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REGULATORY BOARD REVIEW BOARD OF CHIROPRACTIC

AUDIT OVERVIEW

The West Virginia Board of Chiropractic Is Necessary to Protect the Public

The Board of Chiropractic Complies with Most of the General Provisions of Chapter 30 of the West Virginia Code; However, Improvement Is Needed

The Board's Financial Documentation, Recordkeeping, and Fee Collections Need Improvement

State Agency Notices for Virtual Meetings Lack Uniform Statutory Requirements

The Board's Website Needs Improvements to Enhance User-Friendliness and Transparency



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October 16, 2023

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The Honorable Chris Phillips
House of Delegates
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Dear Chairs:

Pursuant to the West Virginia Performance Review Act, we are transmitting a Regulatory Board Review of the *Board of Chiropractic*. The issues covered herein are: *"The West Virginia Board of Chiropractic Is Necessary to Protect the Public;" "The Board of Chiropractic Complies with Most of the General Provisions of Chapter 30 of the West Virginia Code; However, Improvement Is Needed;" "The Board's Financial Documentation, Recordkeeping, and Fee Collection Need Improvement;" "State Agency Notices for Virtual Meetings Lack Uniform Statutory Requirements;"* and *"The Board's Website Needs Improvement to Enhance User-Friendliness and Transparency."*

We transmitted a draft copy of the report to the *Board of Chiropractic* on August 15, 2023. We held an exit conference on August 22, 2023. We received the agency response on September 1, 2023. If you have any inquiries on this report let me know.

Sincerely,

John Sylvia

John Sylvia

Joint Committee on Government and Finance

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EXECUTIVE SUMMARY

The Performance Evaluation and Research Division (PERD) within the Office of the Legislative Auditor conducted a Regulatory Board Review of the Board of Chiropractic (Board) pursuant to the Performance Review Act, Chapter 4, Article 10. Objectives of this audit were to determine the continued need for the Board, to assess the Board's compliance with the general provisions of Chapter 30 and other applicable laws, to determine why the Board's actual revenues for licensees and business fees are less than expected, to determine whether there is an undesirable condition in law that could create confusion for requirements of virtual meeting notices or exclude the public from the Board's and other state agencies' virtual meetings, and to evaluate the Board's website for user-friendliness and transparency. The issues of this report are highlighted below.

Frequently Used Acronyms in this Report:

CSR – Code of State Rules

CE – Continuing Education

FY – Fiscal Year

HB – House Bill

OASIS – Our Advanced Solution with Integrated Systems (the State's centralized accounting system)

PEIA – Public Employees Insurance Agency

PERD – Performance Evaluation and Research Division

Report Highlights:

Issue 1: The West Virginia Board of Chiropractic Is Necessary to Protect the Public

- The practice of chiropractic is a specialized profession that requires technical knowledge and expertise.
- The consequences of an incompetent or untrained person practicing chiropractic could cause significant harm to the public.
- Regulating the practice of chiropractic, as currently established, should continue to protect the public.

Issue 2: The Board of Chiropractic Complies with Most of the General Provisions of Chapter 30 of the West Virginia Code; However, Improvement Is Needed

- The Board is financially self-sufficient and processes complaints in a timely manner with due process for the licensees. However, in one instance, the Board did not send a complaint status update within six months of receiving the complaint.
- The Board lacks internal controls with respect to segregation of duties.
- The Board's rules generally protect the public but some of the language is outdated or inaccurate. Furthermore, the Board has not promulgated a rule required by West Virginia Code.
- The Board is statutorily granted immunity in regard to "no probable cause" complaints and their related proceedings, which is not granted to other similar regulatory boards. Furthermore, this provision prevents the right of access to the general public.
- The Board does not always identify authorization before entering executive session.
- The Board's office is generally inaccessible to individuals with disabilities.
- The West Virginia Code does not currently require that buildings, offices, or other spaces owned or leased by state agencies, departments, or institutions comply with the Americans with Disabilities Act (ADA).

Issue 3: The Board's Financial Documentation, Recordkeeping, and Fee Collection Need Improvement

- The Board does not have a record of collecting all business approval renewal fees.
- The Board's licensee documentation and annual reports contain inaccuracies that indicate shortfalls in licensee renewal revenue.
- The Board does not keep historical rosters of licensees or chiropractic businesses.
- The revenue shortfalls from businesses are the result inadequate recordkeeping; however, the legislative auditor cannot rule out the possibility of fraud because of insufficient records.

Issue 4: State Agency Notices for Virtual Meetings Lack Uniform Statutory Requirements

- The Board has conducted virtual meetings when there is no declared state of emergency as well as when there is a declared state of emergency. It did not give remote access instructions in its meeting notices filed with the Secretary of State.
- State agencies are permitted to conduct virtual meetings, such as teleconferences, during non-emergency conditions.
- House Bill 3146, passed in 2023, provides requirements for virtual meetings held during declared states of emergency. However, no requirements are given for virtual meetings that are held when no emergency exists.
- An undesirable condition statutorily exists that could create confusion for state agencies and the public regarding what the requirements are regarding meeting notices for virtual meetings held when there is no declared state of emergency.

Issue 5: The Board's Website Needs Improvement to Enhance User-Friendliness and Transparency

- The Board's website needs more improvements to enhance user-friendliness and transparency. Additional website features should be considered.
- The Board's website could benefit from additional transparency features as well.

PERD's Response to the Agency's Written Response

The Board provided its response on July 18, 2023 (see Appendix E). The Board reported that it agrees with the findings and recommendations in the report and that it is already implementing some of the recommendations. The Board has responded that it has no reason to suspect any type of fraud and it is confident that the discrepancies between expected and actual revenue are attributable to oversight in the status of chiropractors' business licenses and the task of following up on outstanding payments. The Board requested a few changes to the language in the report and the conclusion of Issue 3, regarding the potential risk of fraud and the business fee shortfalls in revenue. PERD honored most of these requests. However, regarding the conclusion of Issue 3, without specific records accounting for discrepancies, PERD must acknowledge that it was unable to rule out the possibility that fraud occurred.

Recommendations

1. *The legislative auditor recommends that the Legislature continue the Board of Chiropractic as currently regulated.*
2. *The Legislature should consider creating uniform reporting standards of violations within West Virginia Code for the Board of Chiropractic identical to that of the Board of Medicine.*
3. *The Board should consider utilizing the State Treasurer's Lockbox system to reduce the risk of fraud.*
4. *The Board should adhere to W. Va. Code §30-1-5(c) and send status reports to complainants and respondents within six months of the complaint being filed.*
5. *The Board should seek to have legislative rule CSR §4-1-12 amended to remove the duplicate complaint procedure, and have the procedural rule CSR §4-05 amended to include the subsections of legislative rule CSR §4-1-12.2.a and §4-1-12.2.b, in order to preserve the Board's impartiality and integrity during the investigative procedures and final adjudications.*
6. *The Board should amend CSR §4-05 to define its procedures addressing the scenario of a tie vote on probable cause.*
7. *The Board should amend CSR §4-5-5.1 and §4-5-5.2 to reflect applicable violations found within W. Va. Code §30-16-11.*
8. *The Board should amend CSR §4-03 to reference the correct section of West Virginia Code.*
9. *The Board should amend CSR §4.3.3.6 to reflect the Board of Chiropractic as the state regulatory body for the practice of chiropractic rather than the practice of registered professional nursing.*
10. *The Board should comply with W. Va. Code §6-9A-3(d) to provide the public with sufficient notice of its meetings.*
11. *The Legislature should consider amending and removing the provision within W. Va. Code § 30-16-11(e); thereby, granting the right of public access to all the Board's complaints and related proceedings.*
12. *The Board should adhere to W. Va. Code §6-9A-4 and state the authorization before entering executive sessions during board meetings and ensure the minutes reflect the authorization.*
13. *The Board should make necessary changes to improve handicap accessibility to its office pursuant to the Americans with Disabilities Act, including the possibility of relocating its office.*
14. *The Legislature should consider requiring that all buildings, offices, or other spaces owned or leased by any department, agency, or institution of state government comply with ADA standards on or before July 1, 2025.*

15. *The Legislature should consider amending W. Va. Code §5A-1-11(c)(8) to specify that the Office of Equal Opportunity inspect physical properties owned or leased by the state and confirm compliance with Americans with Disabilities Act standards.*
16. *The Legislature should consider amending W. Va. Code §5A-10-et seq. to require that state agency properties comply with the Americans with Disabilities Act under the provisions of 42 U.S.C. §12101, et seq.*
17. *The Legislature should consider amending W. Va. Code §5A-10-et seq to require the Real Estate Division executive director receive approval by the OEO coordinator of compliance with ADA standards prior to entering any lease or renewal of a lease of physical properties.*
18. *The Board should consider retaining a count of chiropractors at the end of the fiscal year to accurately reflect the number of licensees for a given fiscal year.*
19. *The Board should consider identifying the licensee categories in the roster to reflect the licensee's status.*
20. *The Board should update the business roster to ensure all authorized businesses are recorded.*
21. *The Board should consider identifying retirees on its roster and itemizing retiree renewal revenue in the annual reports to ensure revenue is appropriately maintained and documented.*
22. *The Board should consider itemizing its annual renewal revenue category to ensure license renewal is appropriately documented and transparent.*
23. *The Board should improve its recordkeeping of chiropractic businesses and collect all fees due it under state law to maintain financial solvency.*
24. *The Legislature should consider amending law to impose the same notice standards that apply to virtual meetings held during a declared state of emergency to virtual meetings held during non-emergencies.*
25. *The Board should improve the user-friendliness and transparency of its website by incorporating more of the website elements identified.*

ISSUE 1

The West Virginia Board of Chiropractic Is Necessary to Protect the Public

Issue Summary

The West Virginia Board of Chiropractic (Board) is charged with protecting the public health, safety, and welfare from unprofessional, improper, incompetent, or unlawful practice of chiropractic in accordance with West Virginia Code §30-16 *et seq.* This objective is to find if there is a need for the continuation, consolidation, or termination of the regulatory board. In determining the need for the regulatory board, the legislative auditor considers the extent to which significant and discernable adverse effects on public welfare would occur if the practice of chiropractic was unregulated. Regulating the practice of chiropractic should continue as it is necessary to protect the public.

The Practice of Chiropractic Is a Complex Practice that Is Regulated in Every State

Chiropractors usually do not work under the supervision of physicians or other healthcare professionals. Chiropractors have direct, physical contact with patients of all ages and work in a variety of settings. Patients often seek out chiropractic care for back pain, and a common treatment for this is full-spine specific manipulation/adjustment. As the spine is a sensitive and vital part of the human body, regulatory mechanisms must be in place to protect the public from possible serious harm if administered by unqualified individuals.

As the spine is a sensitive and vital part of the human body, regulatory mechanisms must be in place to protect the public from possible serious harm if administered by unqualified individuals.

Chiropractors treat many conditions that affect the nervous and musculoskeletal systems. Additionally, chiropractors may treat musculoskeletal pain anywhere in the body including the neck, jaw, shoulders, elbows, wrists, hips, knees, and ankles. Essentially, they care for any kind of muscle, bone, or joint pain or dysfunction. Common treatments practiced by chiropractors include adjustments to realign joints; soft-tissue therapy to relax tight muscles and relieve spasms or release tension in connective tissue that surrounds each muscle; joint bracing/taping to support sprained joints or muscles as they heal; and exercises and stretches to restore and maintain joint stability and mobility. Chiropractors use their hands or small instruments to apply quick controlled force to a joint during chiropractic adjustments. Additionally, chiropractors can gently stretch joints beyond their normal ranges of motion to realign vertebrae within the spine. The human body relies on

intricate musculoskeletal and nervous system interactivity to function and provide mobility. As such, any improper treatment of this interactivity by an unqualified individual could result in considerable restrictions to mobility or harm to basic bodily functions.

Chiropractic adjustment is a complex practice but considered safe when performed by trained, qualified professionals. However, serious complications from manipulation may include a herniated disk or worsening an existing disk herniation, compression of nerves in the lower spinal column, and strokes that can occur after neck manipulation. Bodily manipulations can produce debilitating or deadly harm to the spine, muscles, skeleton, nerves, and brain. Without regulation of this profession, there is an increased risk of serious harm to the public by unqualified or incompetent individuals.

All 50 states regulate doctors of chiropractic and the process to become licensed is rigorous. In West Virginia, the Board requires that an applicant pass the standard national examination for chiropractic licensure. The Board also regularly receives and investigates complaints against chiropractors. The two major national chiropractic associations are the Federation of Chiropractic Licensing Boards, and the National Board of Chiropractic Examiners. The Federation of Chiropractic Licensing Boards serves to support state regulatory chiropractic boards. The National Board of Chiropractic Examiners develops, administers, scores, and reports results for chiropractic exams. Furthermore, practices and research may evolve that make using older chiropractic treatments and techniques obsolete. The Board has established continuing education requirements for chiropractors; thereby, mitigating the potential healthcare risk of licensees not updating their skills over time.

The legislative intent, stated in W. Va. Code §30-16-1, is that the Board protect the public from the unprofessional, improper, incompetent, and unlawful practice of chiropractic through regulatory authority over persons practicing chiropractic. The Legislature's concern regarding who may practice chiropractic is such that, per W. Va. Code §30-16-2(a), no person may practice or even offer to practice chiropractic in West Virginia without a license from the Board. Without regulatory oversight, the public's health, safety, and welfare would be at higher risk of harm than with regulation. When provided the opportunity to describe why the Board is necessary to protect the public, the Board stated that: *"the practice of chiropractic is one that needs to be governed by persons who are educated, experienced, and licensed in the practice of chiropractic. The mission of the Board is to ensure that the public will have access to competent, safe, and ethical practitioners in the profession; therefore, this profession must be regulated."*

Without regulation of this profession, there is an increased risk of serious harm to the public by unqualified or incompetent individuals.

