

**Regulatory Board Review**

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**Board of Acupuncture**

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**The Licensure of the Practice of  
Acupuncture Is Necessary for the  
Protection of the Public**

**The Board of Acupuncture Complies  
With Most of the General Provisions  
of Chapter 30**

**The Small Number of Licensees Limits  
Accessibility and Potential for  
Improved Effectiveness**



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John Sylvia  
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July 29, 2007

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

The Honorable Jim Morgan  
House of Delegates  
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1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Performance Review Act, we are transmitting a Regulatory Board Review of the *Board of Acupuncture*, which will be presented to the Joint Committee on Government Operations and Joint Committee on Government Organization on Sunday, July 29, 2007. The issues covered herein are "*The Licensure of the Practice of Acupuncture Is Necessary for the Protection of the Public;*" "*The Board of Acupuncture Complies With Most of the General Provisions of Chapter 30;*" and "*The Small Number of Licensees Limits Accessibility and Potential for Improved Effectiveness.*"

We transmitted a draft copy of the report to the West Virginia Board of Acupuncture on June 27, 2007. The West Virginia Board of Acupuncture opted not to have an exit conference. We received the agency response from the Board on July 5, 2007.

Let me know if you have any questions.

Sincerely,

Handwritten signature of John Sylvia in cursive script.  
John Sylvia

JS/tlc

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*Joint Committee on Government and Finance*

*Board of Acupuncture*

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# Executive Summary

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## **Issue 1: The Licensure of the Practice of Acupuncture Is Necessary for the Protection of the Public.**

This *Regulatory Board Evaluation* requires by law a determination of whether licensure of acupuncture is necessary for public protection. Acupuncture is the practice of stimulating points of the body by the insertion of acupuncture needles, the application of moxibustion, and the manual, mechanical, thermal or electrical therapies when performed in accordance with the principles of oriental acupuncture medical theories. According to the 2006 Annual Report, the Board licenses 47 individuals. Of this group, 21 reside in West Virginia and 25 reside in 10 other states. According to the Board, a number of non-West Virginia residents hold West Virginia licenses in order to not have to repeat qualifying examinations. Finally, it should be noted that third party insurance providers require acupuncturists to be licensed. PEIA requires that the practitioner be licensed. Therefore, acupuncturist services would be restricted to the public if licensure were discontinued. It is the opinion of the Legislative Auditor that it is necessary to continue the licensing of this profession to protect life, health, and safety of the public.

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*The Board licenses 47 individuals. Of this group, 21 reside in West Virginia and 25 reside in 10 other states.*

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## **Issue 2: The Board of Acupuncture Complies With Most of the General Provisions of Chapter 30.**

The Board of Acupuncture has satisfactorily complied with most of the general provisions of Chapter 30. These laws and rules, primarily found within the Board's own enabling statute of the West Virginia Code and in the general provisions of Chapter 30, are important for the effective operation of a licensing board. According to information provided by the West Virginia Board of Acupuncture, the Board is not complying with annual meeting requirements. To date, the Legislative Library and the Secretary of State's Office has not received the Board's annual report for any year. The Board is not maintaining a complete register of applicants as required by law. The register of applicants provided by the Board to the Legislative Auditor lists only the applicant's name, license number, and the date of registration. This omits the applicant's age, educational information and other qualifications, whether or not an examination was required, a list of all renewals or registrations, and a list of any suspensions or revocations.

## **Issue 3: The Small Number of Licensees Limits Accessibility and Potential for Improved Effectiveness.**

The Board of Acupuncture licenses only 47 individuals. The Board does not maintain a permanent office location and staff. This has been the case since the Board's creation in 1996. Since that time, Board members have conducted Board business from their own personal offices. While the Board has made attempts to be accessible, aside from having a permanent office location, the Legislative Auditor still has some concern. Without

