

August 2023
PE 23-02-661

REGULATORY BOARD REVIEW

BOARD OF PHYSICAL THERAPY

AUDIT OVERVIEW

The Board of Physical Therapy Is Necessary to Protect the Public

The Board of Physical Therapy Complies with Most of the General Provisions of Chapter 30 of W. Va. Code; However, Improvement Is Needed

The Board's Fees Do Not Generate Excessive Revenue When Compared to the Board's Normal Expenses as a Result of Recent Fee Eliminations and Reductions

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

The Board of Physical Therapy Needs to Consider What Measures to Take to Ensure It Provides Handicapped Accessibility to Its Office and Services Under the Americans with Disabilities Act



JOINT COMMITTEE ON GOVERNMENT ORGANIZATION

Senate

Jack Woodrum, Chair
Jason Barrett
Bill Hamilton
Mark Hunt
Glenn Jeffries
Mike Maroney
Rupie Phillips
Ben Queen
Randy Smith
Mike Stuart
Chandler Swope
Ryan Weld
Mike Woelfel

House of Delegates

Chris Phillips, Chair
Pat McGeehan, Vice-Chair
David Adkins
Jordan Bridges
Eric Brooks
Geno Chiarelli
Kathie Hess Crouse
Mark Dean
Tom Fast
Don Forsht
Scott Heckert
Rick Hillenbrand
Mike Honaker

Todd Longanacre
Phil Mallow
Carl Martin
Chris Pritt
Mark Ross
Andy Shamblin
Doug Smith
Adam Vance
Evan Worrell
Ric Griffith
Mike Pushkin
Kayla Young



WEST VIRGINIA OFFICE OF THE LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314
State Capitol Complex
Charleston, West Virginia 25305
(304) 347-4890

Aaron Allred
Legislative Auditor

John Sylvia
Director

Jill Mooney
Research Manager

Harry Koval
Research Analyst

Keith Brown
Referencer

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 7, 2023

The Honorable Jack Woodrum
West Virginia State Senate
Building 1, Room 214W
1900 Kanawha Boulevard, East
Charleston, WV 25305-0470

The Honorable Chris Phillips
West Virginia House of Delegates
Building 1, Room 213E
1900 Kanawha Boulevard, East
Charleston, WV 25305-0470

Dear Chairs:

Pursuant to the West Virginia Performance Review Act, we are transmitting a Regulatory Board Review of the *Board of Physical Therapy*. The issues covered herein are: “*The Board of Physical Therapy Is Necessary to Protect the Public;*” “*The Board of Physical Therapy Complies with Most of the General Provisions of Chapter 30 of W. Va. Code; However, Improvement is Needed;*” “*The Board’s Fees Do Not Generate Excessive Revenue When Compared to the Board’s Normal Expenses as a Result of Recent Fee Eliminations and Reductions;*” “*The Board’s Website Needs Modest Improvement to Enhance User-Friendliness and Transparency;*” and “*The Board of Physical Therapy Needs to Consider What Measures to Take to Ensure It Provides Handicapped Accessibility to Its Offices and Services Under the Americans with Disabilities Act.*”

We transmitted a draft copy of the report to the *Board of Physical Therapy* on June 15, 2023. We received the agency response on July 18, 2023. If you have any inquiries on this report let me know.

Sincerely,

John Sylvia

John Sylvia

Joint Committee on Government and Finance

CONTENTS

Executive Summary..... 7

Issue 1: The Board of Physical Therapy Is Necessary to Protect the Public 11

Issue 2: The Board of Physical Therapy Complies with Most of the General Provisions of Chapter 30 of W.Va. Code; However, Improvement Is Needed 17

Issue 3: The Board’s Fees Do Not Generate Excessive Revenue When Compared to the Board’s Normal Expenses as a Result of Recent Fee Eliminations and Reductions31

Issue 4: The Board’s Website Needs Modest Improvement to Enhance User-Friendliness and Transparency37

Issue 5: The Board of Physical Therapy Needs to Consider What Measures to Take to Ensure It Provides Handicapped Accessibility to Its Office and Services Under the Americans With Disability Act.....41

List of Tables

Table 1: Board of Physical Therapy Number of Licensees FY 2020 through FY 2022..... 16

Table 2: Board of Physical Therapy Budget Information FY 2017 through FY 2022 19

Table 3: Board of Physical Therapy “Annual Budget” vs Actual Expenditures FY 2017 through FY 2022 ...20

Table 4: Board of Physical Therapy Alternative Methods to Determine Excess Transfers FY 2017 through FY 2022.....22

Table 5: Physical Therapists, Physical Therapy Assistants, and Athletic Trainers Licensure Fees West Virginia and Surrounding States23

Table 6: Board of Physical Therapy Complaint Resolutions Statistics FY 2020 through FY 202224

Table 7: Physical Therapists, Physical Therapy Assistants, and Athletic Trainers Continuing Education Requirements West Virginia and Surrounding States25

Table 8: Board of Physical Therapy Expected Revenue and Actual Revenue FY 2020 through FY 202227

Table 9: Board of Therapy Percentage of Expected and Required Expenditures FY 2020 through FY 202227

Table 10: Board of Physical Therapy Excess Fund Transfers to the State General Revenue Fund FY 2017 through FY 2022.....32

Table 11: Board of Physical Therapy Website Evaluation Score37

Table 12: Board of Physical Therapy Website Evaluation Score38

List of Figures

Figure 1: Board of Physical Therapy Revenues, Expenditures, and End-of-Year Cash Balances FY 2006 through FY 2022.....34

List of Appendices

Appendix A: Transmittal Letter43
Appendix B: Objectives, Scope and Methodology45
Appendix C: Chapter 30 Healthcare Licensing Boards49
Appendix D: Website Criteria Checklist and Points System 51
Appendix E: Agency Response55

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 Physical Therapy (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 if the Board's fees generate excessive revenue when compared to the Board's normal expenses, to evaluate the Board's website for user-friendliness and transparency, and to assess general accessibility of the Board's facility with respect to the Americans with Disabilities Act checklist. The issues of this report are highlighted below.

Frequently Used Acronyms in this Report:

CSR – Code of State Rules

CE – Continuing Education

OASIS – Our Advanced Solution with Integrated Systems

PERD – Performance Evaluation and Research Division

Report Highlights:

Issue 1: The Board of Physical Therapy Is Necessary to Protect the Public

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

Issue 2: The Board of Physical Therapy Complies with Most of the General Provisions of Chapter 30 of the W. Va. 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 licensee a complaint status update within six months of receiving the complaint.
- The Board has accumulated an average cash balance that is nearly four times its actual annual expenditures.
- The Board reimburses board members and staff lodging expenses in a manner inconsistent with the guidelines of the Travel Management Office of the Department of Administration.

Issue 3: The Board's Fees Do Not Generate Excessive Revenue When Compared to the Board's Normal Expenses as a Result of Recent Fee Eliminations and Reductions

- The Board's fees no longer generate excessive revenue when compared to its normal expenses.
- The Board has a large cash balance, and it could see more fund transfers to the State General Fund as required by law depending on expenditures.

Issue 4: The Board’s Website Needs Modest Improvement to Enhance User-Friendliness and Transparency

- The Board’s website needs only modest improvements to enhance user-friendliness and transparency. Additional features should be considered to further improve user-friendliness, such as a site functionality tool, mobile functionality, and feedback options.
- The Board’s website could benefit from additional transparency features such as budget data, FOIA information, and website update status.

Issue 5: The Board of Physical Therapy Needs to Consider What Measures to Take to Ensure It Provides Handicapped Accessibility to Its Office and Services Under the Americans with Disabilities Act

- There are possible physical barriers to accessing the Board’s office.
- The Board did not meet Americans with Disabilities Act requirements in its parking lot, entrances, bathroom, and signage.
- It is recommended that the Board consider the measures it needs to take to improve handicap accessibility to its office and services under the Americans with Disabilities Act.

PERD’s Response to the Agency’s Written Response

The Board provided its response on July 18, 2023 (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.

Recommendations

1. *The legislative auditor recommends that the Legislature continue the Board of Physical Therapy as currently regulated.*
2. *The Legislature consider amending W. Va. Code 30-1-5 to require reporting of individual practice violations from additional entities such as hospitals, health care organizations, and liability insurance organizations to the healthcare licensing boards listed in Appendix C.*
3. *The Legislature should also consider amending W. Va. Code 30-1-5 to include civil penalties for failure to report by mandated reporters.*
4. *To ensure that expanded reporting requirements do not result in unnecessary reporting, the healthcare licensing boards should clearly indicate in their respective rules and on their websites the types of issues that should and should not be reported.*
5. *The Legislature should consider amending WV Code §30-1-10 to allow for the transfer of excess funds from chapter 30 boards to the state general revenue fund based on the sum of revenues of a board’s last*

two fiscal years. Consideration should also be given to limit the amount that can be transferred in a fiscal year.

- 6. The Board should provide a status update to its licensees within six months of a complaint starting against them.*
- 7. The Board should consider using the State Treasurer's lockbox system.*
- 8. The Board should comply with state travel rules.*
- 9. The Board should ensure that all its members attend at least one orientation session for each term they are in office.*
- 10. The Board should provide the public with remote attendance instructions for its teleconference meetings.*
- 11. The Board should identify proper authorization to hold executive sessions as required by law.*
- 12. The Board should consider adding other user-friendliness and transparency elements to its website.*
- 13. The Board of Physical Therapy should consider what measures it needs to take to improve handicap accessibility to its office and services under the Americans with Disabilities Act.*

ISSUE 1

The Board of Physical Therapy Is Necessary to Protect the Public

Issue Summary

This is a Regulatory Board Review of the Board of Physical Therapy (Board) to determine if there is a need for the continuation, consolidation, or termination of the Board. The Board licenses physical therapists, physical therapy assistants, and athletic trainers. In considering the need for a regulatory board, the legislative auditor determines if there would be significant adverse effects to the public if the profession were unregulated. The legislative auditor determines that the public could be harmed if the practice of physical therapy was unregulated. Therefore, the legislative auditor recommends that regulation by the Board be continued as currently structured.