The Board has established continuing education requirements for chiropractors; thereby, mitigating the potential healthcare risk of licensees not updating their skills over time.

Chiropractic License Is Required for Insurance Coverage

On the matter of licensure requirements for insurance coverage of chiropractic services, the Board stated, “*All private and public insurance carriers credentialing Doctors of Chiropractic in West Virginia require an active chiropractic license for treatment to be covered.*” The audit team confirmed that some major insurance providers require licensure for chiropractors in order for their services to be covered. For example, West Virginia Medicaid requires chiropractic services be provided by an individual licensed to practice under West Virginia law. Additionally, Medicare covers chiropractic services only when performed by licensed chiropractors. Also, the Public Employees Insurance Agency (PEIA) plans A, B, C, and D require the profession of chiropractors to be licensed by the State for services to be covered. Therefore, if this profession were not licensed by the State, its services would not be covered by major insurance carriers in the state.

West Virginia Issues About 300 Licenses Annually

As shown in Table 1, over the previous six fiscal years, the Board licenses an average of 293 chiropractors annually. Of these licensees, on average, 235 are in-state and 58 are out-of-state. From fiscal year 2017 to 2022, the total number of licensed chiropractors decreased by 17.

If this profession were not licensed by the State, its services would not be covered by major insurance carriers in the state.

Table 1
Board of Chiropractic
Number of Licensees
FY 2017 through FY 2022

Fiscal Year	In-State	Out-of-State	Total
2017	234	66	300
2018	243	57	300
2019	241	57	298
2020	237	58	295
2021	228	55	283
2022	228	55	283
Average	235	58	293

Source: PERD calculations based on Board of Chiropractic's Annual Reports, Roster of Licensees, Register of Applicants, and the National Provider Identifier registry.

The Legislature Should Consider Amending the Board’s Mandatory Reporting of Incidents to Be Similar to the Board of Medicine’s Reporting Requirements

Mandatory reporting of incidents involving licensees is essential for protecting the public and is recognized by the Legislature as a necessary component of oversight. Specifically, W. Va. Code §30-1-5(d) requires professional licensing boards to timely report violations of individual practice acts to each other and requires their licensees to timely report known or observed violations of their practice act or board rules by another licensee of the same regulatory board.

During the 2022 legislative session, the Legislature further underscored the importance of mandatory reporting by passing Senate Bill 606 that expanded reporting requirements as they relate to the Board of Medicine. **The legislative auditor considers the Board of Medicine’s expanded mandatory reporting to be best practice.** While the Board of Chiropractic has provisions for mandatory reporting within its enabling statute (W. Va. Code §30-16-16), the provisions are not as expansive as the Board of Medicine. The list below shows the key differences between the Board of Medicine’s and the Board of Chiropractic’s reporting requirements.

W. Va. Code §30-1-5(d) requires professional licensing boards to timely report violations of individual practice acts to each other and requires their licensees to timely report known or observed violations of their practice act or board rules by another licensee of the same regulatory board.

1. Courts are only required to report **felony convictions** involving drugs or alcohol to the Board of Chiropractic, whereas courts are required to notify the Board of Medicine if licensees are convicted of **any felony** or **any crime** involving alcohol or drugs.
2. For the Board of Medicine, West Virginia Code provides statutory immunity to civil liability for persons reporting in good faith, and there is a penalty for malicious or fraudulent reports, as can be found in W. Va. Code §30-3-14(b)(13). **However, no such provisions are stated in Code for the profession of chiropractors.**
3. The Board of Medicine may deny an application for a license or other authorization and discipline its licensees that intentionally, negligently, or falsely file a state or federally required report (W. Va. Code §30-3-14(c)(5)). **However, no such provision is stated in Code for the profession of chiropractors.**
4. Per W. Va. Code §30-3-14(c)(22), the Board of Medicine may deny an application for a license or other authorization and discipline its licensees who “*knowingly fail to report to the board*”

any act of gross misconduct committed by another licensee of the board or failing to comply with any reporting requirement set forth in §30-3-14(b).” **No such provisions are stated in Code for the profession of chiropractors.**

5. The Board of Medicine’s enabling statute (W. Va. Code §30-3-14(b)(5)) requires licensees to submit a report to the Board if they believe a licensed or authorized individual under the Board of Medicine’s jurisdiction has exercised influence in a provider-physician relationship to engage in sexual activity with a patient; engaged in sexual misconduct with a patient; violated medical or professional protocols transferring or prescribing controlled substances; jeopardized patient safety through their conduct; or committed any other gross misconduct. **There is no such provision for chiropractic professionals.**

While the W. Va. Code has several mandates for reporting of misconduct for the Board of Medicine’s applicants and licensees, the Code has fewer mandates for reporting misconduct of the Board of Chiropractic’s applicants and licensees. It is the opinion of the legislative auditor that state healthcare professional licensing boards are better able to fulfill their purpose to protect public health, safety, and welfare when they have prompt and valid information from reliable sources to inform their disciplinary process. Some information pertinent to public health and safety includes professional misconduct, such as sexual misconduct with patients or surrogates, and controlled substance diversion. However, without uniform statutory requirements, healthcare organizations and professionals may not report violations despite possessing credible information about problem practitioners. More mandated reporters from various sources could enhance the Board of Chiropractic’s effectiveness in protecting the public. **Thus, the legislative auditor recommends the Legislature consider establishing reporting standards of violations within West Virginia Code for the Board of Chiropractic that are identical to that of the Board of Medicine.**

Without uniform statutory requirements, healthcare organizations and professionals may not report violations despite possessing credible information about problem practitioners.

Conclusion

The unregulated practice of chiropractic would place the public at higher risk of harm than if regulated. The practice of chiropractic is specialized, involving specific training and continuing education. The treatments chiropractors offer involve adjusting the intricacies of the musculoskeletal and nervous systems. Thus, regulation of a practice that can potentially damage delicate and necessary bodily functions

is necessary. Moreover, without a method of licensure or verification, insurance companies may deny coverage to chiropractic patients. **The legislative auditor determines there is a need for the Board of Chiropractic and recommends that the Legislature continue it as currently regulated.**

Recommendations

1. *The legislative auditor recommends that the Legislature continue the Board of Chiropractic as currently regulated.*
2. *The Legislature should consider creating uniform reporting standards of violations within West Virginia Code for the Board of Chiropractic identical to that of the Board of Medicine.*

ISSUE 2

The Board of Chiropractic Complies with Most of the General Provisions of Chapter 30 of the West Virginia Code; However, Improvement Is Needed

Issue Summary

The Board observes many important provisions of Chapter 30 of the West Virginia Code. The Board is financially self-sufficient. However, the Board should improve its recordkeeping and documentation in terms of keeping an accurate count of the number of licensees and informing chiropractic companies of fees due. Furthermore, the Board should conduct a general review of its legislative and procedural rules to eliminate outdated and contradicting language. The Board has established continuing education requirements. Moreover, the Board should also provide proper authorization before entering executive sessions. The Board's office does not meet the accessibility standards of the Americans with Disabilities Act and should take the necessary action to improve handicap accessibility for the public.

The Board observes many important provisions of Chapter 30 of the West Virginia Code.

The Board Complies with Most General Provisions of Chapter 30

The general provisions of Chapter 30 of the West Virginia Code are important for the effective operation of regulatory boards. The Board is compliant with the following provisions:

- Every person appointed as a member of the Board of Chiropractic took the Oath of Office and has filed the certificate thereof with the Secretary of State (§30-1-2).
- The chair or executive director annually attended the orientation session conducted by the state auditor (§30-1-2a(c)(2)).
- Each board member attended at least one orientation session conducted by the state auditor during each term in office (§30-1-2a(c)(3)).
- The Board adopted an official seal (§30-1-4).
- The Board met at least once annually (§30-1-5(a)).
- The Board provided public access on a website to all completed disciplinary actions in which discipline was ordered (§30-1-5(d)).
- The Board is financially self-sufficient in carrying out its responsibilities (§30-1-6(c)).

- The Board established continuing education requirements (§30-1-7a).
- The Board promulgated rules specifying the investigation and resolution procedures of all complaints (§30-1-8(k)).
- The Board maintains an alphabetically arranged roster of licensees' names who are practicing in the state (§30-1-13).
- The Board reimburses board members and staff lodging in a manner consistent with the guidelines of the Department of Administration's Travel Management Office (§30-1-11(c)).
- The Board has promulgated rules waiving initial occupational licensing fees for low-income families and military families, (§30-1-23(d)).
- The Board has promulgated rules in accordance with W. Va. Code §30-1-24(c) stipulating that the Board may not disqualify applicants from initial licensure because of a prior criminal conviction unless the conviction is for a crime that bears a rational nexus to the profession. The rule lists several factors to consider in determining whether a criminal conviction bears a rational nexus to the chiropractic profession.

The Board has promulgated rules in accordance with W. Va. Code §30-1-24(c) stipulating that the Board may not disqualify applicants from initial licensure because of a prior criminal conviction unless the conviction is for a crime that bears a rational nexus to the profession.

The Board is not in compliance with the following provisions:

- In general, the Board does well in sending status reports to complainants and respondents within six months of complaints being filed. Fourteen (14) out of 15 complaints had the required status reports. The one exception was a status report that was sent 159 days late, due in part because the complaint was consolidated with another complaint.
- The Board submitted the annual reports to the governor and Legislature describing transactions for the previous two years (§30-1-12(b)). However, the annual reports submitted in 2017 and 2018 do not include the agendas or meeting minutes of the Board in accordance with (§30-1-12(b)(8)).
- West Virginia Code §30-1-12(c) requires boards to list their telephone numbers and addresses in the state government listing of the Charleston area telephone directory. However, the Board only has its telephone number in the Charleston directory, not its address. West Virginia Code §30-1-12(c) also encourages boards to consider additional telephone directories in the state. The Board lists its telephone number in other city directories such as Beckley, Parkersburg, and Morgantown, but the address is not

In general, the Board does well in sending status reports to complainants and respondents within six months of complaints being filed.

included in these directories. The Board has its telephone number and address listed on its website.

The Board Is Financially Self-Sufficient

The Board is financially self-sufficient as required by W. Va. Code §30-1-6(c). As shown below in Table 2, the Board's end-of-year cash balance grew from fiscal year 2019 to 2021. Also shown in Table 2, the FY 2021 ending cash balance is slightly above twice its annual expenditures. The increased cash balance in FY 2021 is primarily due to a decrease in travel and training expenses. It is the legislative auditor's opinion that cash reserves that are from one to two times a board's annual expenditure are at a prudent level. The Board's revenues come from fees for initial applications; examinations; requests for continuing education courses; preceptorship approvals; requests for address listings; approvals for articles of incorporation; corporation, PLLC, and LLC renewals; and chiropractic licensure renewals. Annual disbursements include staff salaries and benefits, utilities, travel expenses, website servicing fees, and legal costs paid to the Attorney General's office.

It should be noted that passage of Senate Bill 334 reduced 12 of the Board's fees.

Table 2
Board of Chiropractic
Budget Information
FY 2019 through FY 2021

Fiscal Year	Beginning Cash Balance	Revenues	Expenditures	End-of-Year Cash Balance	End-of-Year Cash as a Percentage of Annual Expenditures
2019	\$139,245	\$130,555	\$108,101	\$161,699	150%
2020	\$161,699	\$136,885	\$118,697	\$179,887	152%
2021	\$179,887	\$126,550	\$101,835	\$204,601	201%
Average	\$160,277	\$131,330	\$109,545	\$182,063	168%

Source: Our Advanced Solution with Integrated Systems (OASIS), WV-FIN-151 Board Summary Report. PERD calculations of percentages.

It should be noted that passage of Senate Bill 334 reduced 12 of the Board's fees. The reductions vary by fee, but the overall average reduction for each fee is 22 percent. It should also be noted that the number of licensees is declining. For FY 2019 to 2021, the number of licensees dropped by 15. This decline in total licensees is relatively small and is unlikely to exacerbate revenue decreases due to the fee reductions.

While the Board's cash reserves are currently at a sufficient level, the final effect of the fee reductions has not occurred.

The Board's Licensure Renewal Fees Are Generally Higher than Those Surrounding States on an Annual Basis

Table 3 shows the licensure and renewal fees in West Virginia and surrounding states. Of the five surrounding states, only Kentucky uses an annual renewal cycle for its chiropractic licensees. On an annual basis, only Maryland requires a higher renewal fee. With regard to initial licensure fees, only Pennsylvania requires a smaller initial fee (\$25) than West Virginia. It should be noted that, effective July 1, 2022, Senate Bill 334 reduced initial licensing fees from \$50 to \$45 and also reduced annual renewal fees from \$300 to \$261. However, even with the annual renewal fee reduction, West Virginia's renewal fee is higher than most surrounding states.

State	Initial Fee	Renewal Fee*	Renewal Cycle
Kentucky	\$350	\$250	Annual
Maryland	\$200	\$363	Biennial
Ohio	\$250	\$250	Biennial
Pennsylvania	\$25	\$105	Biennial
Virginia	\$277	\$156	Biennial
West Virginia	\$45	\$261	Annual

Source: Federation of Chiropractic Licensing Boards website and W. Va. CSR §4-06.
*Renewal fees shown have been halved for states that biennially renew licensure.