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immediate internet access, the general public may experience difficulty in receiving information from the Board or in lodging a complaint against a licensee. In addition to the limited budget's affect on the Board's ability to provide adequate public accessibility, a limited budget may limit or prohibit the Board's ability to conduct onsite inspections of acupuncture facilities. **It is the opinion of the Legislative Auditor that the lack of onsite inspections could make the Board liable if an acupuncture patient were to become injured as a result of a contaminated or unsafe facility that is being operated by a licensee. However, despite the Board's willingness to conduct inspections in the future, the Legislative Auditor is concerned that it may not have the necessary resources to contract either a part-time or full-time inspector.** Therefore, it could be beneficial if the Board of Acupuncture was provided staff and possibly investigatory assistance by the Department of Health and Human Resources-Bureau of Public Health or transferred to the Board of Medicine.

In addition to the limited budget's affect on the Board's ability to provide adequate public accessibility, a limited budget may limit or prohibit the Board's ability to conduct onsite inspections of acupuncture facilities.

### Recommendations

1. *The Legislature Auditor recommends that the regulation of acupuncture be continued.*
2. *The Legislative Auditor recommends that the Board of Acupuncture meet twice annually as required by the Code, or seek an amendment to the Code requiring it to meet once per year.*
3. *The Legislative Auditor recommends that the Board submit its annual reports to the Governor and the Legislature as required by statute.*
4. *The Legislative Auditor recommends that the Board maintain a complete register of applicants as required by law.*
5. *The Legislative Auditor recommends that all regulatory boards be required to maintain permanent office space.*
6. *The Legislative Auditor recommends that the Board require applicants to furnish it with all names and surnames that applicants have used or been known by in their lifetime.*
7. *The Legislative Auditor recommends that the Legislature consider requiring the Department of Health and Human Resources-Bureau of Public Health to provide staff and investigatory assistance to the Board of Acupuncture, in a manner similar to that between DHHR-BPH and the Board of Registration for Sanitarians; or*
8. *The Legislative Auditor recommends that the Legislature consider transferring all functions of the Board of Acupuncture to the Board of Medicine. If this recommendation is followed, the Legislative Auditor recommends that the Legislature ensure that professional acupuncture representation be placed on the Board of Medicine.*



# Review Objective, Scope and Methodology

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This Regulatory Board Evaluation of the Board of Acupuncture is required and authorized by the West Virginia Performance Review Act, Chapter 4, Article 10 of the *West Virginia Code*, as amended. The Board is intended to protect the public interest regarding the practice of Acupuncture.

## Objective

The objective of this audit is to determine if the Board is necessary for protecting the public interest and whether or not the Board is operating in compliance with the provisions of Chapter 30 of the *West Virginia Code* and other applicable laws and rules.

## Scope

The scope of the audit is fiscal years 2004 to 2007 (partial).

## Methodology

Information compiled in this report has been acquired through communication with and documentation from the Board. Documents obtained from the Board included annual reports; Board minutes; Board procedures for investigating and resolving complaints; procedures for verification of continuing professional education; Board and licensee rosters. Information gathered from other state agencies included the Secretary of State's Office, Legislative Librarian, State Treasurer, and the Department of Administration. Legislative Services legal counsel provided a legal opinion. Information was obtained from previous reports of the Legislative Auditor. Finally, information regarding licensing practices of other states was obtained via internet resources. Every aspect of this review complied with Generally Accepted Government Auditing Standards (GAGAS).



## **The Licensure of the Practice of Acupuncture Is Necessary for the Protection of the Public.**

This *Regulatory Board Evaluation* requires by law a determination of whether licensure of acupuncture is necessary for public protection. The primary consideration for determining if the profession of acupuncture should be licensed is if the unregulated practice of acupuncture would endanger the life, health and safety of the public. The Legislature established the Board of Acupuncture in 1996. Any person practicing as an acupuncturist is required to submit to the Board evidence that he or she is qualified.

The “practice of acupuncture” is defined by §30-36-2(5) as:

*... the use of oriental medical therapies for the purpose of normalizing energetic physiological functions including pain control, and for the promotion, maintenance and restoration of health.*

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*According to the 2006 Annual Report, the Board licenses 47 individuals.*

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(b) “Practice acupuncture” includes:

- (1) Stimulation of points of the body by the insertion of acupuncture needles;
- (2) The application of moxibustion; and
- (3) Manual, mechanical, thermal or electrical therapies only when performed in accordance with the principles of oriental acupuncture medical theories.