The legislative auditor determines that the public could be harmed if the practice of physical therapy was unregulated. Therefore, the legislative auditor recommends that regulation by the Board be continued as currently structured.

Physical Therapy Is a Specialized Profession

Physical therapy includes examining, evaluating, and testing patients with mechanical, physiological and developmental impairments, functional limitations, and disabilities or other health and movement-related conditions to determine a diagnosis, prognosis, and plan of treatment intervention, and to assess the ongoing effects of the intervention. Members of the profession also use manual therapy techniques, including mobilization of the joints, therapeutic massage, airway clearance techniques, and mechanical and electrotherapeutic modalities. Physical therapists must complete a doctoral-level education in physical therapy and pass a board-approved examination.

Physical therapy assistants perform under the supervision of a physical therapist who delegates patient-related activities. These activities include physical therapy procedures, but not the performance of evaluative procedures or determination and modification of the patient plan of care. Licensure as a physical therapy assistant requires a person to have graduated from a two-year college-level education program for physical therapist assistants and pass an examination approved by the Board.

The Board began registering (title protection) athletic trainers as of June 16, 2010.

The State Regulates Athletic Trainers

The Board began registering (title protection) athletic trainers as of June 16, 2010. However, as of January 1, 2020, athletic trainers

have a codified scope of practice and are issued licenses. The Board granted licensure status to those persons holding a board-issued athletic trainer registration prior to January 1, 2020. Otherwise, after January 1, 2020, athletic trainers must graduate with at least a bachelor's degree and pass a board-approved examination. The scope of athletic training, as defined in West Virginia (W. Va.) Code §30-20A-5, includes principles, methods, and procedures for managing athletic injuries or conditions, which includes the prevention, emergency care, clinical examination and assessment, therapeutic intervention, and treatment of athletic injuries or conditions using appropriate preventative and supportive devices. Athletic training also includes instruction to coaches, athletes, parents, medical personnel, and communities in care and prevention of athletic injuries or conditions.

While the athletic trainer is typically responsible for initial injury assessment, W. Va. Code does not restrict the ability of other licensed health professionals, such as physicians, occupational therapists, and physical therapists, practicing within their own recognized scopes of practice, from conducting athletic-training-related activities. The law also excludes athletic training students, certain armed forces members, and other federal employees from required registration and does not prevent them from performing the duties of an athletic trainer.

The Public Could Face Harm without Regulation

Physical therapy plays a role in patients' health and has the potential to cause harm. Physical therapy professionals have direct, physical contact with patients of all ages and work in a variety of settings including physical therapy offices, nursing or residential care facilities, hospitals, or the patient's home. Furthermore, physical therapists usually do not work under the supervision of a physician or other healthcare practitioner.

The 2011 PERD review of the Board concluded that a physical therapist or a physical therapy assistant could compromise a patient's health if a licensee does not upgrade his or her skills through continuing education (CE) courses. Practices and research may evolve that make using older physical therapy treatments harmful to, or less effective for, the patient. The Board enforces CE requirements by performing periodic CE audits on licensees.

The Board granted licensure status to those persons holding a board-issued athletic trainer registration prior to January 1, 2020.

Physical therapy plays a role in patients' health and has the potential to cause harm. The 2011 PERD review of the Board concluded that a physical therapist or a physical therapy assistant could compromise a patient's health if a licensee does not upgrade his or her skills through continuing education (CE) courses.

PERD concluded in a sunrise review in 2015 that there is a low incident of danger to public safety from athletic trainers who meet established standards of education such as those needed to become registered. These conclusions were based on a lack of complaints, certification revocations, and misrepresentation of qualifications. The Board received two complaints against athletic trainers from fiscal years 2020 to 2022, neither related to a lack of competency or malpractice on the part of the licensee. While there is a low documented incidence rate of harm to the public by athletic trainers, regulation of athletic trainers in its current form provides the public with an assurance that there are uniform professional standards state-licensed athletic trainers must meet whether they are employed by a county board of education or any other setting.

When provided the opportunity to describe why the Board is necessary to protect the public, the Board's executive director stated that:

The Board of Physical Therapy is necessary to protect the public. Regulation is intended to ensure the safety of consumers by determining appropriate entry-level education and establishing the minimum standard for professional knowledge, skills and abilities for Physical Therapists, Physical Therapy Assistants and Athletic Trainers.

The majority of what physical therapists, physical therapist assistants and athletic trainers do is not dangerous; however, the potential to inflict physical, emotional, or financial harm exists. The nature of physical therapy care often creates a need for physical touch between the provider and the patient. As access to physical therapists without a physician's referral increases, the public must have the assurance that a physical therapist's training is appropriate. Physical therapists, physical therapist assistants and athletic trainers work with easily compromised or exploitable populations, including elderly persons, children, persons with physical, mental, and developmental disabilities, and incarcerated persons. When a power imbalance exists, so does the potential to inflict harm. In addition, physical therapists and physical therapist assistants provide treatment in a variety of settings, including the home, which allows them access to an individual's body and private property, often without any other individual on site. When an individual files a

PERD concluded in a sunrise review in 2015 that there is a low incident of danger to public safety from athletic trainers who meet established standards of education. The Board received two complaints against athletic trainers from fiscal years 2020 to 2022, neither related to a lack of competency or malpractice on the part of the licensee.

When provided the opportunity to describe why the Board is necessary to protect the public, the Board's executive director stated that physical therapists, physical therapist assistants and athletic trainers work with easily compromised or exploitable populations, including elderly persons, children, persons with physical, mental, and developmental disabilities, and incarcerated persons.

complaint against a physical therapist, physical therapist assistant or athletic trainer, the Board investigates the complaint and enforces the laws and rules of the jurisdiction.

Physical therapy licensing boards receive reports of incidents such as billing fraud, theft, sexual misconduct, and substance abuse; after thorough investigation, the response in some cases has been to deny or revoke the practitioner's license in order to protect the public.

The practice of physical therapy is regulated in all 50 states and District of Columbia, Puerto Rico, and the U.S. Virgin Islands. Athletic trainers are licensed or otherwise regulated in 49 states and the District of Columbia; efforts continue to add licensure in California. Of the 49 regulated states (plus the District of Columbia), 45 of the states have a licensure bill, four have registration bills and one has a certification bill.

Given the close physical contact that physical therapists, physical therapy assistants, and athletic trainers have with their patients, the potential for harm is present.

The Board's Enabling Statute Does Not Require Informed Entities Such as Liability Insurance Organizations or Healthcare Facilities to Report Potential Violations to It

W. Va. Code §30-1-5(d) requires every licensing boards to timely report violations of individual practice acts to the board by which the individual may be licensed. Moreover, this same statutory provision requires every person licensed or registered by a board to timely report known or observed violations of the practice act or the board's rules by any other person licensed or registered by the same board. However, the Board's enabling statute does not require anyone to report potential practice act or rules violations. In comparison, the West Virginia Board of Medicine's enabling statute requires reporting by entities in positions to identify potential violations, including hospitals, peer licensees, liability insurance organizations, including the state Board of Risk and Insurance Management, the courts, state medical associations, and managed care organizations operating in West Virginia. Additionally, the Board of Medicine's enabling statute provides it with the authority to assess a civil

Given the close physical contact that physical therapists, physical therapy assistants, and athletic trainers have with their patients, the potential for harm is present.

The Board's enabling statute does not require anyone to report potential practice act or rules violations. In comparison, the West Virginia Board of Medicine's enabling statute requires reporting by entities in positions to identify potential violations.

penalty against a mandated reporter found to have violated the reporting requirement.

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, but is not limited to, professional misconduct, including but not limited to sexual misconduct with patients or surrogates and controlled substance diversion. Without statutory requirements, healthcare organizations and professionals may not report violations despite possessing credible information about problem practitioners. W. Va. Code §30-1-5(d) requires that law-enforcement agencies and courts timely report to the appropriate board any violations of individual practice acts by any individual. It is unknown how many cases related to major violations that other entities in positions to identify potential violations may choose not to report. The Board is unable to take action to protect public safety unless it has access to such information. **Therefore, the Legislature should consider amending W. Va. Code 30-1-5 to require violation reporting from additional entities as previously stated to the healthcare licensing boards listed in Appendix C.** Furthermore, without enforcement authority over the reporting requirements required entities may choose not to report. **Therefore, the Legislature should also consider including civil penalties for all mandated reporters for failure to report.**

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

More mandated reporters could enhance regulatory boards' effectiveness in protecting the public. However, it is important that boards clearly communicate the criteria for reporting violations to avoid receiving complaints that do not warrant investigation because reporting requirements are vague. **Therefore, the healthcare licensing boards should clearly indicate in their respective rules and on their websites the types of issues that should and should not be reported.**

Therefore, the Legislature should consider amending W. Va. Code 30-1-5 to require violation reporting from additional entities as previously stated to the healthcare licensing boards.

The Board Licenses Over 3,330 Individuals

The Board issues biennial licenses to physical therapists, physical therapy assistants, and athletic trainers. Table 1 shows the number of licensees governed by the Board between FY 2020 and FY 2022.