While the Board's cash reserves are currently at a sufficient level, the final effect of the fee reductions has not occurred.

The Board has one full-time employee, the executive director, who manages the Board's finances. Therefore, the Board cannot segregate duties for proper internal control.

The Board Lacks Internal Controls and Should Consider Utilizing the State Treasurer's Lockbox System and Improving Recordkeeping

The Board has one full-time employee, the executive director, who manages the Board's finances. Therefore, the Board cannot segregate duties for proper internal control. Segregation of duties is important because it safeguards and reduces the risk against improper use or loss of the Board's resources.

The executive director accepts and records payment from licensees. In addition, the executive director deposits revenues and is responsible for reconciling revenues. To have adequate segregation of duties, there should be controls in place that prevent one person from performing two or more control activities associated with purchasing and receiving revenue, such as authorizing transactions, receiving merchandise, receiving and depositing revenue, recording transactions, and maintaining custody of assets. Additionally, PERD found that the Board receives none of its revenues as online payments.

As an example of adequate segregation of duties for handling cash, the state treasurer specifies in its Cash Receipts Handbook for West Virginia Spending Units, “Unless otherwise authorized by the State Treasurer’s Office, an individual should not have the sole responsibility for more than one of the following cash handling components:”

- collection
- depositing
- disbursement, and
- reconciling.

Moreover, the Board does not utilize the State Treasurer’s Lockbox system, which can minimize the handling of revenue. The State Treasurer’s Office provides a lockbox operation whereby remittances can be picked up from a post office box, opened and sorted, imaged, deposited, and the information forwarded to the Board by the State Treasurer’s Office for a fee. Use of the lockbox operation helps to mitigate the risk of fraud and is beneficial to boards with a small staff to handle such procedures. It should be noted that the Board has begun to consider implementing the State Treasurer’s Lockbox system to reduce variances in licensure renewal; however, no decision has been made. **Nonetheless, the legislative auditor recommends the Board should consider utilizing the State Treasurer’s Lockbox system to reduce the risk of fraud.**

To have adequate segregation of duties, there should be controls in place that prevent one person from performing two or more control activities associated with purchasing and receiving revenue, such as authorizing transactions, receiving merchandise, receiving and depositing revenue, recording transactions, and maintaining custody of assets.

It should be noted that the Board has begun to consider implementing the State Treasurer’s Lockbox system to reduce variances in licensure renewal; however, no decision has been made.

The Risk of Fraud on the Expenditure Side Is at an Acceptable Level but Not on the Revenue Side

Given the lack of internal controls, an assessment must be made on the risk of fraud and gain a reasonable assurance that fraud has not occurred. This is done by PERD examining the Board’s expenditures and revenues. Expected and required expenditures are those that are expected for normal operations of an agency or required by law.

Expected and required expenditures can also be based on an agency's unique responsibilities. PERD evaluated the Board's expenditures for FY 2019 through FY 2021 and determined that, on average, 95 percent of the Board's expenses consisted of expected and required expenditures (see Table 4). The legislative auditor's opinion is that when a board's required and expected expenditures are 90 percent or more of total annual expenditures, the likelihood of fraud having occurred on the expenditure side is relatively low.

Table 4
Board of Chiropractic
Percentage of Expected and Required Expenditures
FY 2019 through FY 2021

Fiscal Year	Total Expenditures	Total Expected and Required Expenditures	Percent
2019	\$108,101	\$101,666	94%
2020	\$118,697	\$110,850	93%
2021	\$101,835	\$100,346	99%
Average	\$109,544	\$104,287	95%

Source: PERD calculations based on OASIS reports WV-FIN-GL-151 and WV-FIN-TRLDL-002.

PERD evaluated the Board's expenditures for FY 2019 through FY 2021 and determined that, on average, 95 percent of the Board's expenses consisted of expected and required expenditures.

With respect to the revenue side, PERD found that actual revenues were considerably lower than expected revenues. Under these circumstances, the risk of fraud on the revenue side is concerning. Therefore, a detailed review of revenue is required to determine if fraud may have occurred. This review of revenue is discussed in Issue 3 of this report.

The Board resolves complaints within an average of 104 days.

The Board Resolves Complaints in a Timely Manner

The legislative auditor reviewed all 15 complaints the Board received from 2019 through 2022. The complaints included a variety of concerns by the public. All 15 complaints were resolved and closed. As shown in Table 5, the Board receives an average of five complaints each calendar year. Additionally, the Board resolves complaints within an average of 104 days.

Table 5
Number of Complaints to the
West Virginia Board of Chiropractic
2019 through 2022

Calendar Year	Number of Complaints Received	Complaints Resolved	Number of Disciplinary Actions Taken	Average Number of Days to Resolve
2019	7	7	3	136
2020	4	4	0	98
2021	3	3	0	89
2022	1	1	0	91
Average	5	5	1	104

Source: PERD analysis of the WV Board of Chiropractic complaint files.

Per W. Va. Code §30-1-5(c), every board “shall investigate and resolve complaints which it receives and shall, within six months of the complaint being filed, send a status report to the party filing the complaint and the respondent by certified mail[.]” The Board submits status reports in a timely manner when applicable; except for one occasion wherein the Board was 159 days late. This delay was due to the complaint being consolidated with another. Furthermore, a review of the Consent Decree and Order and the review of the scope of practice by the chiropractor’s attorney took longer than expected. All other complaints have been resolved within a six-month timeframe. **The Board should adhere to W. Va. Code §30-1-5(c) and send status reports to complainants and respondents within six months of the complaint being filed.**

The Board submits status reports in a timely manner when applicable; except for one occasion wherein the Board was 159 days late.

The Board Has Established Continuing Education Requirements

As shown in Table 6, the Board has established continuing education (CE) requirements for its licensees. Of the five surrounding states, West Virginia requires less CE than Maryland, Ohio, and Virginia but more than Kentucky and Pennsylvania on an annual basis. W. Va. Code §30-16-15(a)(3) requires chiropractors to complete 18 hours of CE each year, of which 6 hours may be mandated in special subjects by the Board. By legislative rule, of the 18 required CE hours, 12 must be attended in person.

Table 6 Chiropractors Continuing Education Requirements West Virginia and Surrounding States		
State	CE Hours Required	Renewal Cycle
Kentucky	12	annual
Maryland	24	biennial
Ohio	36	biennial
Pennsylvania	12	biennial
Virginia	30	biennial
West Virginia	18	annual

Source: Federation of Chiropractic Licensing Boards, and PERD's review of West Virginia surrounding states' statutes and board websites.

The Board specifies qualifying programs of CE for chiropractors in legislative rule. These programs shall be conducted by a board-approved member of the Council on Chiropractic Education and the program must be approved by the Board prior to presentation. The sponsoring group provides an attendance list of licensees to the Board. Approved CE institutions and programs are available on the Board's website.

The Board specifies qualifying programs of CE for chiropractors in legislative rule.

The Board's Rules Generally Protect the Public; However, the Board Has Not Promulgated Rules Providing Required Information Stipulated in West Virginia Code §6-9A-3(d)

The audit team reviewed legislative and procedural rules promulgated by the Board and found that, as written, they are generally intended to protect the public. However, the audit team noted several concerns regarding the Board's rules as follows:

- The West Virginia Code of State Rules (CSR) §4-05 *et seq.* contains the Board's procedural rules for its disciplinary and complaint procedures, as required by W. Va. Code §30-1-8(k). However, legislative rule CSR §4-1-12 contains a duplicate, truncated version of the Board's complaint process. The current version of CSR §4-05 became effective December 29, 2000. The current version of CSR §4-1-12 became effective July 1, 2014. Both rules are active. The Board stated that it does not follow the truncated version of legislative rule §4-1-12, except for CSR §4-1-12.2.a and §4-1-12.2.b. These subsections preserve the Board's

integrity and impartiality during the investigative procedure and final adjudication, respectively. Moreover, these subsections are not in the procedural rules CSR §4-05. **The Board should seek to have legislative rule CSR §4-1-12 amended to remove the duplicate complaint procedure, and have the procedural rule CSR §4-05 amended to include the subsections of legislative rule CSR §4-1-12.2.a and §4-1-12.2.b, in order to preserve the Board’s impartiality and integrity during the investigative procedures and final adjudications.**

- Per CSR §4-1-12.2.b, as a board member, the Investigative Officer must recuse himself or herself from a probable cause vote during the complaint procedure. However, this may create a potential tie-vote scenario. According to the Board, to avoid a tie-vote scenario on probable cause, the Investigative Officer’s recommendation of “probable cause” or “no probable cause” should hold sway over the outcome of a tie-vote, thereby breaking the tie. However, this is not codified within the rule but is an informal practice. **The legislative auditor recommends that the Board amend procedural rule §4-05 to address the scenario of a tie-vote on probable cause.**
- Regarding the disposition of a complaint and what constitutes a violation applicable for complaint, CSR §4-5-5.1 and §4-5-5.2 reference CSR §4-1-13. However, CSR §4-1-13 references the appeal process. The correct citation should be W. Va. Code §30-16-11, rather than CSR §4-1-13. **The legislative auditor recommends that the Board seek to have CSR §4-5-5.1 and §4-5-5.2 amended to reflect applicable violations found within W. Va. Code §30-16-11.**
- Regarding the appointment and empowerment of a hearing examiner, CSR §4.3.6.1 directs the authority to conduct hearings to “§ 19-5-3.10.” However, Chapter 19 of the W. Va. Code governs agriculture. Furthermore, CSR §4.3.3.6 refers to the “*Complaint of Notice of Hearing issued in the name of the Board as the agency of the State regulating the practice of registered professional nursing.*” “Registered professional nursing” is likely a misprint and instead should state “practice of *chiropractic.*” **The Board should have CSR §4-03 amended to reference the correct section of W. Va. Code. The legislative auditor also recommends the Board should amend CSR §4.3.3.6 to reference the Board of Chiropractic as the state regulatory body for the practice of chiropractic rather than the practice of registered professional nursing.**

- PERD also noted that the Board has not promulgated a rule pursuant to W. Va. Code §6-9A-3(d), which states that “*each governing body shall promulgate rules by which the date, time, place and agenda of all regularly scheduled meetings and the date, time, place and purpose of all special meetings are made available, in advance, to the public and news media.*” **The Board should comply with W. Va. Code §6-9A-3(d) to provide the public with sufficient notice of its meetings.**

The W. Va. Code Contains a Provision on Confidentiality for Complaints Wherein No Probable Cause Is Found

Per W. Va. Code §30-16-11(e), “*If probable cause is not found in the complaint, all proceedings relating to the complaint and the response of the licensee or his or her representative shall be held confidential and may not be made available to the public or to any other state or federal agency or court.*” This provision essentially prevents the right of public access to a complaint and related proceedings if the Board deems the complaint to have no probable cause. As regulatory boards’ adherence to complaint procedures is an important aspect of a performance review, the audit team requested a legal opinion from the Office of the Legislative Auditor’s Legislative Services Division (Legislative Services) to determine if the provision within W. Va. Code §30-16-11(e) prevented PERD’s access to the Board’s complaints and subsequent documentation. It is the legal opinion of Legislative Services that the provision within W. Va. Code §30-16-11(e) grants the Board an immunity to audits and inquiries not held by other Chapter 30 licensing boards. Specifically, in three cases between 1984 and 1994, the Supreme Court of Appeals of West Virginia found that the public has a right of access to the complaint of other documents. Two of the three cases involve regulatory boards. **The legislative auditor recommends the Legislature should consider an amendment to remove the confidentiality within W. Va. Code §30-16-11(e); thereby, granting the right of public access to all the Board’s complaints and related proceedings.**

Per W. Va. Code §30-16-11(e), “If probable cause is not found in the complaint, all proceedings relating to the complaint and the response of the licensee or his or her representative shall be held confidential and may not be made available to the public or to any other state or federal agency or court.”

It is the legal opinion of Legislative Services that the provision within W. Va. Code §30-16-11(e) grants the Board an immunity to audits and inquiries not held by other Chapter 30 licensing boards.

The Board Did Not Identify Authorization When Entering Executive Sessions

The Open Meetings Act (Act) allows governing bodies to hold an executive session and exclude the public only when a closed session is required to deal with one of the particular matters specified in W. Va. Code §6-9A-4. The Act requires each governing body to “*identify*

the authorization under this section” for holding an executive session. The Board entered executive session 18 times in its meetings from fiscal years 2017 through 2021. The Commission has advised that it is not necessary to specifically reference the Code section as this may not inform the public who may not be familiar with such a reference. Instead, the Commission has advised that the required “authorization” for going into executive session could be provided by stating the general subject matter covered by a particular exemption in the Act, such as “*to issue, effect, deny, suspend or revoke a license, certificate or registration under the laws of this state or any political subdivision, unless the person seeking the license, certificate or registration or whose license, certificate or registration was denied, suspended or revoked requests an open meeting.*” Of the 18 times the Board entered executive session, it cited an Act authorization 11 times before entering into executive session. However, for the remaining seven meetings either the Board did not cite the authorization or it did not record it within the minutes. **Therefore, the legislative auditor recommends the Board should adhere to W. Va. Code §6-9A-4 and state the authorization before entering executive sessions during Board meetings and ensure the minutes reflect the authorization.**

Of the 18 times the Board entered executive session, it cited an Act authorization 11 times before entering into executive session.