According to the 2006 Annual Report, the Board licenses 47 individuals. Of this group, 21 reside in West Virginia and 25 reside in 10 other states. Additionally, according to the roster, one licensee resides in Montserrat, British West Indies. West Virginia licensees may, by reciprocity, become licensed in a state that has equal or lower requirements. According to the Board, a number of non-West Virginia residents hold West Virginia licenses in order to not have to repeat qualifying examinations. Many states have their own licensing exams and do not honor the national exam (NCCAOM) as West Virginia does. However, these states do honor, by reciprocity, West Virginia’s license.

The United Nations World Health Organization established the Guidelines on Basic Training and Safety in Acupuncture to provide standards for safety in the clinical practice of acupuncture, minimize the risk of infection and accidents, to alert acupuncturists to contradictions, and to advise on the management of complications occurring during treatment. According to the United Nations World Health Organization, possible acupuncture related accidents may include or be a result of:

- Poor needle quality - If a needle is bent, the shaft eroded, or the tip hooked or blunt, the needle is defective and should be discarded.

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- Position of patient - The patient should assume a comfortable posture before needling and be requested to remain still during treatment.
  - Fainting - Such reactions are often due to nervousness, hunger, fatigue, extreme weakness of the patient, an unsuitable position, or too forceful manipulation.
  - Convulsions - All patients about to receive acupuncture should be asked if they have a history of convulsions. If convulsions do occur, the practitioner should remove all needles and render first aid.
  - Pain - Pain during insertion is usually due to clumsy technique, or to blunt, hooked or thick needles. Pain occurring when the needle is inserted deep into the tissues may be due to hitting pain receptor nerve fibers. Pain occurring after withdrawal is usually due to unskilled manipulation or excessive stimulation.
  - Stuck needle - This could be caused by a muscle spasm, rotation of the needle with too wide an amplitude, rotation in only one direction causing muscle fibers to tangle around the shaft, or movement by the patient.
  - Broken needle - Breaks may arise from poor quality manufacture, erosion between the shaft and the handle, a strong muscle spasm or sudden movement of the patient, incorrect withdrawal of a stuck or bent needle, or prolonged use of galvanic current.
  - Local infection - Negligence in using strict aseptic techniques may cause local infection, especially in ear acupuncture therapy.
  - Burning during moxibustion - Moxibustion is the treatment where mugwort is burned on or near the skin to stimulate the acupuncture point which could result in the burning of the patient's skin.
  - Injury to important organs- If administered correctly, acupuncture should not injure any organ. However, if injury does occur, it may be serious.

According to the Board President:

*Acupuncture is a type of health care that requires stringent training, and contains bodily invasive procedures that present an obvious threat to the health and safety of the public if not regulated. The public has no way of evaluating whether someone offering acupuncture is thoroughly trained in safe techniques and disease prevention. Endorsement by the State by way of license is both a real and implied guarantee of competence for the public welfare.*

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Educational requirements for the practice of acupuncture are stated in §30-36-10 of the West Virginia Code. To qualify for a license, an applicant shall:

- (a) Be of good moral character;*
- (b) Be of at least 18 years of age;*
- (c) Demonstrate competence in performing acupuncture by meeting **one** of the following standards for education, training or demonstrated experience:*

*(1) Graduation from a course of training of at least one thousand eight hundred hours, including three hundred clinical hours, that is:*

- (A) Approved by the national accreditation commission for schools and colleges of acupuncture and oriental medicine (ACAOM); or*
- (B) Found by the board to be equivalent to a course approved by the national accreditation commission for schools and colleges of acupuncture and oriental medicine;*

*(2) Achievement of a passing score on an examination that is:*

- (A) Given by the national commission for the certification of acupuncturists (NCCAOM); or*
- (B) Determined by the board to be equivalent to the examination given by the national commission for the certification of acupuncturists;*