Table 1
Board of Physical Therapy
Number of Licensees
FY 2020 through FY 2022

Type	2020	2021	2022
Physical Therapists	1,653	1,637	1,644
Physical Therapy Assistants	1,302	1,332	1,348
Athletic Trainers	354	336	368
Totals	3,309	3,305	3,360

Source: Board of Physical Therapy.

Conclusion

The complexity and scope of modern physical therapy requires that the public be protected through the regulation of the profession. Without regulation, the public could face harm by the profession. The Board serves this function through education and competency criteria, CE enforcement, and responding to complaints. The legislative auditor concludes that regulation of physical therapists, physical therapy assistants, and athletic trainers is necessary to protect the public.

The complexity and scope of modern physical therapy requires that the public be protected through the regulation of the profession.

Recommendations

1. *The legislative auditor recommends that the Legislature continue the Board of Physical Therapy as currently regulated.*
2. *The Legislature should consider amending W. Va. Code 30-1-5 to require reporting of individual practice violations from additional entities such as hospitals, health care organizations, and liability insurance organizations to the healthcare licensing boards listed in Appendix C.*
3. *The Legislature should also consider amending W. Va. Code 30-1-5 to include civil penalties for failure to report by mandated reporters.*
4. *To ensure that expanded reporting requirements do not result in unnecessary reporting, the healthcare licensing boards should clearly indicate in their respective rules and on their websites the types of issues that should and should not be reported.*

ISSUE 2

The Board of Physical Therapy Complies with Most of the General Provisions of Chapter 30 of W. Va. Code; However, Improvement Is Needed

Issue Summary

The Board complies with most of the general provisions of W. Va. Code §30-1-et al., including being financially self-sufficient, having continuing education requirements, and resolving complaints in a timely manner with due process for licensees. However, the Board does not have sufficient financial segregation of duties for handling its revenue and should consider using the State Treasurer's lockbox system. The Board must also ensure that board members attend the State Auditor's Seminar on Regulatory Boards. Furthermore, the Board should reimburse lodging expenses consistent with the policies of the Department of Administration's Travel Management Office.

The Board does not have sufficient financial segregation of duties for handling its revenue and should consider using the State Treasurer's lockbox system.

The Board Complies with Most of the General Provisions of Chapter 30

With a few exceptions, the Board complies with the general provisions of Chapter 30 of West Virginia Code. These provisions are important for the effective operation of regulatory boards. The Board complies with the following provisions:

- The chairperson, the executive director, or the chief financial officer annually attended the orientation session conducted by the State Auditor (§30-1-2a (c)(2)).
- The Board adopted an official seal (§30-1-4).
- The Board met at least once annually (§30-1-5(a)).
- The Board resolved all complaints within one year of the status report (§30-1-5(c)).
- 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 procedural rules specifying the investigation and resolution procedure or all complaints (§30-1-8(k)).
- The Board's register includes all applicants with appropriate

With a few exceptions, the Board complies with the general provisions of Chapter 30 of West Virginia Code.

information, such as the date of the application, name, age, education, and other qualifications, place of residence, examination required, whether the license was granted or denied, and suspensions, etc. (§30-1-12(a)).

- The Board submitted an annual report to the governor and the Legislature describing transactions for the preceding two years (§30-1-12(b)).
- The Board complied with public access requirements as specified by (§30-1-12(c)).
- A roster has been prepared and maintained of all licenses that includes names and office addresses. (§30-1-13).
- The Board promulgated legislative rules for the waiver of initial licensing fees for low-income individuals and military families (§30-1-23(d)).
- The Board promulgated legislative rules for consideration of applicants for initial licensure with prior criminal convictions (§30-1-24(c)).

The Board reimbursed or otherwise paid board members and staff lodging in a manner inconsistent with the guidelines of the Department of Administration's Travel Management Office (§30-1-11(c)).

The Board is not in compliance with the following provisions:

- Two of the Board's seven members did not attend at least one orientation session conducted by the State Auditor during one of their terms (§30-1-2a(c)(3)).
- The Board did not provide a complaint status update to one licensee within six months (§30-1-5(c)).
- The Board reimbursed or otherwise paid board members and staff lodging in a manner inconsistent with the guidelines of the Department of Administration's Travel Management Office (§30-1-11(c)).

The Board has accumulated a cash balance in fiscal year (FY) 2022 that is four times its annual expenditures. The Board's revenues primarily come from physical therapist, physical therapy assistant, athletic trainer licensing and renewal fees, and continuing education provider fees.

The Board Is Financially Self-Sufficient

Table 2 shows that the Board is financially self-sufficient as required by W. Va. Code §30-1-6(c). It is the legislative auditor's opinion that cash reserves that are from one to two times a board's annual expenditures are at a prudent level. However, the Board has accumulated a cash balance in fiscal year (FY) 2022 that is four times its annual expenditures. This is suggestive that the Board imposes fees that are more than what it needs to operate. This is discussed in Issue 3. The Board's revenues primarily come from physical therapist, physical therapy assistant, athletic trainer licensing and renewal fees, and continuing education provider fees. Annual disbursements include staff salaries and benefits, utilities, travel costs, website servicing costs, and legal costs paid to the West Virginia Attorney General's Office.

Table 2
Board of Physical Therapy
Budget Information
FY 2017 through FY 2022

Fiscal Year	Beginning Cash Balance	Revenues	Expenditures	Ending Cash Balance	End-of-Year Cash as a Percentage of Annual Expenditures
2017	\$997,179	\$355,981	\$305,929	\$1,047,230	342%
2018	\$1,047,230	\$284,612	\$389,204	\$942,639	242%
2019	\$942,639	\$294,847	\$269,086	\$968,400	360%
2020	\$968,400	\$271,672	\$261,319	\$978,753	375%
2021	\$978,753	\$287,600	\$246,239	\$1,020,113	414%
2022	\$1,020,113	\$245,405	\$253,137	\$1,012,381	400%
Avg.	\$992,386	\$290,019	\$287,486	\$994,919	396%

Source: Our Advanced Solutions with Integrated Systems (wvOASIS), Cash Balance report (WV-FIN-GL-151).

PERD calculations of percentages.

The Accumulation of a Cash Balance that Is Nearly Four Times Actual Expenditures Raises the Issue of an Inadequate Method of Transferring Funds in Excess of What a Board Needs According to West Virginia Code §30-1-10

PERD's 2011 regulatory board review found that the Board had a precariously low end-of-year cash balance from FY 2006 through 2008. In that report, PERD recommended the Board should carefully monitor its financial condition in order to maintain cash reserves between one and two times its annual expenditures. In response to the recommendation, the Board doubled the initial license fees for physical therapists and physical therapy assistants effective May 2009 and by the end of FY 2011 the Board's ending balance was slightly higher than its expenditures. Furthermore, beginning in June 2011, the Board began collecting fees for the registration of athletic trainers that then nearly doubled when registration became licensure in 2020.

PERD's 2011 regulatory board review found that the Board had a precariously low end-of-year cash balance from FY 2006 through 2008. In response to the recommendation, the Board doubled the initial license fees for physical therapists and physical therapy assistants effective May 2009.

Although the legislative auditor understands that the Board needed to raise fees to keep financially self-sufficient, the higher fees and added revenue over the last 12 years has resulted in the accumulation of a cash balance that is nearly four times the Board's actual expenditures in FY 2022. This raises the question of whether revenue generated by the Board is beyond what is sufficient for operating. W. Va. Code §30-1-10(a), states that "When the special fund of any board accumulates to an amount which exceeds twice the annual budget of the board...the State Treasurer shall transfer the excess amount to the State General Revenue Fund." The intent may have been to prevent regulatory boards from accumulating more funds than needed for operations.

According to the State Treasurer's Office, it interprets "annual budget" in statute to be a board's appropriated budget within wvOASIS. While the state treasurer's interpretation of annual budget may fulfill the Legislature's intent, it becomes problematic when many boards submit expenditure schedules that are well in excess of what boards actually spend for the year represented.

Table 3 shows the Board's "annual budget" as represented on its expenditure schedule in comparison to its actual annual expenditures over the last six fiscal years. While it is understandable that a board would want to budget beyond what it may need to account for contingencies and unexpected expenses, it is unrealistic when the annual budget is as much as 107 percent higher than actual expenditures each year.

The higher fees and added revenue over the last 12 years has resulted in the accumulation of a cash balance that is nearly four times the Board's actual expenditures in FY 2022.

Table 3
Board of Physical Therapy
"Annual Budget" vs Actual Expenditures
FY 2017 through FY 2022

Fiscal Year	"Annual Budget" Expenditure Schedule	Actual Expenditures	Difference	Difference as a Percentage of Actual Expenditures
2017	\$434,728	\$305,929	\$128,799	42%
2018	\$500,000	\$389,204	\$110,796	28%
2019	\$500,000	\$269,086	\$230,914	86%
2020	\$509,115	\$261,319	\$247,796	95%
2021	\$509,115	\$246,239	\$262,876	107%
2022	\$509,139	\$253,137	\$256,002	101%
Avg.	\$506,842	\$287,446	\$206,197	77%

While it is understandable that a board would want to budget beyond what it may need to account for contingencies and unexpected expenses, it is unrealistic when the annual budget is as much as 107 percent higher than actual expenditures each year.

Source: PERD calculations based on wvOASIS Cash Balance report WV-FIN-GL-151 and Board's expenditure schedules.