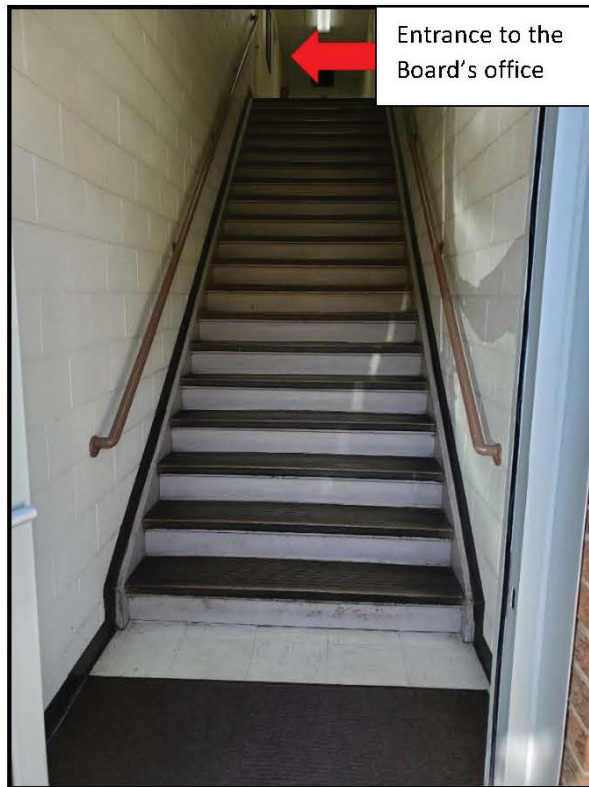
The Board’s Office Is Generally Inaccessible to Individuals with Disabilities

PERD conducted a site visit to the Board’s office located at 415 ½ D Street, in South Charleston. This visit was to determine if the office and building meet select guidelines of the Americans with Disabilities Act. PERD found the Board’s office is inaccessible to individuals with various disabilities.

As shown in Figure 1, an individual must walk up 19 steps to enter the Board’s office. The only other way to access the office is by walking up 19 steps located on the rear exterior of the building; however, this access is not intended for the general public. The building does not have access for mobility-impaired individuals, such as a lift, ramp, or elevator. In addition, the office does not have braille signage or any type of auditory guidance for visually impaired individuals. It should be noted that the audit team assessed other sections of the office; however, the general inability of the mobility and visually impaired to access the office renders these observations moot.

PERD found the Board’s office is inaccessible to individuals with various disabilities.

Figure 1: Front Entranceway Stairs to the Board of Chiropractic’s Office



While the Board has indicated a willingness to meet with disabled individuals offsite, currently there is no accessibility plan.

Additionally, PERD inquired whether the Board had a plan to accommodate individuals with disabilities. While the Board has indicated a willingness to meet with disabled individuals offsite, currently there is no accessibility plan. The audit team’s review did not assess the entire building, nor is the review intended to certify the building as compliant with the Americans with Disabilities Act. The audit team used professional judgment and a checklist provided by the Institute for Human Centered Design as a guide to determine if the building provides reasonable access for disabled individuals. **The legislative auditor recommends that the Board should make necessary changes to improve handicap accessibility to its office pursuant to the Americans with Disabilities Act, including the possibility of relocating its office.**

As the findings of this issue show, access to the Board’s office is restrictive for those with disabilities.

West Virginia Code Does Not Currently Require ADA Compliance

As the findings of this issue show, access to the Board’s office is restrictive for those with disabilities. Moreover, ADA non-compliance may preclude boards from hiring disabled individuals otherwise qualified

for employment. However, this finding is not unique to the Board of Chiropractic. In conducting performance audits of state agencies each year, PERD routinely evaluates the buildings for ADA compliance. PERD has encountered several agencies over the years in which their buildings present access challenges for people with disabilities. In 2014, PERD evaluated the Department of Veterans Assistance and found field offices that had ADA compliance issues, such as narrow hallways and corridors that presented difficulties in accommodating disabled veterans in motorized wheelchairs. Fortunately, a 2016 update report found that the department rectified all ADA issues by relocating or renovating seven field offices. More recently, PERD's regulatory board reviews have found four regulatory boards are not ADA compliant. PERD recommended the following boards consider measures they need to make to improve handicap accessibility to offices and services: 1) the Board of Examiners in Counseling (2021), 2) the Board of Physical Therapy (2023), 3) the Board of Chiropractic (2023), and 4) the Board of Occupational Therapy (2023). **Therefore, the legislative auditor's recommends that all buildings, offices, or other spaces required by any department, agency, or institution of state government should be in full compliance with ADA standards on or before July 1, 2025.**

PERD's regulatory board reviews have found four regulatory boards are not ADA compliant.

West Virginia Code §5A-1-11(c)(8) requires the Office of Equal Opportunity (OEO) to be **available to inspect** and advise the leasing section of the Division of Purchasing on purchases of physical properties for compliance with the ADA. However, code does not require the OEO **to inspect** physical properties owned or leased by the State of West Virginia. **Therefore, the legislative auditor recommends that the Legislature consider amending W. Va. Code §5A-1-11(c)(8) to specify the OEO inspect physical properties, owned or leased by the State, and approve compliance with ADA standards.**

West Virginia Code §5A-10-2(a) regarding the Real Estate Division, states no state agency may lease any physical properties except in accordance with the provisions of §5A-10-2 and §5A-3-1 et seq. However, these code sections do not specify state agencies must comply with ADA requirements found in 42 U.S.C. §12101, et seq.

Furthermore, West Virginia Code §5A-10-2(a) regarding the Real Estate Division, states no state agency may lease any physical properties except in accordance with the provisions of §5A-10-2 and §5A-3-1 et seq. However, these code sections do not specify state agencies must comply with ADA requirements found in 42 U.S.C. §12101, et seq. **The legislative auditor recommends the Legislature consider amending W. Va. Code §5A-10-et seq. to require state agency properties comply with ADA requirements under 42 U.S.C. §12101, et seq.**

Similarly, West Virginia Code §5A-10-4 authorizes the Real Estate Division's executive director to lease physical properties required by any institution of state government and to delegate authority. However, code does not require the executive director consider ADA requirements and approval from the OEO for any lease approval. **The legislative auditor recommends the Legislature consider amending W. Va. Code**

§5A-10-et seq to require the Real Estate Division Executive Director receive approval by the OEO coordinator prior to entering any lease or renewal of a lease of physical properties.

Conclusion

The Board complies with most of the general provisions of Chapter 30. However, the Board should consider using the State Treasurer's Lockbox system to process fees to reduce the risk of fraud. Although the risk of fraud on the expenditure side is at an acceptable level, there is concern on the risk of fraud on the revenue side. This concern prompts the need for a detailed review of the Board's handling of revenue, which is described in Issue 3 of this report. The Board should generally review and amend its legislative rules. The Board's office is not readily accessible to individuals with disabilities, and the Board should consider taking action to improve its accessibility to the public.

Recommendations

3. *The Board should consider utilizing the State Treasurer's Lockbox system to reduce the risk of fraud.*
4. *The Board should adhere to W. Va. Code §30-1-5(c) and send status reports to complainants and respondents within six months of the complaint being filed.*
5. *The Board should seek to have legislative rule CSR §4-1-12 amended to remove the duplicate complaint procedure, and have the procedural rule CSR §4-05 amended to include the subsections of legislative rule CSR §4-1-12.2.a and §4-1-12.2.b, in order to preserve the Board's impartiality and integrity during the investigative procedures and final adjudications.*
6. *The Board should amend CSR §4-05 to define its procedures addressing the scenario of a tie-vote on probable cause.*
7. *The Board should amend CSR §4-5-5.1 and §4-5-5.2 to reflect applicable violations found within W. Va. Code §30-16-11.*
8. *The Board should amend CSR §4-03 to reference the correct section of West Virginia Code.*

9. *The Board should amend CSR §4.3.3.6 to reflect the Board of Chiropractic as the state regulatory body for the practice of chiropractic rather than the practice of registered professional nursing.*
10. *The Board should comply with W. Va. Code §6-9A-3(d) to provide the public with sufficient notice of its meetings.*
11. *The Legislature should consider amending and removing the provision within W. Va. Code § 30-16-11(e); thereby, granting the right of public access to all the Board's complaints and related proceedings.*
12. *The Board should adhere to W. Va. Code §6-9A-4 and state the authorization before entering executive sessions during board meetings and ensure the minutes reflect the authorization.*
13. *The Board should make necessary changes to improve handicap accessibility to its office pursuant to the Americans with Disabilities Act, including the possibility of relocating its office.*
14. *All buildings, offices, or other spaces required by any department, agency, or institution of state government should be in full compliance with ADA standards on or before July 1, 2025.*
15. *The Legislature should consider amending W. Va. Code §5A-1-11(c)(8) to specify the Office Equal Opportunity inspect physical properties, owned or leased by the state, and approve compliance with Americans with Disabilities Act standards.*
16. *The Legislature should consider amending W. Va. Code §5A-10-et seq. to require that state agency properties comply with the Americans with Disabilities Act under the provisions of 42 U.S.C. §12101, et seq.*
17. *The Legislature should consider amending W. Va. Code §5A-10-et seq to require the Real Estate Division executive director receive approval by the OEO coordinator prior to entering any lease or renewal of a lease of physical properties.*

ISSUE 3

The Board's Financial Documentation, Recordkeeping, and Fee Collection Need Improvement

Issue Summary

In assessing the risk of fraud, PERD found that the Board's expected revenue exceeds actual revenue. This is a cause for concern because it suggests that the risk of fraud is relatively high. Consequently, PERD examined the Board's revenue in greater detail to determine if fraud may have occurred or if there is a plausible explanation. Overall, PERD found two factors causing the revenue variance. The first factor is that the total number of licensees reported in the Board's annual reports were not accurate. The second factor contributing to the variance is that the Board does not delineate in the annual reports license revenue from retired licensees. This is important as retired licensees pay a substantially lower renewal fee than active licensees. Furthermore, the Board's roster does not delineate retired licensees. Thus, the only method for identifying and accounting for these individuals is for the executive director to review the files maintained by the Board. **The legislative auditor recommends the Board consider retaining a count of chiropractors at the end of the fiscal year to accurately reflect the number of licensees for each fiscal year. The legislative auditor also recommends the Board consider identifying the licensee categories in the roster to reflect the licensee's status.**

PERD also found business fee renewal revenue was below expected revenue. Based on a sample of chiropractic businesses, PERD found 9.3 percent did not submit business renewal fees. The Board does not keep an accurate historical list of chiropractic businesses, and thus does not know the count of businesses required to pay renewal fees. This is concerning as it increases the risk of chiropractic businesses not submitting payment for business renewal fees and the Board remaining unaware. PERD found 4.7 percent of the revenue shortfall within the chiropractic business sample was due to businesses not submitting renewal fees. However, the remaining 4.7 percent of the revenue shortfall remains unaccounted for and presents the possibility that fraud may have occurred. **The legislative auditor also recommends the Board update the business roster to ensure all authorized businesses are recorded.**

Consequently, PERD examined the Board's revenue in greater detail to determine if fraud may have occurred or if there is a plausible explanation.

The remaining 4.7 percent of the revenue shortfall remains unaccounted for and presents the possibility that fraud may have occurred.

The Board's Licensee Documentation Contains Inaccuracies, Purporting Significant Shortfalls in Revenue

Given the Board's lack of internal controls, in order to assess the risk of fraud and gain a reasonable assurance that fraud has not occurred, PERD examined the Board's revenue. As shown in Table 7, PERD calculated the minimum expected revenue from licenses by multiplying license fees by the number of reported licensees. PERD found that expected revenue exceeded actual revenue for fiscal years 2017, 2019, 2021, and 2022. Also as shown in Table 7, in the aggregate, actual revenue was \$16,225 below expected revenue.

Fiscal Year	Expected Revenue	Actual Revenue	Variance
2017	\$84,900	\$83,375	(\$1,525)
2018	\$85,050	\$81,350	\$300
2019	\$85,650	\$81,350	(\$4,300)
2020	\$84,300	\$89,050	\$4,750
2021	\$82,800	\$72,600	(\$10,200)
2022	\$82,350	\$77,100	(\$5,250)
Total	\$505,050	\$488,825	(\$16,225)

Source: PERD calculations based on the Board's annual reports.

When actual revenue is significantly less than expected revenue, it is PERD's procedure to review a board's revenue in greater detail. The first issue identified by PERD is that the executive director does not use a fiscal year-end licensee count for the annual reports. Rather, the Board uses the actual number of licensed chiropractors when the executive director creates the report. This is typically several months after the close of the fiscal year. As a result, the number used in the annual report contains any chiropractor licensed since the beginning of the new fiscal year. Thus, the licensee count in the annual report, on which PERD based its calculations, is not reflective of the actual fiscal year for which it is reported. Moreover, the count the Board uses in the annual report does not include individuals licensed during a fiscal year who have chosen not to renew their license, thus also affecting the accuracy of the count. PERD accounted for the necessary deletions and additions and applied

The first issue identified by PERD is that the executive director does not use a fiscal year-end licensee count for the annual reports. Rather, the Board uses the actual number of licensed chiropractors when the executive director creates the report.

The count the Board uses in the annual report does not include individuals licensed during a fiscal year who have chosen not to renew their license, thus also affecting the accuracy of the count.

the changes to the estimate; however, the Board's revenues continued to be less than expected.

Given the continued shortage of revenue compared to estimates, PERD examined proof of payment to verify that the Board received all license renewal payments due. It should be noted that the Board does not maintain historical rosters of licensees. Thus, PERD had to recreate annual licensee rosters for fiscal year 2017 through fiscal year 2022 in order to sample licenses over the fiscal years. PERD took a random sample of 276 out of 1,949 licensees from fiscal year 2017 to fiscal year 2022. The Board produced a record of payment for 99 percent of the licensees in PERD's requested sample.