*(3) Successful completion of an apprenticeship consisting of at least two thousand seven hundred hours within a five-year period under the direction of an individual properly approved by that jurisdiction to perform acupuncture; or*

*(4) Performance of the practice of acupuncture in accordance with the law of another jurisdiction or jurisdictions for a period of at least three years within the five years immediately prior to application that consisted of at least five hundred patient visits per year; and*

*(d) Achievement of any other qualifications that the board establishes in rules [Emphasis added].*

Typically, an ACAOM program should have an admissions policy that has prerequisites for admission into the professional program. This generally requires the satisfactory completion of at least two academic years (60 semester credits/ 90 quarter credits) of education at the baccalaureate level (at an accredited institution) that is appropriate for

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preparation for graduate level work.

## **The Board of Acupuncture Follows Criteria Set Forth by National Acupuncture Associations**

The National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) indicates to employers, patients, and peers that one has met national standards for the safe and competent practice of acupuncture as defined by the profession. The NCCAOM is a non-profit organization established in 1982. Its mission is to establish, assess, and promote recognized standards of competence and safety in acupuncture and Oriental medicine for the protection and benefit of the public. The NCCAOM follows national guidelines for certification and testing in order to ensure a fair, valid, and reliable examination. NCCAOM certification is the only nationally recognized certification available to qualified practitioners of acupuncture and Oriental medicine. Also, certification is a requirement for licensure in most states.

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*In the United States, the profession of acupuncture is licensed at the state level.*

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The Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) is the national accrediting agency recognized by the U.S. Department of Education to accredit master's-level programs in the acupuncture and Oriental medicine profession. The Commission fosters excellence in acupuncture and Oriental medicine education by establishing policies and standards that govern the accreditation process for acupuncture and Oriental medicine programs. Currently, ACAOM has over 50 schools and colleges with accredited or candidacy status with the Commission.

As provided by the Code and Rules, the Board issues licenses to applicants under five exclusive circumstances. Applicants can obtain licensure by providing evidence that they graduated from an ACAOM approved school; or that they have achieved a passing score on the NCCAOM examination, or equivalent. The Board may also issue a license to applicants after they demonstrate that they have either:

- completed an apprenticeship,
- demonstrated experience in practice, or
- obtained licensure in another state.

Specific details for each method of licensure are outlined by the Code, Legislative Rules, as well as the Board's [Application for Licensure](#).

## **Forty States and the District of Columbia Regulate the Profession of Acupuncture**

In the United States, the profession of acupuncture is licensed at the state level. The most common method for licensure is that of administration through independent acupuncture boards or free standing committees of acupuncture examiners. The second most common method is for states to employ a single board of medicine, which oversees licensure for all forms of health care practitioners. Table 1 shows the regulatory agency of acupuncture licensure by state.

*With the number of risks that exist, the Legislative Auditor finds that the regulation of acupuncture professionals be continued.*

<b>Table 1 Regulation of Acupuncture by State</b>		
<b>Regulatory Agency</b>	<b>Number of States</b>	<b>States</b>
Independent Board	13	<i>Alaska, Arizona, Arkansas, California, Maryland, Missouri, Nevada, New Hampshire, New Mexico, New York, North Carolina, Tennessee, and West Virginia</i>
State Agency	10	<i>Connecticut, Colorado, District of Columbia, Florida, Hawaii, Idaho, Massachusetts, Rhode Island, Wisconsin, Washington</i>
Mult-Profession Board	6	<i>Illinois, Indiana, Maine, Nebraska, Utah, Vermont</i>
Board of Medicine	12	<i>Georgia, Iowa, Louisiana, Minnesota, Montana, New Jersey, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Virginia</i>
States with Regulation*	41	
States Without Regulation	10	<i>Alabama, Delaware, Kansas, Kentucky, Michigan, Mississippi, North Dakota, Oklahoma, South Dakota, Wyoming</i>
<i>Source: West Virginia Board of Acupuncture</i>		
<i>* Includes the District of Columbia</i>		

