findings is that since we are such a small profession that we believe our office staff would only have to be on a part-time basis.

To finding #2 that our employers are already responsible and liable for protection of the public. Yes, a physician does refer patients to our profession in the clinical setting, but other disciplines do not monitor our work. We may work with Registered Nurses and other licensed professionals, but they do not monitor our work. We work independently. Also some clinical settings in West Virginia only employ exercise physiologists in their program.

Since the report states that employers are responsible and liable for protection of the public, then the argument could be made that nurses, physical therapists, occupational therapists, physical therapist assistants, physician assistants, do not need licensure either. You may argue that some of these professionals will set up their own businesses or clinics. Exercise physiologists can do the same thing without a license.

Also, in Finding #2, it states "In a gym setting clients are usually part of the healthy population." This should state "apparently healthy population." Even though this population of clients look healthy, it does not mean that there is not an undiagnosed disease such as heart disease, diabetes, hypertension, etc. Staff in fitness centers, or exercise physiologists running their own business need to be very well trained and to protect public health should be licensed.

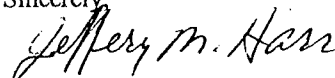
We also would like the Legislative Auditors to look at education of our profession as compared to other health care professions that are licensed. In many instances our profession has more education than other licensed healthcare providers. I will ask this question again, why should some healthcare providers be licensed and others not?

If this process is to protect the public, then we need to look at what is best for the public, especially when West Virginia leads national statistics in heart disease, obesity, diabetes, tobacco use and are increasingly becoming an older population. This population is in need of exercise physiologists for exercise programs and risk factor modification to prevent and/or reverse these disease processes. It was stated in one meeting that within a few years they could see our profession needing to be licensed due to increased use by the public. Why wait? We can start now, before there are problems and lawsuits in West Virginia. Yes, there are financial questions of running a board for licensure. But those can be addressed by running the office out of Marshall University for free or as recommendation #2 states, affiliating the board with an existing board.

I would like to thank the members of the Joint Committee on Government Organization for considering our proposal of licensure. West Virginia can be a leader in providing competent professionals in the fight for a healthy West Virginia.

Thank you.

Sincerely,



Jeffery M. Harr, M.S., President

West Virginia Association of Exercise Physiologists



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May 24, 2000

Jeff Harr, MS
President
West Virginia Association of Exercise Physiologists
Cardiac Rehabilitation
Charleston Area Medical Center
3200 MacCorkle Avenue, SE
Charleston, WV 25304

Dear Jeff:

A representative of the West Virginia Association of Exercise Physiologists (WVAEP) recently apprised me of their efforts to obtain a site for the WVAEP licensing board. I understand that the coming legislative year and related proposal for licensure lend some degree of urgency to these efforts.

As Director of the Human Performance Laboratory (HPL) at Marshall University, I suggested the use of an office in the HPL. The licensing board may utilize this office space at no cost. There is a desk in the office and some basic office supplies. The board can provide other office equipment and supplies they find necessary. Meeting rooms, online computers, and audiovisual equipment are also available when necessary for planning meetings.

I would be pleased to assign graduate assistants to assist with some of the office duties. This could include answering phones, assisting with mailings, and developing a WVAEP web page.

Please consider this proposal of support for the WVAEP. If you have questions concerning use of the office space and graduate assistant assignments, please contact me at 304-696-2936. It is a pleasure to be part of this magnificent effort.

Sincerely,

William P. Marley, Ph.D.
Professor and Director, Human Performance Laboratory
Marshall University

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