The Board produced a record of payment for 99 percent of the licensees in PERD's requested sample.

In producing the records for the sample, the executive director noted some licensees were retired, and thus pay a lower fee than active licensees. This information is not reported separately in either the annual reports or the Board's roster of licensees. Considering that retired chiropractors pay significantly less renewal fees than active chiropractors, maintaining adequate records and documentation should reflect this difference. **The legislative auditor recommends the Board consider identifying retirees on its roster and itemizing retiree renewal revenue in the annual reports to ensure revenue is appropriately maintained and documented.**

PERD identified two major factors contributing to the Board's revenue shortfalls: the annual reports do not portray an accurate count of chiropractors by fiscal year and they do not delineate retiree renewal revenue. As shown in Table 8, when the audit team accounted for the number of retirees and the reduced revenue of retiree licensure, the Board was still under expected revenue in fiscal years 2019, 2021, and 2022. However, as indicated in Table 8, the fluctuating license renewal revenues are likely attributable to revenue from one fiscal year being deposited into the next fiscal year. License renewal applications and payments must be postmarked by July 1st which coincides with the beginning of the State's fiscal year. This means the Board will receive, and deposit, license renewals for the same renewal cycle in different fiscal years. Table 8 suggests that the large license renewal revenue amounts in fiscal years 2017, 2018, and 2020 are partially attributable to when revenue is received and when the revenue is posted.

Considering that retired chiropractors pay significantly less renewal fees than active chiropractors, maintaining adequate records and documentation should reflect this difference.

Table 8
Board of Chiropractic
Adjusted Expected and Actual Licensee Revenue
FY 2017 through FY 2022

Fiscal Year	Expected Revenue	Actual Revenue	Variance
2017	\$81,300	\$83,375	\$2,075
2018	\$82,650	\$81,350	\$2,700
2019	\$82,500	\$81,350	(\$1,150)
2020	\$81,750	\$89,050	\$7,300
2021	\$78,750	\$72,600	(\$6,150)
2022	\$78,900	\$77,100	(\$1,800)
Total	\$485,850	\$488,825	\$2,975

Source: PERD calculations based on the Board's annual reports.

W. Va. Code §30-1-12(b)(2) delineates categories of receipts to be recorded in annual reports, including renewals. As the list of categories is significantly detailed, the Legislature intended for an itemized, transparent record of revenue to be documented within the annual reports. The Board itemizes revenue in its annual reports; however, it aggregates its renewal revenue by consolidating in-state, out-of-state, and retiree revenue into a single category. **The legislative auditor recommends the Board consider itemizing its annual renewal revenue category to ensure license renewal is appropriately documented and transparent.**

The Board itemizes revenue in its annual reports; however, it aggregates its renewal revenue by consolidating in-state, out-of-state, and retiree revenue into a single category.

The Board Does Not Have Record of Collecting All Business Approval Renewal Fees

Chiropractors establishing a chiropractic business, such as a PLLC or corporation, must obtain approval from the Board. It should be noted that the Board does not license chiropractic businesses, it only approves them. Per CSR §4-6-2.4, chiropractic businesses pay a fee of \$150 for the Board's initial approval and another \$150 fee to annually renew the Board's approval.

In addition to calculating expected licensee revenue, PERD also calculated expected annual business approval renewal fee revenue. As shown in Table 9, PERD found that from FY 2017 to FY 2022 the expected revenue exceeded actual revenue every year, except for 2017. Also, as

shown in Table 9, PERD calculates that cumulatively, the Board’s actual revenue is less than expected revenue by a total of \$10,200 for the 2017-2022 period.

Fiscal Year	Businesses*	Expected Revenue	Actual Revenue	Variance
2017	100	\$15,600	\$17,700	\$2,100
2018	105	\$16,650	\$16,350	(\$300)
2019	112	\$17,550	\$14,250	(\$3,300)
2020	118	\$18,150	\$18,000	(\$150)
2021	123	\$19,500	\$15,750	(\$3,750)
2022	132	\$20,400	\$15,600	(\$4,800)
Total		\$107,850	\$97,650	(\$10,200)

*Source: Board of Chiropractic Annual Reports. Expected revenue and variance are PERD’s calculations based on the Board’s Annual Reports.
The Board does not maintain a historical roster of businesses.

Based on information provided by the Secretary of State, PERD determined the Board’s current roster of businesses included entities no longer operating and did not contain some businesses providing chiropractic services.

Given the substantial variance between expected and actual revenue, PERD sampled chiropractic business renewals for fiscal years 2017 through 2022 to verify the Board is collecting all monies it is entitled to receive, and to determine if fraud may have occurred. It should be noted that the Board does not maintain historical rosters or counts of businesses, nor is the information provided in the annual reports. Moreover, based on information provided by the Secretary of State, PERD determined the Board’s current roster of businesses included entities no longer operating and did not contain some businesses providing chiropractic services. Thus, the audit team reconstructed the rosters for fiscal years 2017 to 2022 in order to conduct the analysis.

Of the 193 renewals sampled by PERD, the Board was unable to provide documentation of payment for 18 (9.3 percent). Of the 18 business entities, 9 of them were not present on the Board’s roster but were identified by the Secretary of State as active businesses.

PERD randomly sampled 193 out of 777 business approval renewals from fiscal year 2017 to fiscal year 2022. Of the 193 renewals sampled by PERD, the Board was unable to provide documentation of payment for 18 (9.3 percent). Of the 18 business entities, 9 of them were not present on the Board’s roster but were identified by the Secretary of State as active businesses. This amounts to 4.7 percent – or \$1,350 – of the sample. The other 9 business entities are on the Board’s roster of approved businesses. When asked about the missing payments, the executive director stated: “If a licensee fails to include his/her PLLC,

Corporation, and/or LLC fee, I always follow-up with the licensee that they must submit payment to the Board; however, operating on an honor system, [I] fail to follow-up for a second time should they not submit payment.”

Although the revenue shortfall could be attributed to inaccurate recordkeeping and/or failure to follow-up on outstanding payments, PERD cannot conclusively eliminate the potential of fraud. This is because it is conceivable that payments for business renewals could have been diverted from the Board. This stems from two potential scenarios. First, although the Board did not have some entities recorded on the roster of businesses, the opportunity exists that the entities could have been excluded from the roster and payment for renewals could have been diverted from the Board. Second, for entities on the roster for which a proof of payment was not provided, the payment could similarly have been diverted from the Board. Nonetheless, the legislative auditor is concerned the Board’s recordkeeping is inadequate to determine if the Board has collected all fees it is required to by state law. **Therefore, the Board needs to improve its recordkeeping and collect all fees due it under state law to maintain financial solvency and self-sufficiency.**

Although the revenue shortfall could be attributed to inaccurate recordkeeping and/or failure to follow-up on outstanding payments, PERD cannot conclusively eliminate the potential of fraud.

Conclusion

The Board’s chiropractor count is inaccurate in the annual reports because it is including initial licensees from the succeeding fiscal year and does not include individuals no longer licensed. Furthermore, the Board does not distinguish retired licensees in its roster or annual reports. Thus, these two issues contribute to the discrepancy between expected and actual revenue. When adjusted for these issues, the cause of variance in the Board’s revenue is due to renewal revenue appearing in the next fiscal year’s cycle as the renewal cycle is on a fiscal year basis. Moreover, PERD found the Board does not keep an accurate historical list of chiropractic businesses. Specifically, several businesses are operating for which the Board had no documentation of payment. However, in sampling the renewal payments, PERD was unable to conclusively eliminate the potential for the missing payments to be fraud related.

Nonetheless, the legislative auditor is concerned the Board’s recordkeeping is inadequate to determine if the Board has collected all fees it is required to by state law.

Recommendations

18. *The Board should consider retaining a count of chiropractors at the end of the fiscal year to accurately reflect the number of licensees for a given fiscal year.*

19. *The Board should consider identifying the licensee categories in the roster to reflect the licensee's status.*
20. *The Board should update the business roster to ensure all authorized businesses are recorded.*
21. *The Board should consider identifying retirees on its roster and itemizing retiree renewal revenue in the annual reports to ensure revenue is appropriately maintained and documented.*
22. *The Board should consider itemizing its annual renewal revenue category to ensure license renewal is appropriately documented and transparent.*
23. *The Board should improve its recordkeeping of chiropractic businesses and collect all fees due it under state law to maintain financial solvency.*

ISSUE 4

State Agency Notices for Virtual Meetings Lack Uniform Statutory Requirements

Issue Summary

After reviewing the Board’s meeting minutes and notices, the audit team noted that notices for teleconferences (virtual meetings) provided no call-in number, livestream access, or other methods the public may use to access the teleconferences. Some of these virtual meetings were held during the COVID-19 declared state of emergency. Conducting virtual meetings has been permissible for many years, and with the passage of House Bill 3146 during the 2023 legislative session, the Legislature has established virtual meeting notice requirements for meetings held during a declared state of emergency. However, there are no statutory notice requirements for virtual meetings held during non-emergency conditions. This statutory inconsistency creates an undesirable condition wherein confusion may arise from the public and agencies regarding what the standard practice is for posting notices of virtual meetings held when there is no declared state of emergency.

The 10 notices the Board filed with the Secretary of State’s Office for these teleconference meetings did not provide a call-in number for public attendance.

Statutory Requirements for Virtual Meeting Notices Are Inconsistent

Teleconference meetings have been held by state agencies for many years. In 1999, the West Virginia Ethics Commission recognized the prevalence of teleconference meetings and responded by issuing an advisory opinion on August 5, 1999. The advisory opinion (99-08) stated that “*a telephone conference must comply with the other requirements of the [Open Governmental Proceedings] Act. Therefore, the public must be given notice of the telephone conference, a public place must be provided for those who wish to attend.*” However, according to the Legislative Services Division within the Office of the Legislative Auditor, there is nothing listed in any caselaw or ethics opinion that requires the call-in number or link to a virtual meeting be included in the public notice.

The Board conducted 10 teleconference meetings from fiscal year 2018 to fiscal year 2022. Per the Board’s meeting notices, 1 of the 10 teleconference meetings was an emergency meeting. The 10 notices the Board filed with the Secretary of State’s Office for these teleconference meetings did not provide a call-in number for public attendance. Instead, the notices instructed that agendas would be available upon request, or

that the agenda will be made available three days prior to the meeting by contacting the Board. No violation has been committed by the Board according to Legislative Services. Eight (8) of these 10 teleconference meetings occurred during the COVID-19 pandemic, in which a state of emergency was declared by the governor on March 16, 2020, and state agencies could not meet in person. During this time, the Ethics Commission posted guidelines on its main webpage that stated, “*a governing body’s efforts to accommodate additional attendees through providing a call-in number or access to a livestream of the meeting would meet the minimum requirements of the Open Meetings Act.*” This statement was issued only as guidelines for the state-wide emergency.

In response to the COVID-19 emergency that required widespread use of virtual meetings by state agencies to maintain operations, the Legislature passed House Bill (HB) 3146 during the 2023 legislative session that provided statutory requirements for virtual meetings held during a declared state of emergency. House Bill 3146 included requirements for notices of virtual meetings such as stating what technology will be used and how members of the public may participate in real time. Although not specifically listed, the notice requirements of HB 3146 “*would include Zoom links, Facebook pages names or links, and call-in numbers*” according to Legislative Services.

However, it should be noted that House Bill 3146 speaks only to virtual meetings held during a declared state of emergency. Legislative Services indicates in its legal opinion that:

Nothing in the Ethics opinion 99-08, or anything since, lists these same requirements for virtual attendance of meetings during **non-declared emergency** times. Therefore, we should expect that meetings held during states of emergency require more information to satisfy notice requirements and that less information is necessary for compliance with notice requirements for virtual meetings during times where no state of emergency is declared. [emphasis added]

Although the governor’s state of emergency was lifted on January 1, 2023, there is the likelihood that state agencies will continue to hold virtual meetings during non-emergency conditions. Legislative Services’ legal opinion states that:

HB 3146 does **only** authorize virtual meetings during declared states of emergency and addresses only those

House Bill 3146 included requirements for notices of virtual meetings such as stating what technology will be used and how members of the public may participate in real time.

However, it should be noted that House Bill 3146 speaks only to virtual meetings held during a declared state of emergency.

meetings that would take place during a time that it is contraindicated to meet in person due to the emergency declaration. However, in 1999, the West Virginia Ethics Commission 99-08, the Committee found that the Open Governmental Proceedings Act permitted video and telephone conferencing, as well as conferencing “by other electronic means.” The Commission further stated “a telephone conference must comply with the other requirements of the Act.” [emphasis included]

Therefore, while HB 3146 only pertains to virtual meetings during declared emergencies, virtual meetings are still permitted during non-emergencies.

Legislative Services concludes that with the passage of HB 3146, virtual meetings held during states of emergency will “require more information to satisfy notice requirements and that less information is necessary for compliance with notice requirements for virtual meetings during times where no state of emergency is declared.” **Therefore, Legislative Services advises that the Legislature consider amending law to impose the same notice standards that apply to virtual meetings held during a declared state of emergency to virtual meetings held during non-emergencies.** The reasoning behind the recommendation is that:

1. There are times that courts must look to other parts of the code to borrow a definition to interpret a different section of code or rules and could apply §6-9C-1, *et seq.* to notice requirements for Open Meetings under other circumstances;
2. It is a negligible amount of effort and no added cost to adhere to the higher standard required during a state of emergency; and
3. Consistency in notice could forestall questions and complaints about what the standard is for notice, especially if notice is given according to meetings during regular time but a state of emergency is declared between initial notice being provided the date and time of the meeting.