The legislative auditor also questions the Board’s reasoning of keeping money, year after year, solely for a database contract the cost of which, even on the high end, would not warrant the excess the Board has maintained in its fund. PERD finds that it is not uncommon for boards to submit expenditure schedules with “annual budgets” that were 30 to 100 percent above their actual expenditures. Therefore, the legislative auditor concludes that in many cases expenditure schedules of regulatory boards are not representative of an “annual budget.” Consequently, the current mechanism for transferring excess funds from boards to the state general revenue fund – by transferring the amount that exceeds twice the Board’s annual budget – is inadequate in achieving the objective of W. Va. Code §30-1-10(a).

If the intent to transfer a board’s excess funds to the state general revenue fund is to avoid boards accumulating more than is sufficient for operations, then the Legislature should consider an alternative method of making this transfer. PERD examined this issue in the past and determined that a better approach is to base the excess transfer on a board’s total revenue, since the amount charged licensees is a primary factor behind a board accumulating an amount beyond what it needs. Since revenues can be volatile due to changes in the number of licensees or fee increases, PERD determined that it would be best to use the sum of total revenues for the previous two fiscal years. In this case, if a board’s year-end accumulated balance exceeds the sum of total revenue for the previous two fiscal years, then the excess amount would be transferred. PERD also examined a transfer mechanism based on total current expenditures, in which an excess transfer would occur if the end-of-year cash balance is greater than twice the total current expenditures. The primary problem with this method is that a board could be influenced to increase expenditures to avoid an excess transfer. **Therefore, the Legislature should consider amending W. Va. Code §30-1-10 to state that transfers from licensing boards to the state general revenue fund be based on the sum of a board’s actual revenues for the previous two fiscal years.**

Table 4 shows actual transfer amounts as well as the amounts excess transfers would be under alternative transfer mechanisms. Using total revenue of the previous two fiscal years would have resulted in transfers of \$760,489 in contrast to the \$307,380 actually transferred. Using expenditures as the basis for excess transfers would have resulted in transfers totaling \$833,131. Table 4 also shows that the larger transfers result in lower end-of-year cash balances. It should be noted that the reason much larger amounts would be transferred to the State General Fund than the current method is because the current method allows cash balances to accumulate well beyond what a board needs to operate. Given the large cash balances that some boards have accumulated, if there is concern of transferring relatively large amounts from a board in a fiscal year, the Legislature could limit the amount transferred in any

PERD finds that it is not uncommon for boards to submit expenditure schedules with “annual budgets” that were 30 to 100 percent above their actual expenditures. Therefore, the legislative auditor concludes that in many cases expenditure schedules of regulatory boards are not representative of an “annual budget.”

PERD examined this issue in the past and determined that it would be best to use the sum of total revenues for the previous two fiscal years. In this case, if a board’s year-end accumulated balance exceeds the sum of total revenue for the previous two fiscal years, then the excess amount would be transferred.

fiscal year. For example, Senate Bill 248, introduced during the 2023 legislative session, proposed that the transfer of excess funds be based on twice a board's actual expenditures for the last fiscal year, and would have limited transfer amounts to \$200,000 in any fiscal year. With this provision, boards that have accumulated large cash balances would experience gradual decreases over time rather than potentially sharp one-time decreases. Furthermore, the bill also provided that a board could avoid a transfer by filing an emergency legislative rule to reduce its fees by 50 percent. **Therefore, if the Legislature amends W. Va. Code §30-1-10, it should further consider implementing a limit to the amount of funds that could be transferred in any fiscal year.**

Table 4
Board of Physical Therapy
Alternative Methods to Determine Excess Transfers
FY 2017 through FY 2022

Fiscal Year	Current Transfer Method	Based on Revenue of Previous Two Years	Based on Twice the Current Year's Expenditures
2017	\$127,723	\$489,887	\$818,541
2018	\$177,774	\$72,416	\$6,737
2019	\$0	\$71,001	\$0
2020	\$0	\$71,487	\$0
2021	\$0	\$54,300	\$7,853
2022	\$1,883	\$1,398	\$0
Total Transfers	\$307,380	\$760,489	\$833,131
End-of-Year Cash Balance	\$1,012,381	\$560,670	\$486,630

Senate Bill 248, introduced during the 2023 legislative session, proposed that the transfer of excess funds be based on twice a board's actual expenditures for the last fiscal year, and would have limited transfer amounts to \$200,000 in any fiscal year.

Source: PERD revenue calculations based on whether the ending cash balances exceeds the sum of the previous two years revenues. PERD expenditure calculations based on whether ending year balance is greater than twice current years expenditures.

The Board’s Initial Licensure Fees Are Generally Higher than Those of Surrounding States While Its Renewal Fees Are in the Middle of Surrounding States

West Virginia and surrounding states’ licensure and renewal fees can be seen in Table 5. The initial licensure for West Virginia physical therapists is \$245, for physical therapist assistants is \$165, and for athletic trainers is \$205. West Virginia’s renewal fee for physical therapists is \$100, for physical therapy assistants it is \$60, and for athletic trainers it is \$80. The initial licensure fee for physical therapists is higher than all surrounding states. For physical therapy assistants, only Kentucky has a higher initial licensure fee. For athletic trainers, West Virginia has the highest initial licensure fee. West Virginia’s physical therapist renewal fees are far less than Maryland’s but otherwise fall at a midpoint between the rest of the neighboring states. For physical therapy assistants the renewal fees are mostly similar to Ohio and Virginia while substantially less than both Kentucky and Maryland. The renewal fee for athletic trainers is higher than it is in Kentucky, Ohio, and Pennsylvania but less than in Maryland and Virginia. These higher fees suggest why the Board’s end-of-year balances are so high. **This matter is further discussed in Issue 3.**

The initial licensure for West Virginia physical therapists is \$245, for physical therapist assistants is \$165, and for athletic trainers is \$205.

Table 5 Physical Therapists, Physical Therapy Assistants, and Athletic Trainers Licensure Fees West Virginia and Surrounding States							
State	Physical Therapists		Physical Therapist Assistants		Athletic Trainers		Renewal Cycle
	Initial Fee	Renewal Fee	Initial Fee	Renewal Fee	Initial Fee	Renewal Fee	
Kentucky	\$225	\$170	\$225	\$170	\$100	\$50	PT & PTA - biennial AT - triennial
Maryland	\$150	\$325	\$150	\$300	\$200	\$161	biennial
Ohio	\$100	\$70	\$100	\$70	\$100	\$70	biennial
Pennsylvania	\$30	\$90	\$30	\$45	\$20	\$37	biennial
Virginia	\$140	\$135	\$100	\$70	\$130	\$135	biennial
Surrounding States Avg.	\$129	\$158	\$121	\$131	\$110	\$91	biennial
West Virginia	\$245	\$100	\$165	\$60	\$205	\$80	biennial

Source: Respective state licensure board websites and statutes.

The Board Resolves Complaints in a Timely Manner

PERD reviewed the 27 complaints the Board received in fiscal years 2020 through 2022. Per W. Va. Code of State Rules §16-3-5.1, anyone can file a complaint against licensees with the Board. Table 6 provides an overview of the complaints and average time to resolve them. According to W. Va. Code §30-1-5(c), each regulatory board must resolve a complaint within 18 months of the initial filing. Furthermore, the Board is required to send status reports to the party filing the complaint and the respondent within six months after the complaint was initially filed if the case has not been resolved within six months. During the scope of the audit, the Board resolved all but one complaint within 18 months of their receipt dates.¹ The Board sent status reports to the parties filing the complaints and the respondents within six months of the complaints being filed in all but one instance in FY 2020.

During the scope of the audit, the Board resolved all but one complaint within 18 months of their receipt dates.

Table 6
Board of Physical Therapy
Complaint Resolution Statistics
FY 2020 through FY 2022

Fiscal Year	Number of Complaints Received	Number of Cases with Disciplinary Actions	Average Resolution Time in Days
2020	14	10	168
2021	6	1	88
2022	7	5	77

Source: PERD's analysis of the Board's complaint files
PERD's calculations of average complaint resolution times are calculated based on resolved complaints not total number of complaints.

Legislative rules require physical therapists and physical therapist assistants to complete 24 hours of CE within the two-year licensing period. Athletic trainers are required by legislative rule to complete 50 hours of CE within the two-year licensing period.

The Board Has Established Continuing Education Requirements

The Board has established continuing education (CE) requirements for its licensees as can be seen in Table 7 for West Virginia and the surrounding states. Legislative rules require physical therapists and physical therapist assistants to complete 24 hours of CE within the two-year licensing period. Athletic trainers are required by legislative rule to complete 50 hours of CE within the two-year licensing period.

¹ The Board suspended a physical therapist's license citing immediate danger to the public. The Board and the licensee agreed to postpone an administrative hearing on the license suspension until the licensee's health permits.

State	Physical Therapists	Physical Therapist Assistants	Athletic Trainers	Renewal Cycle
Kentucky	30	20	60	PT & PTA - biennial; AT - triennial
Maryland	30	20	50	biennial
Ohio	24	12	25	biennial
Pennsylvania	30	30	2	biennial
Virginia	30	30	0	biennial
Surrounding States Avg.	29	22	27	biennial
West Virginia	24	24	50	biennial

Source: PERD's analysis of other state's licensing board websites, statutes, and rules.

The Board specifies qualifying sources of CE for physical therapists and physical therapy assistants in legislative rule. These sources include practice review tools from the Federation of State Boards of Physical Therapy and class instruction from a college/university accredited by the Commission on Accreditation in Physical Therapy Education. These sources may also include CE courses sponsored by the American Physical Therapy Association, Board of Certification, or West Virginia Physical Therapy Association.