## **Conclusion**

Acupuncture is the practice of stimulating points of the body by the insertion of acupuncture needles, the application of moxibustion, and the manual, mechanical, thermal or electrical therapies when performed in accordance with the principles of oriental acupuncture medical theories. **Without regulation, these procedures could potentially be harmful to the public.** With the number of risks that exist, the Legislative Auditor finds that the regulation of acupuncture professionals be continued. In addition, it is clear that most other states find licensure to be prudent. Finally, it should be noted that third party insurance providers require acupuncturists to be licensed. PEIA requires that the practitioner be licensed. License information is required as part of registration. Therefore, acupuncturist services would be restricted to the public if licensure were

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discontinued. It is the opinion of the Legislative Auditor that it is necessary to continue the licensing of this profession to protect life, health, and safety of the public.

### **Recommendation**

1. *The Legislature Auditor recommends that the regulation of acupuncture be continued.*



## Issue 2

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### **The Board of Acupuncture Complies With Most of the General Provisions of Chapter 30.**

The Board of Acupuncture has satisfactorily complied with most of the general provisions of Chapter 30. These laws and rules, primarily found within the Board's own enabling statute of the West Virginia Code and in the general provisions of Chapter 30, are important for the effective operation of a licensing board. The Board has complied with the following:

- A member of the Board attended the orientation session provided by the State Auditor's Office (§30-1-2a);
- The Board has adopted an official seal (§30-1-4);
- The Board has a lay person appointed to the Board (§30-1-4a);
- The Board has established continuing education requirements (§30-1-7a);
- Complaints are investigated and resolved with due process (§30-1-5; §30-1-8);
- The Board is financially self-sufficient in carrying out its responsibilities (§30 1-6(c));
- The Board's meetings are open to the public and notifications to the Secretary of State's Office are published in a timely manner (§6-9A-3);
- The Board maintains a roster (§30-1-13) of licensees; and,
- The Board maintains a record of its proceedings (§30-1-12(a)).

*In the past four years the Board held meetings on November 20, 2004, March 17, 2007, and April 28, 2007, which is not in compliance with the Code.*

### **The Board Does Not Comply With Annual Meeting Requirements**

According to information provided by the West Virginia Board of Acupuncture, the Board is not complying with annual meeting requirements. Pursuant to WVC §30-36-6(b) the Board is required to meet twice a year, and the general provisions of chapter 30, article 5, section 1 requires every board to meet at least once per year. According to the Board of Acupuncture's minutes, in the past four years the Board held meetings on November 20, 2004, March 17, 2007, and April 28, 2007, which is not in compliance with the Code. No meetings were held in 2005 or 2006. According to the Board, two Board meetings were scheduled in 2006, but each had to be cancelled due to a lack of a quorum.

<b>Table 2 Board of Acupuncture Meeting Dates</b>	
<b>Year</b>	<b>Date of Meeting</b>
2004	November 20, 2004
2005	No Meetings Held
2006	No Meetings Held
2007	March 17, 2007 April 28, 2007
<i>Source: West Virginia Board of Acupuncture</i>	

As shown by Table 2, the Board did not meet as required during the 2004-2006 time period. The Legislative Auditor recommends that the Board either comply with the Code's meeting requirement (twice per year for §30-36-6(b)) or seek an amendment to the Code requiring it to meet once per year.

To date, the Legislative Library and the Secretary of State's Office have not received the Board's annual report for any year.

### **The Board Has Not Submitted an Annual Report to the Legislature**

According to §30-1-12(b) of the West Virginia Code, the Board is required to provide an annual report to the Governor and the Legislature. To date, the Legislative Library and the Secretary of State's Office have not received the Board's annual report for any year. As of February 28, 2007 only the 2006 annual report was available on the Board's website. However, since making contact with the Board regarding the present audit, the Board has added the annual reports for 2004 and 2005 to the website. Lack of filing an annual report was also an issue in the previous legislative report. The Legislative Auditor recommends that the Board submit its annual reports to the Governor and the Legislature as required by statute.