Conclusion

The Board conducted teleconference meetings prior to a declared emergency and during the time of a declared state of emergency. The Board posted meeting notices; however, the notices did not indicate how the public was to access these virtual meetings. State agencies are

Therefore, while HB 3146 only pertains to virtual meetings during declared emergencies, virtual meetings are still permitted during non-emergencies.

Legislative Services concludes that with the passage of HB 3146, virtual meetings held during states of emergency will “require more information to satisfy notice requirements and that less information is necessary for compliance with notice requirements for virtual meetings during times where no state of emergency is declared.”

permitted to hold virtual meetings during non-emergency conditions as well as during declared states of emergency. However, there is no statutory provision for requirements relating to meeting notices for virtual meetings held under non-emergency conditions. HB 3146 **only** addresses requirements for virtual meetings held during a declared state of emergency. This creates an undesirable condition of potential confusion for the public and state agencies regarding the standard protocol for meeting notices for virtual meetings held when there is no declared state of emergency. The Legislature should consider amending West Virginia Code to establish the same notice standards for virtual meetings regardless of whether they are conducted during an emergency or non-emergency condition.

Recommendation

24. *The Legislature should consider amending law to impose the same notice standards that apply to virtual meetings held during a declared state of emergency to virtual meetings held during non-emergencies.*

ISSUE 5

The Board’s Website Needs Improvement to Enhance User-Friendliness and Transparency

Issue Summary

In order to actively engage with a state agency online, citizens must first be able to access and comprehend the information on government websites. Every website should include some elements, such as a search tool and contact information including physical and email address, telephone number, and the names of administrative officials. Other elements such as social media links, graphics, and audio/video features may not be necessary or practical for some state agencies. Table 10 shows the Board integrates 32 percent of the checklist items in its website. This measure indicates that the Board needs to make more improvements in the user-friendliness and transparency of its website.

The Board needs to make more improvements in the user-friendliness and transparency of its website.

Table 10 Board of Chiropractic Website Evaluation Score			
Substantial Improvement Needed	More Improvement Needed	Modest Improvement Needed	Little or No Improvement Needed
0-25%	26-50%	51-75%	76-100%
	Board Score: 32%		
<i>Source: PERD’s review of the Board of Chiropractic’s website as of September 1, 2022.</i>			

The Board’s Website Scores Relatively Low in User-Friendliness and Transparency

It is common, and has become expected, that government conveys to the public what it is doing through website technology. Therefore, government websites should be designed to be user-friendly. A user-friendly website is understandable and easy to navigate from page to page. The Office of the Legislative Auditor conducted a literature review on assessments of governmental websites and developed an assessment checklist to evaluate West Virginia’s state agency websites. The assessment checklist contains several website elements including a search tool, public records, budget data, mission statement, an organizational chart, Freedom of Information request, agency history, and website update status. An agency can score a total of 50 points in the assessment,

Government websites should be designed to be user-friendly.

18 for user-friendliness and 32 in transparency. As shown in Table 11, the Board scored a total of 16 points overall. This total comprises 7 out of 18 points for user-friendliness and 9 out of 32 points for transparency. The Board should consider making website improvements to provide a better online experience for the public.

Table 11 Board of Chiropractic Website Evaluation Score			
Category	Possible Points	Agency Points	Percentage
User-Friendly	18	7	39%
Transparency	32	9	28%
Total	50	16	32%
<i>Source: PERD's review of the Board of Chiropractic's website as of September 1, 2022.</i>			

The Board should consider making website improvements to provide a better online experience for the public.

The Board's Website Is Navigable But Needs Additional User-Friendly Features

The Board's website is easy to navigate as every page links to the Board's homepage. A sitemap link can be found at the bottom of every webpage assisting in navigating the website. However, a navigation bar is not located at the top of every page which would allow for a readily accessible position for ease of navigation. Agency contact information can be found below the navigation bar to the bottom left quadrant of every webpage; however, there is no link to an FAQ section that would facilitate easier access to frequent, public inquiries. A search box can be found on every page to assist in finding relevant information on the Board's website. Furthermore, the website also supports mobile functionality but does not have a mobile application established.

Using the Flesch-Kincaid Analysis, the readability of the language used in the Board's homepage scores at a college-graduate reading level. This score is far above the recommended sixth to seventh-grade reading level.

Using the Flesch-Kincaid Analysis, the readability of the language used in the Board's homepage scores at a college-graduate reading level. This score is far above the recommended sixth to seventh-grade reading level. Furthermore, the license renewal section of the Board's webpage scores at the collegiate reading level. This also is above the recommended reading level, but it should also be considered that an individual seeking to renew a chiropractic license will have completed education and training that would require a collegiate level of reading to obtain his or her initial license. Nonetheless, the complaint section of the Board's website scores

at an eighth and ninth-grade reading level. This is the closest score to the recommended sixth to seventh-grade reading level and is likely the area of the website that would potentially see the greatest range of reading levels in its use. The website also includes the usage of sans-serif fonts.

User-Friendly Considerations

Although some items may not be practical for this Board, the following are attributes that could improve user-friendliness:

- **Foreign Language Accessibility** – A link to translate all webpages into other languages other than English.
- **Help Link** – The website does contain agency contact information; however, there should be a link that allows users to access a FAQ section.
- **Content Readability** – As noted above, the website should be written on a sixth- to seventh-grade reading level.
- **Site Functionality** – The website should include buttons to adjust the font size and resizing of text should not distort the site graphics or text.
- **Mobile Functionality** – The website is available in a mobile version; however, the Board has not created a mobile application (app).
- **Navigation** – Every page is linked to the Board’s homepage; however, the website lacks a navigation bar at the top of every page.
- **FAQ Section** – A page that lists the agency’s most frequently asked questions and responses.
- **Feedback Options** – There is no webpage where users can voluntarily submit feedback about the website or a particular section of the website.
- **Online Survey/Poll** – A short survey should pop up and request users to evaluate the website.
- **Social Media Links** – The website should contain buttons that allow users to post the agency’s content to social media pages such as Twitter and Facebook.
- **RSS Feeds** - RSS stands for “Really Simple Syndication” and allows subscribers to receive regularly updated work (i.e. blog posts, news stories, audio/video, etc.) in a standardized format.

The Board's Website Needs Additional Transparency Features

A transparent website should promote accountability and provide information for citizens about the Board's performance, as well as encourage public participation. Additionally, it should utilize tools and methods to collaborate across all levels of government. The Board's website has 28 percent of the core elements necessary for a general understanding of the Board's mission and performance. The Board's website includes the email, physical address, telephone number, administrative officials' names and contact information, the Board's mission statement, and several applicable public records relating to the agency's function. These include records, such as, but not limited to, meeting minutes, statutes, and disciplinary actions. The website also contains news and information of events, meetings, etc. However, there is neither a calendar containing this information nor is the information embedded into a calendar program. It should also be noted that while there has been an attempt at displaying graphical information, the link to access the graphical display is broken.

A transparent website should promote accountability and provide information for citizens about the Board's performance, as well as encourage public participation.

Transparency Considerations

The Board should consider providing additional elements to the website to improve transparency. The following attributes could be beneficial:

- **Location of Agency Headquarters** - The agency's contact page should include an embedded map that shows the agency's location.
- **Administrator(s) Biography** - A biography explaining the administrator(s) professional qualifications and experience.
- **Privacy Policy** - A clear explanation of the agency/state's online privacy policy.
- **Complaint Form** - An online complaint form.
- **Budget** - Budget data should be available at the checkbook level, and ideally embedded using a calendar program.
- **FOIA Information** - Information on how to submit a FOIA request, ideally with an online submission form.
- **Calendar of Events** - The website contains information on events; however, the information is not embedded using a calendar program.

- **Agency History** – The Board’s website should include a page explaining how the Board was created, what it has done, and how, if applicable its mission has changed over time.
- **e-Publications** – The Board’s publications should be online and downloadable.
- **Agency Organizational Chart** – A narrative describing the Board’s organization, preferably in a pictorial representation, such as a hierarchy/organizational chart.
- **Graphic Capabilities** – Allows users to access relevant graphics such as maps, diagrams, etc.
- **Audio/Video Features** – Allows users to access and download relevant audio and video content.
- **Performance Measures/Outcomes** – A page linked to the homepage explaining the agency’s performance measures and outcomes.
- **Website Updates** – The website should have a website update status on screen, ideally for every page.
- **Job Postings/Links to Personnel Division Website** – The Board should have a section on its homepage for open job postings and a link to the application page Personnel Division.

The legislative auditor finds that improvements are needed to the Board’s website in the areas of user-friendliness and transparency.

Conclusion

The legislative auditor finds that improvements are needed to the Board’s website in the areas of user-friendliness and transparency. The website can benefit from incorporating several common features. The Board has pertinent public information on its website including its contact information, rules, state code, board members, and mission statement. Regardless, providing website users with more elements and capabilities, as suggested in the report, would improve user-friendliness and transparency.

Recommendation

25. *The Board should improve the user-friendliness and transparency of its website by incorporating more of the website elements identified.*

Appendix A Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

1900 Kanawha Blvd. East
Building 1, Room W-314
Charleston, WV 25305-0610
(304) 347-4890



John Sylvia
Director

August 15, 2023

Barbara Johnson, Executive Director
West Virginia Board of Chiropractic
415 1/2 D Street, Suite B
P. O. Box 8532
South Charleston, WV 25303

Dear Director Johnson:

This is to transmit a draft copy of the Regulatory Board Review of the West Virginia Board of Chiropractic. This report is tentatively scheduled to be presented during the September 10-12, 2023, interim meeting of the Joint Committee on Government Organization. We will inform you of the exact time and location when the information becomes available. It is expected that a representative from your agency be present at the meeting to answer any questions committee members may have during or after the meeting. It should be noted that the draft report includes an issue (Issue 4) that was not included as an original audit objective. Issue 4 was an outgrowth from the audit objective to evaluate the Board's compliance with the general provisions of West Virginia Code 30-1. Although Issue 4 could have been reported with the findings under the compliance review of the general provisions of Chapter 30, the legislative auditor determined that it would be better to separate the issue because it had implications beyond the Board of Chiropractic.

We need to schedule an exit conference to discuss any concerns you may have with the report. We would like to have the meeting from August 21-23, 2023. Please notify us to schedule an exact time. In addition, we need your written response by noon on Friday, August 25, 2023, 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 304-340-3192 by Thursday, September 7, 2023, to make arrangements.

We request that your personnel not disclose the report to anyone unaffiliated with your agency. The legislative auditor advises that you inform any non-state government entity of the content of this report if that entity is unfavorably described, and request that it not disclose the content of the report to anyone unaffiliated with its organization. Thank you for your cooperation.

Sincerely,
John Sylvia
John Sylvia

Enclosure

Appendix B

Objectives, Scope and Methodology

The Performance Evaluation and Research Division (PERD) within the Office of the Legislative Auditor conducted this Regulatory Board Review of the Board of Chiropractic (Board) as required and authorized by the West Virginia Performance Review Act, Chapter 4, Article 10, of the *West Virginia Code*, as amended. The purpose of the Board, as established in West Virginia Code §30-16, is to protect the public through its licensing process, and to be the regulatory and disciplinary body for Doctors of Chiropractic throughout the state.

Objectives

The objectives of this review are to determine if the Board should be continued, consolidated, or terminated and if conditions warrant a change in the degree of regulations. In addition, this review is intended to assess the Board's compliance with the general provisions of Chapter 30, Article 1 of the *West Virginia Code*, the Board's enabling statute §30-16, and other applicable rules and laws such as the Open Governmental Proceedings (W. Va. Code §6-9A) and purchasing requirements. Another objective resulted from PERD's risk assessment of fraud and the observation that the Board's actual revenue is lower than expected. PERD sought to examine the discrepancy and determine if fraud occurred. A further objective is to determine whether there is an undesirable condition in law that could create confusion for requirements of virtual meeting notices or exclude the public from the Board's and other state agencies' virtual meetings. Finally, it is the objective of the legislative auditor to assess the Board's website for user-friendliness and transparency.

Scope

The scope of the audit covers many aspects of the Board's operations for fiscal years 2017-2022. The evaluation included a review of the Board's internal controls, policy and procedures, meeting minutes, complaint files from calendar years 2019-2022, complaint-resolution process, disciplinary procedures and actions, revenues, and expenditures for the period of FY 2017-2022, continuing education requirements and verification, the Board's compliance with the general statutory provisions (WVC §30-1) for regulatory boards and other applicable laws, and key features of the Board's website.

Methodology

PERD gathered and analyzed several sources of information and conducted audit procedures to assess the sufficiency and appropriateness of the information used as audit evidence. The information gathered and audit procedures are described below.

PERD staff visited the Board's office in South Charleston and met with its staff. Testimonial evidence was gathered for this review through interviews with the Board's staff to gain a better understanding of the Board's internal controls, policies, and procedures. All testimonial evidence were confirmed by written statements and in some cases by corroborating evidence.

To determine if the Board complies with the general provisions of W.Va. Code §30-1, its enabling statute (W. Va. Code §30-16), the Board's rules, and other applicable laws, PERD collected and analyzed the Board's complaint files, meeting minutes, annual reports, budget information, procedures for investigating and

resolving complaints, and continuing education verification procedures. PERD also obtained information from the State Treasurer's Office, the Secretary of State's Office, and the State Auditor's Office. This information was assessed against statutory requirements in §30-1 and §6-9A of the West Virginia Code as well as the Board's enabling statute to determine the Board's compliance with such laws. Some information was also used as supporting evidence to determine the sufficiency and appropriateness of the overall evidence.