A legislative rule also specifies the qualifying sources of CE for athletic trainers. An athletic trainer may provide clinical instruction to an athletic training student who is enrolled in a Board-approved athletic training program for up to 10 hours of CE per licensing period. Sources for CE also include class instruction from colleges/universities accredited by the Commission on Accreditation of Athletic Training Education and courses sponsored by the Board of Certification, National Athletic Trainers Association, and the West Virginia Athletic Trainers Association.

The Board has three full-time employees who manage the Board's finances. However, the Board cannot segregate duties for proper internal control.

The Board's Internal Controls Are Lacking and Should Consider Utilizing the State Treasurer's Lockbox System

The Board has three full-time employees – the executive director, an administrative secretary, and an office assistant – who manage the Board's finances. However, 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.

All three employees can accept and record payment from licensees. In addition, the administrative secretary deposits received revenues and the executive director is responsible for reconciling revenues. In order 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.

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 little or no staff to handle such procedures. **Therefore, the legislative auditor recommends the Board consider utilizing the state treasurer’s lockbox system to further reduce risk.**

Given the 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 and expenditures. For revenue, PERD calculated the minimum expected revenue for the Board by multiplying licensee fees by the number of reported licensees and found that actual revenue exceeded expected revenue in FY 2020 through 2022 (see Table 8). Additionally, PERD found that the Board received 59 percent of its revenues as online payments in FY 2020, 64 percent in FY 2021, and 64 percent in FY 2022. Revenues received online mainly consist of license application fees and renewals.

All three employees can accept and record payment from licensees. In order 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.

The Board does not utilize the State Treasurer’s Lockbox system, which can minimize the handling of revenue. Therefore, the legislative auditor recommends the Board consider utilizing the state treasurer’s lockbox system to further reduce risk.

Table 8 Board of Physical Therapy Expected Revenue and Actual Revenue FY 2020 through FY 2022			
Fiscal Year	Expected Revenue	Actual Revenue*	Difference
2020	\$192,180	\$271,672	\$79,492
2021	\$200,690	\$287,600	\$86,910
2022	\$214,215	\$245,405	\$31,190
Avg.	\$202,362	\$268,226	\$65,864
<i>Source: PERD calculations based on the wvOASIS Cash Balance report, WV-FIN-GL-151, and board information.</i> <i>*Licensees renew biennially so revenues fluctuate.</i>			

PERD also evaluated the Board’s expenditures for FY 2020 through FY 2022 and determined that, on average, 95 percent of the Board’s expenses consisted of expected and required expenditures.

PERD also evaluated the Board’s expenditures for FY 2020 through FY 2022 and determined that, on average, 95 percent of the Board’s expenses consisted of expected and required expenditures (see Table 9). 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 9 Board of Physical Therapy Percentage of Expected and Required Expenditures FY 2020 through FY 2022	
Fiscal Year	Percent
2020	93%
2021	96%
2022	95%
Avg.	95%
<i>Source: PERD calculations based on wvOASIS Account Status report WV-FIN-GL-062.</i>	

PERD’s analysis of board travel expenditures showed certain instances of non-compliance with the state travel rules.

While the Board’s percentage of expected/required expenditures were above 90 percent, PERD’s analysis of board travel expenditures showed certain instances of non-compliance with the state travel rules. Although the legislative auditor concludes that the travel expenses were generally legitimate, some expenditures were inconsistent with state travel rules. Examples include:

- One lodging receipt was not itemized for the annual purchasing conference in September 2019, and
- Lodging totaling \$780.21 which exceeded approved per diem rates. This amount includes, taxes totaling \$37.02 on in-state lodging.

Therefore, the legislative auditor recommends the Board should comply with state travel rules by requiring itemized receipts and not pay any form of taxation for in-state lodging.

The Board Should Ensure that Board Members Attend the Required Training Sessions

W. Va. Code §30-1-2a(c)(3) states that each board member shall attend the State Auditor’s Training Session for regulatory boards at least once during each term of office, and that the chair, the executive director, or the chief financial officer must attend each year. The legislative auditor identified four current board members who appropriately attended the State Auditor’s training during their first appointed terms. One current board member did not attend any training sessions during his first five-year term and began his second term in 2022. Additionally, one former board member did not attend any training sessions during his term. **Therefore, the legislative auditor finds that the current board member should adhere to W. Va. Code §30-1-2a(c)(3) and attend the State Auditor’s Training Session for Regulatory Boards.**

One current board member did not attend any training sessions during his first five-year term and began his second term in 2022. Additionally, one former board member did not attend any training sessions during his term.

The Board Does Not Provide Public Access to Its Open Teleconference Meetings

The Board conducted 13 teleconference meetings during the scope of this audit, two of which were emergency meetings. While it is not an issue to have telephonic meetings, the notices the Board filed with the Secretary of State’s Office did not provide a call-in number for public attendance. Instead, the notice instructed that those wishing to attend come to the board office or contact the Board. During the COVID-19 pandemic, 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

The Board conducted 13 teleconference meetings during the scope of this audit, two of which were emergency meetings.

Act.” Given this advice, **the legislative auditor recommends the Board provide a call-in number, livestream access, or other remote attendance instructions for its teleconferences on its online meeting notices filed with the Secretary of State’s Office.**

The Board Is Not Identifying Proper Authorization to Hold 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 22 times in its meetings from fiscal years 2020 through 2022. It cited an Act authorization once, about the status of license that it suspended. The Ethics Commission (Commission) has concluded that the Legislature intended to allow persons attending a meeting to be told the reason(s) for excluding the public to meet in executive session. 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.*” **Therefore, the Board should state the Open Meetings Act authorization before entering executive sessions during Board meetings.**

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

The Board entered executive session 22 times in its meetings from fiscal years 2020 through 2022. The Board should state the Open Meetings Act authorization before entering executive sessions during Board meetings.

Conclusion

The Board complies with most of the general provisions of Chapter 30. However, the Board should consider using the State Treasurer’s Office lockbox system to process fees to reduce the risk of fraud. Additionally, the Board should comply with state travel rules, specifically with the allowable reimbursement rates for lodging and the exemption from taxes to in-state vendors. Overall, while the Board has generally good practices, it needs to comply with Chapter 30 requirements in all instances to ensure consistency and adherence to state laws.

Recommendations

5. *The Legislature should consider amending WV Code §30-1-10 to allow for the transfer of excess funds from chapter 30 boards to the state general revenue fund based on the sum of revenues of a board's last two fiscal years. Consideration should also be given to limit the amount that can be transferred in a fiscal year.*
6. *The Board should provide a status update to its licensees within six months of a complaint starting against them.*
7. *The Board should consider using the State Treasurer's lockbox system.*
8. *The Board should comply with state travel rules.*
9. *The Board should ensure that all its members attend at least one orientation session for each term they are in office.*
10. *The Board should provide the public with remote attendance instructions for its teleconference meetings.*
11. *The Board should identify proper authorization to hold executive sessions as required by law.*

ISSUE 3

The Board's Fees Do Not Generate Excessive Revenue When Compared to the Board's Normal Expenses as a Result of Recent Fee Eliminations and Reductions

Issue Summary

Pursuant to West Virginia Code §30-1-10(b)(2), when the state treasurer notifies the legislative auditor of a transfer of an excess amount from a regulatory board's special fund to the state general fund, the legislative auditor is required to conduct a review of the board's fee structure to determine if the board's fees generate excessive revenue, when compared to the board's normal expenses. The State Treasurer's Office notified the Office of the Legislative Auditor that an excess transfer was made from the Board's special fund to the State General Revenue Fund. In reviewing the Board's fee structure, it was found that in fiscal years 2011 through 2018, the Board's fees did generate excessive revenue when compared to its normal expenses. However, a 2017 fee elimination and a fee decrease have resulted in reduced revenues. At the same time, the Board's expenditures also began to increase in FY 2017 through FY 2019. **Subsequently, the legislative auditor finds that the Board's fees no longer generate excessive revenue when compared to its normal expenses.**

In reviewing the Board's fee structure, it was found that in fiscal years 2011 through 2018, the Board's fees did generate excessive revenue. However, a 2017 fee elimination and a fee decrease have resulted in reduced revenues.

Required Analysis of Board's Fee Structure

W. Va. Code §30-1-10(b)(2) requires the legislative auditor to review the fee structure of a board when notified by the State Treasurer's Office that it transferred cash from a board's special fund to the State General Revenue Fund. This transfer is prompted when a board's fund balance exceeds twice its annual budget or \$10,000, whichever is the greater amount. In November 2022, the State Treasurer's Office notified the legislative auditor that the Board's fund balance exceeded twice its annual budget in FY 2017, FY 2018, and FY 2022, prompting fund transfers from the Board's fund. Table 10 shows the amounts transferred.

In November 2022, the State Treasurer's Office notified the legislative auditor that the Board's fund balance exceeded twice its annual budget in FY 2017, FY 2018, and FY 2022.

Table 10
Board of Physical Therapy
Excess Fund Transfers to the
State General Revenue Fund
FY 2017 – FY 2022

FY	Fund Transfer Amount
2017	\$127,723
2018	\$177,774
2022	\$1,883
Total	\$307,380

Source: State Treasurer's Office.

W. Va. Code §30-1-10(b)(2) requires the legislative auditor to review the fee structure of any board subject to a fund transfer within a reasonable time after the state treasurer notifies the legislative auditor. It did not notify the legislative auditor until November 2022.