### **The Board Does Not Maintain a Complete Register of Applicants as Required by Law**

The Board is not maintaining a complete register of applicants as required by law. WVC §30-1-12(a) states:

*The secretary of every board shall keep a record of its proceedings and a register of all applicants for license or registration, showing for each the date of his or her application, his or her name, age, educational and other qualifications, place of residence, whether an examination was required, whether the applicant was rejected or a certificate of license or registration granted, the date of this action, the license or registration number, all renewals of the license or registration, if required, and any suspension or revocation thereof...*

The register of applicants provided by the Board to the Legislative Auditor lists only the applicant's name, license number, and the date of registration. This is not in compliance with the Code due to the lack of:

- Applicant's age;
- Educational information and other qualifications;
- Whether or not an examination was required;
- List of all renewals or registrations; and
- A list of any suspensions or revocations.

### **The Board Is Financially Self-Sufficient**

Financial self-sufficiency of regulatory boards is required by West Virginia Code §30-1-6(c). For FY 2007, as of March 5, 2007, the Board had a cash balance of \$31,941, with average annual expenditures of \$4,776 over the last four years. The Board receives revenues in the form of initial application fees (\$75), license fees (\$425), renewal fees (\$425), and late fees (\$50).

<b>Table 3 Revenues and Expenses 2004-2007</b>					
<b>Fiscal Year</b>	<b>Actual Revenues</b>	<b>Actual Expenditure</b>	<b>Estimated Expenditure Schedules</b>	<b>In-crease in Cash Balance</b>	<b>EOY Cash Balances</b>
2004	\$5,700	\$5,188	\$18,717	\$512	\$13,281
2005	\$9,250	\$5,993	\$17,858	\$3,257	\$16,538
2006	\$9,175	\$3,843	\$17,858	\$5,332	\$21,870
2007*	\$14,150	\$4,079	\$17,858	\$10,071	\$31,941
<i>Source: Department of Administration - Finance Division *as of March 5, 2007.</i>					

West Virginia Code §30-1-10(a) states:

*When the special fund of any board accumulates to an amount which exceeds twice the annual budget of the board or ten thousand dollars, whichever is greater, the excess amount shall be transferred by the state treasurer to the state general revenue fund.*

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The Legislative Auditor has determined that the legislative intent of this statute is to prevent licensing boards from collecting revenue that is well in excess of what is necessary for licensure. According to the West Virginia State Treasurer's Office, it did not transfer funds from the Board to the general fund during fiscal years 2004-2006 because the Board's fund did not accumulate to an amount that exceeded twice the "annual budget." The term "annual budget," as written in code, is undefined. Therefore, the State Treasurer's Office has defined "annual budget" as the estimated total expenditure a board indicates on its expenditure schedule that is submitted to the State Budget Office. Table 3 shows that the Board of Acupuncture uses estimated expenditures on its expenditure schedules that are as much as five times higher than actual expenditures. As a result, the State Treasurer's Office will rarely transfer funds from this Board to the general fund.

This concern was expressed for all Chapter 30 boards in an audit titled Occupational Licensure Boards released by the Legislative Auditor in January 2006. In this audit, the Legislative Auditor recommended that:

*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.*

*This Board needs to increase expenditures on staff and office space to improve accessibility for licensees and the public.*

The intent of the recommendation was to cause a transfer from the board's special revenue account to the state's general revenue fund to occur when the end-of-year balance for any Chapter 30 board exceeded two years' revenue. **Fulfillment of this recommendation would clarify legislative intent to ensure that transfers are made based on revenue rather than estimated expenditure schedules, which are susceptible to overestimation.**

The presence of the Board's surplus may not be the result of imposing licensing fees that are more than necessary for regulating this profession. This Board needs to increase expenditures on staff and office space to improve accessibility for licensees and the public. However, it appears that the surplus is inadequate to provide these additional services unless the Board consider sharing office space with another organization, or that the Legislature consider placing this Board under another state agency or within another board, such as the Board of Medicine.