PERD assessed the risk of fraud on the revenue and expenditure sides. PERD compared the Board's actual revenues to expected revenues for fiscal years 2017 through 2022 in order to assess the risk of fraud, and to obtain reasonable assurance that revenue figures were sufficient and appropriate. To determine expected licensee revenue, PERD calculated the minimum revenue for the Board by multiplying initial licensee fees by the number of initial licensees for a given fiscal year. Then the respective annual renewal fee was multiplied by the respective amount of in-state and out-of-state chiropractors for the same given fiscal year. The initial revenue fee product was then added to the annual renewal fee product, providing a total expected licensee revenue for a given fiscal year that could be compared to the Board's annual reports and data from the State's central accounting system, Our Advanced Solution with Integrated Systems (OASIS). PERD found that actual revenue was less than expected revenue, which led to the determination the risk of fraud occurring on the revenue side was relatively high. PERD calculated business renewal fees separately from licensure renewal fees. Since the Board does not retain a historic roster of chiropractic businesses, PERD used the current roster of chiropractic businesses and adjusted business counts, descending chronologically, until FY 2017 to determine the number of chiropractic businesses in a given fiscal year. Adjustments were made for each fiscal year based on the Secretary of State's business register, the Board's current list of businesses, and when initial licensure or business approval occurred. Initial businesses were then multiplied by initial licensure fees and annual renewals were multiplied by annual renewal fees to determine each separately. Both products were combined for each given fiscal year and compared actual revenue reported by the Board's annual reports and verified with OASIS data. In all but one fiscal year the actual renewal revenue was less than expected.

A more detailed review of the Board's revenue was required to determine why the Board's actual revenues were less than expected and if fraud occurred. Further analysis of the Board's rules and testimonial evidence from the executive director revealed that retired licensees pay a reduced annual renewal fee and the Board does not keep an accurate count of the licensees by aggregating the count in each given fiscal year. PERD's expected revenue for licensees was appropriately adjusted using this new information and revealed a cyclical pattern of excess and shortfalls typical of late fee submissions. PERD also provided the Board with a random sample of licensees from fiscal years 2017 through 2022 to determine whether chiropractors were submitting licensure payments to the Board. The Board provided proofs of payment for annual renewal fees in the form of copies of checks and money orders. These were verified by PERD, and the Board was able to provide proof of payment for 99 percent of the sample. For the shortfalls in business fee revenue, PERD compiled a list of chiropractic licensees using the Board's list of licensees on its website from November 23, 2016. PERD used the Secretary of State's business registry and the Board's current list of businesses to adjust when businesses became active and when businesses should have paid a renewal fee. Like the licensee sample, PERD chronologically compiled a random sample of businesses that should have paid a renewal fee from fiscal year 2017 through 2022. This sample was given to the Board and it was asked to provide proofs of payment for the businesses. The Board provided proofs of payment in the form of copies of checks or money orders and was unable to provide documentation for 9.3 percent of the sample. Half of these missing payments, or 4.7 percent of the sample, were from businesses not on the Board's roster. The missing 4.7 percent of the sample may be attributable to the Board's inadequate recordkeeping but PERD could not conclusively eliminate the potential that fraud occurred.

The legislative auditor also tested the Board's expenditures for fiscal years 2019 through 2021 to assess the risk of fraud on the expenditure side. The test involved determining if required and expected expenditures were at least 90 percent of total expenditures. Required and expected expenditures include salaries for staff, employee benefits such as insurance and retirement, postal services, utilities, telecommunications expenses, rent, and office supplies. The legislative auditor determined that during the scope of the review, required and expected expenses were between 93 and 99 percent of total expenditures. As this percentage was above 90 percent, it was concluded that further review of the Board's expenditures for FY 2017, 2018, and 2022 was unnecessary. Therefore, PERD's evaluation of expected and actual revenues concludes that the risk of fraud on the revenue side was at a reasonable level and would not affect the audit objectives, and actual revenues were sufficient and appropriate.

In order to evaluate state agency websites, the legislative auditor conducted a literature review of government website studies, reviewed top-ranked government websites, and reviewed the work of groups that rate government websites in order to establish a master list of essential website elements. The Brookings Institute's "2008 State and Federal E-Government in the United States" and the Rutgers University's 2008 "U.S. States E-Governance Survey (2008): An Assessment of State Websites" helped identify the top ranked states regarding e-government. The legislative auditor identified three states (Indiana, Maine, and Massachusetts) that were ranked in the top 10 in both studies and reviewed all 3 states' main portals for trends and common elements in transparency and open government. The legislative auditor also reviewed a 2010 report from the West Virginia Center on Budget and Policy that was useful in identifying a group of core elements from the master list that should be considered for state websites to increase their transparency and e-governance. It is understood that not every item listed in the master list is to be found in a department or agency website because some of the technology may not be practical or useful for some state agencies. Therefore, the legislative auditor compared the Board's website to the established criteria for user-friendliness and transparency so that the Board of Chiropractic can determine if it is progressing in step with the e-government movement and if improvements to its website should be made.

To determine if there is an undesirable condition within law that would allow for confusion for requirements of virtual meeting notices or exclude the public from the Board's virtual meetings, PERD reviewed the Board's meeting minutes and identified instances when virtual meetings were occurring. Then PERD compared meeting minutes of virtual meetings to the Secretary of State's record of meeting notices, to identify the agenda of the meeting. Furthermore, PERD reviewed W. Va. Code §6-9A-1 *et seq.*, W. Va. Code §6-9C-1 *et seq.*, West Virginia Ethics Commission Advisory Opinion 99-08, and House Bill 3146 2023R. PERD also sought a legal opinion from Legislative Services regarding the Open Meetings Act and House Bill 3146 2023R and the bill's application to virtual meetings held when there is no declared state of emergency as well as the permissibility for the Board to hold virtual meetings without providing a method of remote access to the virtual meeting.

The Office of the Legislative Auditor reviews the statewide single audit and the Division of Highways financial audit annually with regards to any issues related to the State's financial system known as the West Virginia Our Advanced Solution with Integrated Systems (OASIS). The legislative auditor's staff requests and reviews on a quarterly basis any external or internal audit of OASIS. In addition, through its numerous audits, the Office of the Legislative Auditor continuously tests the OASIS financial information. Also, at the start of each audit, PERD asks audited agencies if they have encountered any issues of accuracy with OASIS data. Based on these actions, along with the audit tests conducted on audited agencies, it is our professional judgment that the information in OASIS is reasonably accurate for auditing purposes under the 2018 Government Auditing Standards (Yellowbook). However, in no manner should this statement be construed as a statement that 100 percent of the information in OASIS is accurate.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix C

Website Criteria Checklist and Points System

Website Criteria Checklist and Points System			
User-Friendly	Description	Total Points Possible	Total Agency Points
Criteria	The ease of navigation from page to page along with the usefulness of the website.	18	7
		Individual Points Possible	Individual Agency Points
Search Tool	The website should contain a search box (1), preferably on every page (1).	2 points	2
Help Link	There should be a link that allows users to access a FAQ section (1) and agency contact information (1) on a single page. The link's text does not have to contain the word help, but it should contain language that clearly indicates that the user can find assistance by clicking the link (i.e. "How do I...", "Questions?" or "Need assistance?")	2 points	1
Foreign language accessibility	A link to translate all webpages into languages other than English.	1 point	0
Content Readability	The website should be written on a 6 th -7 th grade reading level. The Flesch-Kincaid Test is widely used by Federal and State agencies to measure readability.	No points, see narrative	
Site Functionality	The website should use sans serif fonts (1), the website should include buttons to adjust the font size (1), and resizing of text should not distort site graphics or text (1).	3 points	1
Site Map	A list of pages contained in a website that can be accessed by web crawlers and users. The Site Map acts as an index of the entire website and a link to the department's entire site should be located on the bottom of every page.	1 point	1
Mobile Functionality	The agency's website is available in a mobile version (1) and/or the agency has created mobile applications (apps) (1).	2 points	1

Website Criteria Checklist and Points System			
Navigation	Every page should be linked to the agency's homepage (1) and should have a navigation bar at the top of every page (1).	2 points	1
FAQ Section	A page that lists the agency's most frequent asked questions and responses.	1 point	0
Feedback Options	A page where users can voluntarily submit feedback about the website or particular section of the website.	1 point	0
Online survey/poll	A short survey that pops up and requests users to evaluate the website.	1 point	0
Social Media Links	The website should contain buttons that allow users to post an agency's content to social media pages such as Facebook and Twitter.	1 point	0
RSS Feeds	RSS stands for "Really Simple Syndication" and allows subscribers to receive regularly updated work (i.e. blog posts, news stories, audio/video, etc.) in a standardized format.	1 point	0
Transparency	Description	Total Points Possible	Total Agency Points
Criteria	A website which promotes accountability and provides information for citizens about what the agency is doing. It encourages public participation while also utilizing tools and methods to collaborate across all levels of government.	32	9
		Individual Points Possible	Individual Agency Points
Email	General website contact.	1 point	1
Physical Address	General address of stage agency.	1 point	1
Telephone Number	Correct telephone number of state agency.	1 point	1
Location of Agency Headquarters	The agency's contact page should include an embedded map that shows the agency's location.	1 point	0
Administrative officials	Names (1) and contact information (1) of administrative officials.	2 points	2

Website Criteria Checklist and Points System			
Administrator(s) biography	A biography explaining the administrator(s) professional qualifications and experience.	1 point	0
Privacy policy	A clear explanation of the agency/state's online privacy policy.	1 point	0
Complaint form	A specific page that contains a form to file a complaint (1), preferably an online form (1).	2 points	0
Budget	Budget data is available (1) at the checkbook level (1), ideally in a searchable database (1).	3 points	0
FOIA information	Information on how to submit a FOIA request (1), ideally with an online submission form (1).	2 points	0
Calendar of events	Information on events, meetings, etc. (1) ideally imbedded using a calendar program (1).	2 points	1
Mission statement	The agency's mission statement should be located on the homepage.	1 point	1
Agency history	The agency's website should include a page explaining how the agency was created, what it has done, and how, if applicable, has its mission changed over time.	1 point	0
Public Records	The website should contain all applicable public records relating to the agency's function. If the website contains more than one of the following criteria the agency will receive two points: <ul style="list-style-type: none"> • Statutes • Rules and/or regulations • Contracts • Permits/licenses • Audits • Violations/disciplinary actions • Meeting Minutes • Grants 	2 points	2
e-Publications	Agency publications should be online (1) and downloadable (1).	2 points	0

Website Criteria Checklist and Points System

Agency Organizational Chart	A narrative describing the agency organization (1), preferably in a pictorial representation such as a hierarchy/organizational chart (1).	2 points	0
Graphic capabilities	Allows users to access relevant graphics such as maps, diagrams, etc.	1 point	0
Audio/video features	Allows users to access and download relevant audio and video content.	1 point	0
Performance measures/outcomes	A page linked to the homepage explaining the agencies performance measures and outcomes.	1 point	0
Website updates	The website should have a website update status on screen (1) and ideally for every page (1).	2 points	0
Job Postings/links to Personnel Division website	The agency should have a section on homepage for open job postings (1) and a link to the application page Personnel Division (1).	2 points	0

Appendix D

Agency Response

West Virginia Board of Chiropractic Response to PERD Audit Submitted September 1, 2023

ISSUE 1: The West Virginia Board of Chiropractic Is Necessary to Protect the Public

Issue Summary

The West Virginia Board of Chiropractic (Board) is charged with protecting the public health, safety, and welfare from unprofessional, improper, incompetent, or unlawful practice of chiropractic in accordance with West Virginia Code §30-16 *et seq.* This objective is to find if there is a need for the continuation, consolidation, or termination of the regulatory board. In determining the need for the regulatory board, the legislative auditor considers the extent to which significant and discernable adverse effects on public welfare would occur if the practice of chiropractic was unregulated. Regulating the practice of chiropractic should continue as it is necessary to protect the public.

Conclusion

The unregulated practice of chiropractic would place the public at higher risk of harm than if regulated. The practice of chiropractic is specialized, involving specific training and continuing education. The treatments chiropractors offer involve adjusting the intricacies of the musculoskeletal and nervous systems. Thus, regulation of a practice that can potentially damage delicate and necessary bodily functions is necessary. Moreover, without a method of licensure or verification, insurance companies may deny coverage to chiropractic patients. **The legislative auditor determines there is a need for the Board of Chiropractic and recommends that the Legislature continue it as currently regulated.**

Recommendations

1. *The legislative auditor recommends that the Legislature continue the Board of Chiropractic as currently regulated.*

Response:

The WVBOC would like to thank the legislative auditor for affirming the critical need for regulation of Chiropractic licensing.

2. *The Legislature should consider creating uniform reporting standards of violations within West Virginia Code for the Board of Chiropractic identical to that of the Board of Medicine.*

Response:

The WVBOC stands ready to comply with the recommendations of the Legislature regarding uniform reporting standards for violations.

ISSUE 2: The Board of Chiropractic Complies with Most of the General Provisions of Chapter 30 of the West Virginia Code; However, Improvement Is Needed

Issue Summary

The Board observes many important provisions of Chapter 30 of the West Virginia Code. The Board is financially self-sufficient. However, the Board should improve its recordkeeping and documentation in terms of keeping an accurate count of the number of licensees and informing chiropractic companies of fees due. Furthermore, the Board should conduct a general review of its legislative and procedural rules to eliminate outdated and contradicting language. The Board has established continuing education requirements. Moreover, the Board should also provide proper authorization before entering executive sessions. The Board's office does not meet the accessibility standards of the Americans with Disabilities Act and should take the necessary action to improve handicap accessibility for the public.