W. Va. Code §30-1-10(b)(2) requires the legislative auditor to determine if the amount of a board's fees generate excessive revenue when compared to the board's normal expenses. If the legislative auditor finds that excessive revenue is generated, those findings, along with recommendations on how the fees can be adjusted to generate only what the board reasonably needs to operate, are to be reported to the Joint Standing Committee on Government Organization.

It should be noted that W. Va. Code §30-1-10(b)(2) requires the legislative auditor to review the fee structure of any board subject to a fund transfer within a reasonable time after the state treasurer notifies the legislative auditor. The State Treasurer's Office was supposed to notify the legislative auditor of any transfer beginning in FY 2019; however, it did not notify the legislative auditor until November 2022. This delayed the legislative auditor's review. The State Treasurer's Office, however, acknowledged the oversight and committed to properly notifying the legislative auditor going forward.

From FY 2017 through FY 2022 the Board's end-of-year cash fund balance exceeded its expenditures, on average, by nearly four times what it spent in those years.

The Board's Fees No Longer Generate Excessive Revenue as the Board Decreased Its Revenues and Expenditures Are Higher

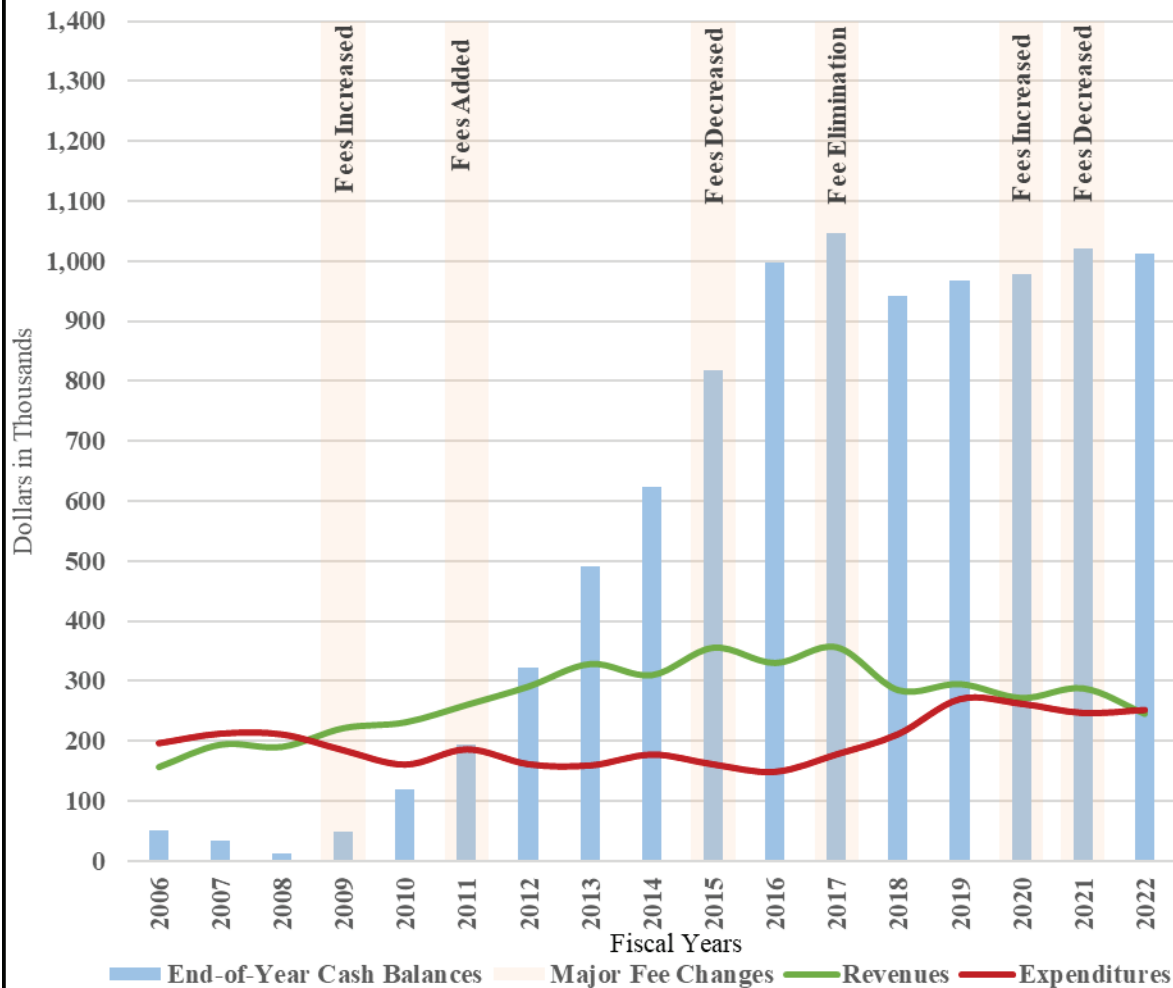
As discussed in Issue 2, from FY 2017 through FY 2022 the Board's end-of-year cash fund balance exceeded its expenditures, on average, by nearly four times what it spent in those years. This suggests that the Board imposes fees that are more than what it needs to operate. Also discussed in Issue 2 was that the Board's initial licensure fees were generally higher than those of surrounding states and its renewal fees were in the middle of the range.

Figure 1 illustrates that prior to 2009, the Board's revenues and expenditures were nearly equal, with expenditures exceeding revenues.² As a result, its end-of-year fund balances tended to be considerably below annual expenditures which prompted the need for a fee increase. Effective in May 2009, the Board doubled the initial licensure fees for physical therapists and physical therapy assistants which led to a substantial growth in revenue. The Board's revenue further increased when the Board began collecting registration fees for regulating athletic trainers in June 2011. After these fee changes, the Board's fund balance increased annually. This upward trend indicates that the 2009 fee increase, coupled with the 2011 fee addition, raised revenue well beyond what was needed for normal operations and that licensees were paying higher fees than necessary to support board operations. Although revenues declined in June 2015, when the Board decreased the biennial renewal fees for physical therapists and physical therapy assistants, its fund balance did not decline until FY 2018.

Effective in May 2009, the Board doubled the initial licensure fees for physical therapists and physical therapy assistants which led to a substantial growth in revenue.

² Expenditures do not include funds transferred to the State General Fund. However, end-of-year cash balances are actual amounts.

Figure 1
Board of Physical Therapy
Revenues, Expenditures, and End-of-Year Cash Balances
FY 2006 through FY 2022



Source: Office of the Legislative Auditor Budget Division Fund Balances, Revenues and Disbursements reports and West Virginia wvOASIS cash balance reports.

As seen in Figure 1, the gap between revenues and expenditures began to narrow following FY 2017, and in FY 2018 the fund balance declined for the first time since FY 2008. Three Board fiscal decisions are the primary contributors to the gap between revenues and expenditures closing. First, on the revenue side, effective September 2017, the Board stopped charging a fee for the online verification of licensure. When the Board was assessing the fee for all license verifications, those performed by Board staff and online, the average annual revenue generated from FY 2014 through FY 2017 was \$52,995. In the full fiscal years since the fee

elimination, FY 2019 through FY 2022, the average revenue generated from license verification by Board staff has been \$7,225. The second fiscal decision made by the Board was on the expenditure side when two Board staff were given pay raises in the second quarter of FY 2018 which increased expenditures by nearly \$13,000. Third, the Board moved its office location which increased its office rent by 93 percent (\$10,233) from FY 2017 to FY 2018. The rent subsequently increased by 24 percent (\$5,091) from FY 2018 to FY 2019.

Although Figure 1 shows that revenues were relatively consistent from FY 2018 to FY 2019, it also shows that expenditures increased. Two contributors to the Board's increased expenditures were payments to the Attorney General's Office for legal counsel, which were nearly \$25,000 more in FY 2019 than in FY 2018, and the purchase of a \$10,672 software license.

Despite increasing fees and adding fees in FY 2020, the Board's revenues do not show much fluctuation. In April 2020, athletic trainers went from having registration status to licensure status. With this change in regulation, the Board increased initial and renewal athletic trainer fees. Although this fee increase has generated an estimated \$16,000 in more revenue since it became effective, another fee the Board added resulted in less revenue generated. The State of West Virginia adopted the physical therapy licensure compact (compact), an agreement with several other states to ease license reciprocity between these states. The Board now charges these applicants a 'compact' fee as opposed to the initial and renewal licensure fee it would have previously collected. As the compact fee is \$50 compared to between \$60 and \$220 for physical therapy assistant and physical therapist initial and renewal licenses, the Board has collected an estimated \$32,720 less in revenues than it would have prior to assessing the \$50 compact fee in place of the licensure fees.

Prior to the 2021 fee decrease, the Board assessed all continuing education course providers the same fee regardless of the number of course hours. As of May 2021, the Board collects \$25 from continuing education providers whose course is under 10 hours and \$50 for those continuing education providers whose course is 10 hours or more. In the one year since this fee change became effective, the Board has collected an estimated \$22,371 less in revenues than it would have had the fee remained the same for all continuing education providers.

Conclusion

The legislative auditor finds that the Board's fees are currently not generating excessive revenue compared with its normal expenses. However, since the Board still has a large cash balance, the legislative

The gap between revenues and expenditures began to narrow following FY 2017, and in FY 2018 the fund balance declined for the first time since FY 2008.

Two contributors to the Board's increased expenditures were payments to the Attorney General's Office for legal counsel, which were nearly \$25,000 more in FY 2019 than in FY 2018, and the purchase of a \$10,672 software license.

auditor expects it could see more fund transfers to the State General Fund depending on expenditures.