### **The Board Has Procedures for the Due Process of Complaints**

Due process is provided by the Board pursuant to WVC §30-36-19 for licensees against whom a complaint is filed. WVC § 30-36-19(a) states:

*(a) Upon filing with the board a written complaint charging a person with being guilty of any of the acts described in section sixteen of this article, the administrative secretary or other authorized employee of the board shall provide a copy of the complaint or list of allegations to the person about*

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*whom the complaint was filed. That person will have twenty days thereafter to file a written response to the complaint. The board shall thereafter, if the allegations warrant, make an investigation. If the board finds reasonable grounds for the complaint, a time and place for a hearing shall be set, notice of which shall be served on the licensee or applicant at least fifteen calendar days in advance of the hearing date. The notice shall be by personal service or by certified or registered mail sent to the last known address of the person.*

Complaints can be made by filling out a complaint questionnaire provided on the Board's website, and sending it to the Complaint Committee of the West Virginia Board of Acupuncture at the address provided. In the past four years, only one complaint has been filed with the Board. This regarded an unlicensed practitioner in West Virginia who was advertising licensed oriental medical services on his website. The Board verified that the individual was not licensed. A letter was sent to the individual's address by registered mail on January 5, 2007, which was undeliverable. Further investigation by the Board along with local law enforcement yielded no current address in the region. As no further evidence of the individual practicing in the state was revealed, the matter was closed and no further action was taken.

*In the past four years, only one complaint has been filed with the Board.*

2004	0
2005	0
2006	0
2007	1

*Source: West Virginia Board of Acupuncture*

### **The Board Maintains a Website**

The Board of Acupuncture maintains a website that enhances its accessibility to the public. The site includes a post office box number for the Board, an email address, a list of fees, a downloadable complaint form, rules and regulations, continuing education requirements, a downloadable license application, a list of board members and licensees, Board meeting minutes, and annual reports. The Legislative Auditor commends the Board for maintaining an informative website.

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## The Legislative Auditor Is Concerned With Board Accessibility

Despite the Board's informative website, accessibility to the Board remains a concern during this review as it was in the Legislative Auditor's 2004 report. Without a permanent office and staff, accessibility is limited. The Board has a listing in the Charleston area directory. However, a street address is not provided, only the city of Huntington is listed. West Virginia Code §30-1-12(c) requires that an address and telephone number be listed in the Charleston area telephone book. On February 27, 2007, the Legislative Auditor attempted to make initial contact with the Board at the number published in the Kanawha County telephone directory. The call was forwarded to an inoperable voice mail system. A message could not be recorded. The Legislative Auditor eventually contacted the Board by telephone at the business offices of the Board officers. The Board's listed telephone number remained inoperable for some time even after the Legislative Auditor informed the Board that it was not working. On May 3, 2007, the Legislative Auditor was informed by the Board that the voice mail issue was being addressed by the telephone company. Soon thereafter, the Legislative Auditor verified that the service had been restored.

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*Without a permanent office and staff, accessibility is limited.*

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The Legislative Auditor has expressed concern for a board's lack of office space in previous audit reports. In the Preliminary Performance Review of the Board of Dietitians (October 1999), the Legislative Auditor found that the Board lacked permanent office space. That report made a general recommendation that the Board of Dietitians identify ways to increase public access. In the Regulatory Board Evaluation of the Board of Examiners in Counseling (January 2006), the Legislative Auditor recommended that the Board "seek office space in a building where the public has access." At the time of the report, the Board operated from the home of the Executive Director. Therefore, the Legislative Auditor recommends that **all regulatory boards** be required to maintain permanent office space.