Conclusion

The Board complies with most of the general provisions of Chapter 30. However, the Board should consider using the State Treasurer's Lockbox system to process fees to reduce the risk of fraud. Although the risk of fraud on the expenditure side is at an acceptable level, there is concern on the risk of fraud on the revenue side. This concern prompts the need for a detailed review of the Board's handling of revenue, which is described in Issue 3 of this report. The Board should generally review and amend its legislative rules. The Board's office is not readily accessible to individuals with disabilities, and the Board should consider taking action to improve its accessibility to the public.

Recommendations

3. *The Board should consider utilizing the State Treasurer's Lockbox system to reduce the risk of fraud.*

Response:

WVBOC will be proactive in consideration of various systems and methods, to reduce the risk of fraud, including consideration of electronic payments and the State Treasurer's Lockbox system.

4. *The Board should adhere to W. Va. Code §30-1-5(c) and send status reports to complainants and respondents within six months of the complaint being filed.*

Response:

WVBOC will adhere to W. Va. Code §30-1-5(c) regarding complaints and respondents.

5. *The Board should seek to have legislative rule CSR §4-1-12 amended to remove the duplicate complaint procedure, and have the procedural rule CSR §4-05 amended to include the subsections of legislative rule CSR §4-1-12.2.a and §4-1-12.2.b, in order to preserve the Board's impartiality and integrity during the investigative procedures and final adjudications.*

Response:

WVBOC will discuss and consider recommendations for amendments to the following rules:

- **CSR §4-1-12 – duplicate complaint procedure**
- **CSR §4-05 – regarding impartiality during investigative procedures**

6. *The Board should amend CSR §4-05 to define its procedures addressing the scenario of a tie-vote on probable cause.*

Response:

WVBOC will discuss and consider recommendations to amend CSR §4-05 to avoid tie-vote scenarios.

7. *The Board should amend CSR §4-5-5.1 and §4-5-5.2 to reflect applicable violations found within W. Va. Code §30-16-11.*

Response:

WVBOC will seek amendment to CSR §4-5-5.1 and §4-5-5.2 to reflect applicable violations.

8. *The Board should amend CSR §4-03 to reference the correct section of West Virginia Code.*

Response:

WVBOC will seek amendment to CSR §4-03 to reflect the correct code.

9. *The Board should amend CSR §4.3.3.6 to reflect the Board of Chiropractic as the state regulatory body for the practice of chiropractic rather than the practice of registered professional nursing.*

Response:

WVBOC will seek amendment to CSR §4.3.3.6 for correction from "Nursing" to "Board of Chiropractic".

10. *The Board should comply with W. Va. Code §6-9A-3(d) to provide the public with sufficient notice of its meetings.*

Response:

WVBOC will comply with W. Va. Code §6-9A-3(d) regarding public notice of meetings by ensuring that annual reports include all Board meetings' agendas and minutes. The board will also comply with the requirement to post all pertinent contact information including addresses and phone numbers.

11. *The Legislature should consider amending and removing the provision within W. Va. Code § 30-16-11(e); thereby, granting the right of public access to all the Board's complaints and related proceedings.*

Response:

WVBOC stands ready to comply with recommendations by the Legislature regarding W. Va. Code § 30-16-11(e) to allow public access to Board complaints and related proceedings.

12. *The Board should adhere to W. Va. Code §6-9A-4 and state the authorization before entering executive sessions during board meetings and ensure the minutes reflect the authorization.*

Response:

WVBOC will adhere to W. Va. Code §6-9A-4 when entering executive sessions during board meetings.

13. *The Board should make necessary changes to improve handicap accessibility to its office pursuant to the Americans with Disabilities Act, including the possibility of relocating its office.*

Response:

The Board office, although open to the public, does not typically have high foot traffic, and does not hold public meetings on site. As accommodation, the Board holds all public meetings either in an ADA-compliant facility or virtually. Upon request, the Executive Director will provide an ADA-compliant meeting space.

ISSUE 3: The Board's Financial Documentation, Recordkeeping, and Fee Collection Need Improvement

Issue Summary

In assessing the risk of fraud, PERD found that the Board's expected revenue exceeds actual revenue. This is a cause for concern because it suggests that the risk of fraud is relatively

high. Consequently, PERD examined the Board's revenue in greater detail to determine if fraud may have occurred or if there is a plausible explanation. Overall, PERD found two factors causing the revenue variance. The first factor is that the total number of licensees reported in the Board's annual reports were not accurate. The second factor contributing to the variance is that the Board does not delineate in the annual reports license revenue from retired licensees. This is important as retired licensees pay a substantially lower renewal fee than active licensees. Furthermore, the Board's roster does not delineate retired licensees. Thus, the only method for identifying and accounting for these individuals is for the executive director to review the files maintained by the Board. **The legislative auditor recommends the Board consider retaining a count of chiropractors at the end of the fiscal year to accurately reflect the number of licensees for each fiscal year. The legislative auditor also recommends the Board consider identifying the licensee categories in the roster to reflect the licensee's status.**

Conclusion

The Board's chiropractor count is inaccurate in the annual reports because it is including initial licensees from the succeeding fiscal year and does not include individuals no longer licensed. Furthermore, the Board does not distinguish retired licensees in its roster or annual reports. Thus, these two issues contribute to the discrepancy between expected and actual revenue. When adjusted for these issues, the cause of variance in the Board's revenue is due to renewal revenue appearing in the next fiscal year's cycle as the renewal cycle is on a fiscal year basis. Moreover, PERD found the Board does not keep an accurate historical list of chiropractic businesses. Specifically, several businesses are operating for which the Board had no documentation of payment. However, in sampling the renewal payments, PERD was unable to conclusively eliminate the potential for the missing payments to be fraud related.

Recommendations

14. *The Board should consider retaining a count of chiropractors at the end of the fiscal year to accurately reflect the number of licensees for a given fiscal year.*

Response:

WVBOC will annually track the number of Chiropractors.

15. *The Board should consider identifying the licensee categories in the roster to reflect the licensee's status.*

Response:

WVBOC will identify all Chiropractors by the following characteristics, beginning Fiscal Year 2024:

- **Active – In-State**
- **Active – Out-of-State**
- **Active – Retired, License Current**
- **Inactive – Retired, Will Not Renew**

- Inactive – Suspended/Renewal Incomplete
- Inactive – Suspended/Disciplinary Action
- Inactive – Deceased

16. *The Board should update the business roster to ensure all authorized businesses are recorded.*

Response:

WVBOC will contact the WV Secretary of State’s office quarterly for a listing of new Chiropractic businesses and will update internal records accordingly.

17. *The Board should consider identifying retirees on its roster and itemizing retiree renewal revenue in the annual reports to ensure revenue is appropriately maintained and documented.*

Response:

WVBOC will identify all Chiropractors using the list of characteristics identified in response to recommendation number 15.

18. *The Board should consider itemizing its annual renewal revenue category to ensure license renewal is appropriately documented and transparent.*

Response:

WVBOC will itemize its annual revenue to ensure the correct fees are collected and documented.

19. *The Board should improve its recordkeeping of chiropractic businesses and collect all fees due it under state law to maintain financial solvency.*

Response:

WVBOC has implemented the recommendations by the legislative auditor to improve identifying the delineation of revenue and collecting all fees due.

PERD randomly sampled 193 out of 777 business approval renewals from fiscal year 2017 to fiscal year 2022. Of the 193 renewals sampled by PERD, the Board was unable to provide documentation of payment for 18 (9.3 percent). Of the 18 business entities, 9 of them were not present on the Board’s roster but were identified by the Secretary of State as active businesses. This amounts to 4.7 percent – or \$1,350 – of the sample. The other 9 business entities are on the Board’s roster of approved businesses. When asked about the missing payments, the executive director stated: *“If a licensee fails to include his/her PLLC, Corporation, and/or LLC fee, I always follow-up with the licensee that they must submit payment to the Board; however, operating on an honor system, [I] fail to follow-up for a second time should they not submit payment.”*

Although the revenue shortfall could be attributed to inaccurate recordkeeping and/or failure to follow-up on outstanding payments, PERD cannot conclusively eliminate the potential of fraud. This is because it is conceivable that payments for business renewals could have been diverted from the Board. This stems from two potential scenarios. First, although the Board did not have some entities recorded on the roster of businesses, the opportunity exists that the entities could have been excluded from the roster and payment for renewals could have been diverted from the Board. Second, for entities on the roster for which a proof of payment was not provided, the payment could similarly have been diverted from the Board. Nonetheless, the legislative auditor is concerned the Board's recordkeeping is inadequate to determine if the Board has collected all fees it is required to by state law. **Therefore, the Board needs to improve its recordkeeping and collect all fees due it under state law to maintain financial solvency and self-sufficiency.**

Conclusion

The Board's chiropractor count is inaccurate in the annual reports because it is including initial licensees from the succeeding fiscal year and does not include individuals no longer licensed. Furthermore, the Board does not distinguish retired licensees in its roster or annual reports. Thus, these two issues contribute to the discrepancy between expected and actual revenue. When adjusted for these issues, the cause of variance in the Board's revenue is due to renewal revenue appearing in the next fiscal year's cycle as the renewal cycle is on a fiscal year basis. Moreover, PERD found the Board does not keep an accurate historical list of chiropractic businesses. Specifically, several businesses are operating for which the Board had no documentation of payment. However, in sampling the renewal payments, PERD was unable to conclusively eliminate the potential for the missing payments to be fraud related.

Response:

WVBOC has previously relied on the "honor system" when Chiropractors are completing annual renewal applications, to state if they own a business. The WV Secretary of State Office should contact the WVBOC if a Chiropractor submits Articles of Incorporation without prior Board verification. WVBOC will request quarterly reports from the WVSOS to verify all businesses are accounted for.

The Board has no reason to suspect any type of fraud. The PERD audit was very in depth and the auditors were actually impressed by the Board's Executive Director's ability to provide cancelled checks and other pertinent information they needed to complete the review of the Board's records. Our Executive Director has been with the Board for 23 years and there has never been any reason to suspect any type of fraud during those years. The Board deeply appreciates our Executive Director for her years of exemplary service to the Board.

The Board is confident that the discrepancies between expected and actual revenue was solely due to oversight in the status of the Chiropractors licenses and the complicated task of following up on outstanding payments such as renewals and

PLLC's that may not have been registered with our office, which is mandated by WV state law.

WVBOC will, within its powers, do its best to prevent this type of situation in the future as outlined above.

ISSUE 4: State Agency Notices for Virtual Meetings Lack Uniform Statutory Requirements

Issue Summary

After reviewing the Board's meeting minutes and notices, the audit team noted that notices for teleconferences (virtual meetings) provided no call-in number, livestream access, or other methods the public may use to access the teleconferences. Some of these virtual meetings were held during the COVID-19 declared state of emergency. Conducting virtual meetings has been permissible for many years, and with the passage of House Bill 3146 during the 2023 legislative session, the Legislature has established virtual meeting notice requirements for meetings held during a declared state of emergency. However, there are no statutory notice requirements for virtual meetings held during non-emergency conditions. This statutory inconsistency creates an undesirable condition wherein confusion may arise from the public and agencies regarding what the standard practice is for posting notices of virtual meetings held when there is no declared state of emergency.

Conclusion

The Board conducted teleconference meetings prior to a declared emergency and during the time of a declared state of emergency. The Board posted meeting notices; however, the notices did not indicate how the public was to access these virtual meetings. State agencies are permitted to hold virtual meetings during non-emergency conditions as well as during declared states of emergency. However, there is no statutory provision for requirements relating to meeting notices for virtual meetings held under non-emergency conditions. HB 3146 **only** addresses requirements for virtual meetings held during a declared state of emergency. This creates an undesirable condition of potential confusion for the public and state agencies regarding the standard protocol for meeting notices for virtual meetings held when there is no declared state of emergency. The Legislature should consider amending West Virginia Code to establish the same notice standards for virtual meetings regardless of whether they are conducted during an emergency or non-emergency condition.

Recommendation

- 20. The Legislature should consider amending law to impose the same notice standards that apply to virtual meetings held during a declared state of emergency to virtual meetings held during non-emergencies.*

Response:

WVBOC stands ready to implement any recommendations made by the Legislature regarding virtual meetings.

ISSUE 5: The Board’s Website Needs Improvement to Enhance User-Friendliness and Transparency

Issue Summary

In order to actively engage with a state agency online, citizens must first be able to access and comprehend the information on government websites. Every website should include some elements, such as a search tool and contact information including physical and email address, telephone number, and the names of administrative officials. Other elements such as social media links, graphics, and audio/video features may not be necessary or practical for some state agencies. Table 10 shows the Board integrates 30 percent of the checklist items in its website. This measure indicates that the Board needs to make more improvements in the user-friendliness and transparency of its website.

Conclusion

The legislative auditor finds that improvements are needed to the Board’s website in the areas of user-friendliness and transparency. The website can benefit from incorporating several common features. The Board has pertinent public information on its website including its contact information, rules, state code, board members, and mission statement. Regardless, providing website users with more elements and capabilities, as suggested in the report, would improve user-friendliness and transparency.

Recommendation

21. The Board should improve the user-friendliness and transparency of its website by incorporating more of the website elements identified.

Response:

WVBOC will implement the recommendations made by the legislative auditor regarding transparency, accessibility, and functionality of the Board’s website.



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