ISSUE 4

The Board’s Website Needs Modest 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 11 shows the Board integrates 54 percent of the checklist items in its website. This measure indicates that the Board needs to make modest improvement in the user-friendliness and transparency of its website.

The Board integrates 54 percent of the checklist items in its website. This measure indicates that the Board needs to make modest improvement in the user-friendliness and transparency of its website.

Table 11 Board of Physical Therapy 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 54%	
<i>Source: PERD’s review of the Board of Physical Therapy website as of October 25, 2022.</i>			

The Board’s Website Scores Reasonably Well in User-Friendliness and Transparency

It has become common and expected that governments convey to the public what they are 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. Government websites should also provide transparency of an agency’s operation to promote accountability and trust. Several organizations have developed assessment criteria to evaluate federal and state government websites for transparency and user-friendliness.

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 (Appendix D). The assessment checklist lists 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 on the checklist, 18 in user-friendliness and 32 in transparency. As illustrated in Table 12, the Board’s website scored a total of 27 points. This total comprises 10 points, or 56 percent, for user-friendliness and 17 points, or 53 percent, of the possible points for transparency. This means the website needs only modest enhancements in both user-friendliness and transparency. **The Board may want to consider adding some elements that could be beneficial to the public.**

The Office of the Legislative Auditor developed an assessment checklist to evaluate West Virginia’s state agency websites. An agency can score a total of 50 points on the checklist, 18 in user-friendliness and 32 in transparency. The Board’s website scored a total of 27 points.

Category	Possible Points	Agency Points	Percentage
User-Friendly	18	10	56%
Transparency	32	17	53%
Total	50	27	54%

Source: PERD’s review of the Board of Physical Therapy website as of October 25, 2022.

The Board’s Website Is Navigable, But Additional User-Friendly Features Should Be Considered

The Board’s website is easy to navigate as every page links to the Board’s homepage. Furthermore, it has a site map, a search box on every page, and a frequently-asked-questions link on the home page. However, there are other checklist items the Board should consider incorporating, such as: site functionality, foreign language accessibility, and feedback options among others. The average readability of the homepage and complaint form was at an eighth grade reading level which is one grade higher than the recommended of seventh grade.

The Board’s website is easy to navigate as every page links to the Board’s homepage.

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 languages other than English.
- **Site Functionality** – The website should include buttons to adjust the font size and resizing the text should not distort site graphics or text.
- **Feedback Options** – A page where users can voluntarily submit feedback about the website or particular sections of the website.
- **Online survey/poll** – A short survey that pops up and requests users to evaluate the website.
- **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.
- **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 contains important transparency features including its email, physical address, telephone number and public records.

The Board Should Consider Additional Transparency Features

A website that is transparent should promote accountability and provide information for citizens about how well the Board is performing, as well as encouraging public participation. The Board’s website contains important transparency features including its email, physical address, telephone number, names and contact information for administrators, and public records such as statutes, rules, and meeting minutes. However, the Board should consider implementing several checklist items listed below.

The Board should consider providing additional elements to the website to improve the board’s transparency.

Transparency Considerations

The Board should consider providing additional elements to the website to improve the board’s transparency. The following are attributes that could be beneficial:

- **Budget** – Budget data should be available at the checkbook level, ideally in a searchable database.
- **FOIA Information** – Information on how to submit a FOIA request, ideally with an online submission form.

- **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.
- **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 agencies performance measures and outcomes.
- **Website Updates** – The website should have a website update status on screen and ideally for every page.

Conclusion

The legislative auditor finds that modest 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, upcoming meetings, and a complaint form. However, providing website users with additional elements and capabilities, as suggested in the report, would increase user-friendliness and transparency.

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

Recommendation

12. *The Board should consider adding other user-friendliness and transparency elements to its website.*

ISSUE 5

The Board of Physical Therapy Needs to Consider What Measures to Take to Ensure It Provides Handicapped Accessibility to Its Office and Services Under the Americans with Disabilities Act

Issue Summary

PERD conducted a review of the Board's office to determine general handicap accessibility in relation to select Americans with Disabilities Act (ADA) requirements. PERD's review found that some portions of the building where the Board is located, including the building entrance, hallways, restrooms, and fire alarm systems either do not generally meet ADA requirements or may hinder physical access to the Board. Furthermore, while the Board's office suite generally met ADA requirements, there are accessibility barriers at the entrance to its office suite.

PERD's review found that some portions of the building where the Board is located, including the building entrance, hallways, restrooms, and fire alarm systems either do not generally meet ADA requirements or may hinder physical access to the Board.

There Are Physical Barriers to Accessing the Board's Office

PERD conducted a site visit to the Board's office located at 2 Players Club Drive in Charleston. This visit was to determine if the office and building meet select requirements of the ADA. PERD's review found the building's parking lot had the minimum required one marked accessible parking spot. The pavement for this parking spot is marked with blue lines and the International Symbol of Accessibility (ISA) symbol; however, it does not have the required ISA sign above the ground. Additionally, this parking spot does not access the aisles that adjoin the accessible route to the building entrance as required. It is just under eighteen feet from the route to the building entrance. The building has four exterior doors, only one of which is unlocked, and none of the three locked, inaccessible entrances have an ISA sign directing persons to the unlocked accessible entrance. The unlocked entrance door is a double door. However, one of the doors is fixed/locked leaving a 23-inch-wide opening, which is less than the minimum 32 inches required. If the double door were unlocked, it would be expected that this would make the opening at least 32 inches to allow entrance to the building. The exterior entrance door closes automatically, however, it closes in less than the minimum five seconds as required. This entry door opens to a vestibule that is 43 inches instead of the 48 inches required. Additionally, a carpet in the vestibule is not securely attached to minimize tripping hazards. Furthermore, the Board's office and bathroom entrances do not have braille signage as required and chairs and a water cooler in the hallway extend more than four inches. The building's handicap bathrooms do not generally meet ADA requirements. The bathroom door closes in 2.5

The building's parking lot had the minimum required one marked accessible parking spot, however, it does not have the required ISA sign above the ground. Additionally, this parking spot does not access the aisles that adjoin the accessible route to the building entrance as required.

seconds rather than the required five seconds. Under the sink counters there is 12 inches of clear floor space, as opposed to the minimum 17 inches required, for a person using a wheelchair to reach the faucet. The clearance around the toilet in the compartment stalls measures 32 inches from the side wall rather than the minimum pre-2012 required 48 inches and 56 inches from the rear wall as permitted by pre-2012 construction standards. Finally, there are no grab bars along the rear walls of the accessible stalls.

PERD's review did not assess the entire building, nor is the review intended to certify the building as ADA compliant. The audit team used professional judgment and the ADA checklist as a guide to determine that while some portions of the building meet ADA requirements, the building entrance and the office entrance may hinder physical access to the Board. The ADA checklist includes accessibility in four priority areas of Approach and Entrance, Access to Goods and Services, Access to Public Toilet Rooms, and Access to Other Items such as water fountains and telephones. A space that is generally accessible will provide access to the elements of the checklist that are necessary to provide services. If the location does not meet the requirements of the ADA checklist, they may also offer reasonable accommodations to make services available.

The building entrance and the office entrance may hinder physical access to the Board.

Conclusion

The Board needs to consider what measures it may need to take to ensure it offers adequate public access to its services, including the possibility of relocating its office. Overall, the Board is not generally accessible in part because the unlocked building entrance only provides 23 inches of clearance when opened and its office door do not meet the general ADA standards. Additionally, neither the building or the Board has Braille signage, handicap-operable doorknobs, or an entrance clearance wide enough to meet the ADA standards. **Therefore, the Legislative Auditor recommends that the Board of Physical Therapy consider the measures it needs to take to improve handicap accessibility to its office and services under the Americans with Disabilities Act.**

Overall, the Board is not generally accessible in part because the unlocked building entrance only provides 23 inches of clearance when opened and its office door do not meet the general ADA standards.

Recommendation

13. *The Board of Physical Therapy should consider what measures it needs to take to improve handicap accessibility to its office and services under the Americans with Disabilities Act.*

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

June 15, 2023

Nonnie Holcomb, Executive Director
Board of Physical Therapy
2 Players Club Dr
Charleston, WV 25311

Dear Executive Director Holcomb:

This is to transmit a draft copy of the regulatory board review of the Board of Physical Therapy. This report is tentatively scheduled to be presented during the August 6-8, 2023 interim meetings of the Joint Committee on Government Operations, and the Joint Committee on Government Organization. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to answer any questions committee members may have during or after the meeting.

In coordination with you, we have scheduled an exit conference in your office for Tuesday, July 18, 2023 at 10:00 a.m. to discuss the draft report. In addition, we need your written response by noon on Friday, July 21, 2023 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 304-340-3192 by Thursday, August 3, 2023 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. However, 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,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

Enclosure

Joint Committee on Government and Finance

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 Physical Therapy (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 §30-20-et al., is to protect the public through its license process, and to be the regulatory and disciplinary body for physical therapists, physical therapy assistants, and athletic trainers throughout the state.

Objectives

An objective of this review is 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 assesses the Board's compliance with the general provisions of Chapter 30, Article 1 of the *West Virginia Code*, the Board's enabling statute W. Va. Code §30-20-et al., and other applicable rules and laws such as the Open Governmental Proceedings (W. Va. Code §6-9A) and purchasing requirements. A third objective was to determine if the Board's fees generate excessive revenue when compared to the Board's normal expenses. The fourth objective was to assess the Board's website for user-friendliness and transparency. Finally, PERD assessed the general accessibility of the Board's office with respect to the Americans with Disabilities Act.

Scope

The evaluation included a review of the Board's internal controls, policy and procedures, meeting minutes, complaint files from fiscal years 2020 through 2022, complaint-resolution process, disciplinary procedures and actions, revenues and expenditures for the period of fiscal years 2020 through 2022, continuing education requirements and verification, the Board's compliance with the general statutory provisions (W. Va. Code §30-1) for regulatory boards and other applicable laws, and key features of the Board's website. The scope also included the accessibility of the Board's office as it relates to the American with Disabilities Act (ADA).

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 Charleston office in Kanawha County and met with its staff. Testimonial evidence was gathered to gain an understanding of the Board's policies, procedures, and internal control. Interviews with the Board's staff or other agencies were confirmed by written statements and in some cases by corroborating evidence.

PERD collected and analyzed the Board's complaint files, meeting minutes, annual reports, budget information, procedures for investigating and resolving complaints, and continuing education. PERD also obtained information from the State Auditor's Office, Secretary of State's Office, the State Treasurer's Office, the Department of Administration's Purchasing Division, and the Ethics Commission. 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 §30-20-et al. 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 compared the Board's actual revenues to expected revenues in order to assess the risk of fraud, and to obtain reasonable assurance that revenue data were sufficient and appropriate. Expected revenues were approximated by applying license fees to the number of licensees for the period of fiscal years 2020 through 2022. Actual revenues fluctuated during the scope of the review which is largely attributable to licensees renewing biennially. However, our evaluation of expected and actual revenues allowed us to conclude 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.

PERD also tested the Board's expenditures for fiscal years 2020 through 2022 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 and benefits, travel reimbursement, board-member compensation, payments to other agencies, insurance, office rent, and utilities. PERD determined that during the scope of the review, required and expected expenses were between 93 and 96 percent of total expenditures. These percentages gave reasonable assurance that the risk of fraud on the expenditure side was not significant enough to affect the audit objectives.

PERD reviewed the Board's fee structure including all amendments to its fees occurring since the last PERD review. This included examining the reason(s) that initiated the need for the fee amendments; assessing the end-of-year cash balance compared to expenditures at the time of the fee changes; listing all fees and indicating if and when they were increased, decreased, stayed the same, were added, or deleted and by how much; calculating the changes in revenue generated over the scope of the review for specific fees and identify the fees that were the major sources of revenue growth or decline; and calculating if revenues have a trend that is flat, decreasing, or increasing including the average annual growth in revenues. PERD further reviewed changes in the number of licensees during the scope of the review to determine if this factored into the growth or decline of revenue or if revenue trends were primarily due to the changes in fees. PERD then examined the trends in total expenditures and end-of-year cash balances to determine if each had a trend that was flat, decreasing, or increasing. We examined expenditures in greater detail as there was a relatively large, long-term upward shift to assess what expenditure(s) were the cause for the shift. In this analysis of expenditures, we excluded the transfers made to the State General Fund as we did not consider them to be normal expenditures. However, in the analysis of end-of-year cash balances, we included the transfers as they were part of generated revenue. PERD then compared through a line graph the trends in revenue, expenditures and end-of-year cash balances.

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 as of October 25, 2022, to the established criteria for user-friendliness and transparency so that the Board can determine if it is progressing in step with the e-government movement and if improvements to its website should be made.

To assess the Board's general compliance with the ADA, PERD utilized portions of the ADA checklist with respect to the Board's office located on 2 Players Club Drive on April 20, 2023. The ADA assessment included interviews with Board staff about accessibility, and measurements and photographs of areas listed in the ADA checklist. These areas include the parking lot, the building entrance and hallways, office doorway, conference room, and bathrooms. PERD compared the measurements and photographs against the ADA checklist.

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 judgement 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

Chapter 30 Healthcare Licensing Boards

Chapter 30 Healthcare Licensing Boards

1. Board of Medicine (article 3)
2. Board of Dental Examiners (article 4)
3. Board of Pharmacy (article 5)
4. Board of Funeral Service Examiners (article 6)
5. Board of Examiners for Registered Professional Nurses (article 7)
6. Board of Examiners for Licensed Practical Nurses (article 7A)
7. Board of Optometry (article 8)
8. Board of Veterinary Medicine (article 10)
9. Board of Osteopathic Medicine (article 14)
10. Board of Chiropractic (article 16)
11. Board of Physical Therapy (article 20)
12. Board of Examiners of Psychologists (article 21)
13. Medical Imaging and Radiation Therapy Technology Board of Examiners (article 23)
14. Board of Occupational Therapy (article 28)
15. Board of Social Work (article 30)
16. Board of Examiners in Counseling (article 31)
17. Board of Examiners in Speech-Language Pathology and Audiology (article 32)
18. Board of Respiratory Care (article 34)
19. Board of Dietitians (article 35)
20. Acupuncture Board (article 36)
21. Massage Therapy Licensure Board (article 37)

Appendix D

Website Criteria Checklist and Points System

Board of Physical Therapy 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	10
		Individual Points Possible	Individual Agency Points
Search Tool	The website should contain a search box (1), preferably on every page (1).	2 points	2 points
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	2 points
Foreign language accessibility	A link to translate all webpages into languages other than English.	1 point	0 points
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 point
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 point
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 point

Board of Physical Therapy 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	2 points
FAQ Section	A page that lists the agency's most frequent asked questions and responses.	1 point	1 point
Feedback Options	A page where users can voluntarily submit feedback about the website or particular section of the website.	1 point	0 points
Online survey/poll	A short survey that pops up and requests users to evaluate the website.	1 point	0 points
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 points
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 points
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	17
		Individual Points Possible	Individual Agency Points
Email	General website contact.	1 point	1 point
Physical Address	General address of stage agency.	1 point	1 point
Telephone Number	Correct telephone number of state agency.	1 point	1 point

**Board of Physical Therapy
Website Criteria Checklist and Points System**

Location of Agency Headquarters	The agency's contact page should include an embedded map that shows the agency's location.	1 point	1 point
Administrative officials	Names (1) and contact information (1) of administrative officials.	2 points	2 points
Administrator(s) biography	A biography explaining the administrator(s) professional qualifications and experience.	1 point	0 points
Privacy policy	A clear explanation of the agency/state's online privacy policy.	1 point	1 point
Complaint form	A specific page that contains a form to file a complaint (1), preferably an online form (1).	2 points	2 points
Budget	Budget data is available (1) at the checkbook level (1), ideally in a searchable database (1).	3 points	1 point
FOIA information	Information on how to submit a FOIA request (1), ideally with an online submission form (1).	2 points	0 points
Calendar of events	Information on events, meetings, etc. (1) ideally imbedded using a calendar program (1).	2 points	1 point
Mission statement	The agency's mission statement should be located on the homepage.	1 point	1 point

**Board of Physical Therapy
Website Criteria Checklist and Points System**

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 points
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/licensees • Audits • Violations/disciplinary actions • Meeting Minutes • Grants 	2 points	2 points
e-Publications	Agency publications should be online (1) and downloadable (1).	2 points	2 points
Agency Organizational Chart	A narrative describing the agency organization (1), preferably in a pictorial representation such as a hierarchy/organizational chart (1).	2 points	1 point
Graphic capabilities	Allows users to access relevant graphics such as maps, diagrams, etc.	1 point	0 points
Audio/video features	Allows users to access and download relevant audio and video content.	1 point	0 points
Performance measures/outcomes	A page linked to the homepage explaining the agencies performance measures and outcomes.	1 point	0 points
Website updates	The website should have a website update status on screen (1) and ideally for every page (1).	2 points	0 points

Appendix E

Agency Response



WEST VIRGINIA BOARD OF PHYSICAL THERAPY
2 Players Club Drive, Suite 102
Charleston, West Virginia 25311
Telephone: (304) 558-0367 Fax: (304) 558-0369

July 18, 2023

VIA EMAIL ONLY

John Sylvia, Director
West Virginia Legislative Performance Evaluation and Research Division
1900 Kanawha Blvd. East
Building 1, Room W-314
Charleston, WV 25305-0610
John.sylvia@wvlegislature.gov

Dear Director Sylvia,

This letter is the West Virginia Board of Physical Therapy's response to the recent draft of the Regulatory Board Review of the West Virginia Board of Physical Therapy. The Board appreciates the opportunity to review and comment on PERD's report and audit findings.

As the state agency charged with protecting the health and safety of the public through licensure, regulation, and oversight of physical therapists (PTs), physical therapy assistants (PTAs) and athletic trainers (ATs), it is appropriate that the Board engage in this review process from time to time. The Board appreciates this process and considers this evaluation as an opportunity to improve our services to the citizens of West Virginia.

First, we would like to thank you for the professional and courteous interaction we experienced throughout the entire audit process with members of the Performance Evaluation and Review Division. The process was very helpful with clear objectives and goals.

Secondly, the members of the West Virginia Board of Physical Therapy have thoroughly reviewed the report and agree that the findings and recommendations are accurate and reasonable. A few of the recommendations are in the process of being implemented. The Board plans to use the document to implement further changes in the future.

Finally, the Board does plan to have a representative at the interim meeting to address any questions or concerns that may arise from the presentation of the report.

If I can be of any further assistance, please contact me at your convenience.

Sincerely,



Nonnie S. Holcomb
Executive Director



WEST VIRGINIA OFFICE OF THE LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314, State Capitol Complex, Charleston, West Virginia 25305

telephone: 1-304-347-4890 | www.legis.state.wv.us/Joint/PERD/perd.cfm | fax: 1- 304-347-4939