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*The Legislative Auditor recommends that all regulatory boards be required to maintain permanent office space.*

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## The Legislative Auditor Recommends That All Regulatory Boards Require Applicants to Provide All Names Used in the Applicant's Lifetime

Currently, the Massage Therapy Licensure Board, the Board of Examiners for Registered Professional Nurses, the Board of Optometry, the Board of Law Examiners, the Board of Medicine, the Board of Osteopathy, the Board of Physical Therapy, the Real Estate Commission, the Board of Examiners for Licensed Counselors, and the Secretary of State (for Private Investigators) are the only Chapter 30 profession regulators that require applicants to provide all names that the applicant has used or been known by in the applicant's lifetime. The Board of Veterinary Medicine requires applicants to provide birth and maiden names. However, this would not necessarily include all names that could have been used by the applicant between the time of birth and the time that the application for license, certificate, or registration is received. Examples where names could be excluded include female applicants that have been married more than once and applicants of either gender that have undergone legal name change for any reason.

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The Legislative Auditor finds that the collection of this information is a simple method of collecting more information on individual applicants. This information would be beneficial in verifying the supporting documentation that is required to be submitted along with application. Supporting documentation could include transcripts and diplomas, which could reflect alternate names. Additionally, the collection of all names would be beneficial in verification of an applicant's criminal history as reported on an application. **For these reasons, the Legislative Auditor recommends that the Board require applicants to furnish it with all names and surnames that the applicants have used or been known by in their lifetime.**

## **Conclusion**

The Board of Acupuncture has satisfactorily complied with most of the general provisions of Chapter 30 of the West Virginia Code. However, the Legislative Library or Secretary of State's Office has no record of receiving any annual reports from the Board of Acupuncture. The Board does not maintain a complete register of applicants that is required by the Code. The Board is financially self-sufficient, although the issue of the Board's excess end-of-year balance raises concern. There are procedures for the due process of complaints. The Board maintains an informative website, but it needs to improve accessibility in order to better serve the public. This can be done by establishing permanent office space and staff.

## **Recommendations**

2. *The Legislative Auditor recommends that the Board of Acupuncture meet twice annually as required by the Code, or seek an amendment to the Code requiring it to meet once per year.*
3. *The Legislative Auditor recommends that the Board submit its annual reports to the Governor and the Legislature as required by statute.*
4. *The Legislative Auditor recommends that the Board maintain a complete register of applicants as required by law.*
5. *The Legislative Auditor recommends that all regulatory boards be required to maintain permanent office space.*
6. *The Legislative Auditor recommends that the Board require applicants to furnish it with all names and surnames that applicants have used or been known by in their lifetime.*





# Issue 3

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## **The Small Number of Licensees Limits Accessibility and Potential for Improved Effectiveness.**

Chapter 30 Regulatory Boards, which are required to be self-sustaining, rely on non-appropriated special revenue in the form of license fees. These moneys are essential for the activity of any board. Revenue of all boards is directly related to the number of licensees of a board. The Board of Acupuncture licenses only 47 individuals. The Board does not maintain a permanent office location and staff. This has been the case since the Board's creation in 1996. Since that time, Board members have conducted Board business from their own personal offices. In order to contact the Board, the public has three options:

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*Board members have conducted Board business from their own personal offices.*

1. Contact the Board by U.S. Mail.
2. Contact the Board by telephone, which allows the public to leave a voice mail message.
3. Contact board officers by electronic mail as provided on the Board's website.

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*It is unclear whether the general public would have had the persistence to contact the Board in light of the previous voice mail dysfunction and lack of headquarters.*

While the Board has made attempts to be accessible, aside from having a permanent office location, the Legislative Auditor still has some concern. Without immediate internet access, the general public may experience difficulty in receiving information from the Board or in lodging a complaint against a licensee. It should be noted that after making initial contact with the Board at the beginning of the review, the Board has been accessible and responsive to the Legislative Auditor through the Board officers' places of business and by electronic mail. However, it is unclear whether the general public would have had the persistence to contact the Board in light of the previous voice mail dysfunction and lack of headquarters. West Virginia Code requires the Board to be accessible to the public.

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*A limited budget may limit or prohibit the Board's ability to conduct onsite inspections of acupuncture facilities.*

In addition to the limited budget's affect on the Board's ability to provide adequate public accessibility, a limited budget may limit or prohibit the Board's ability to conduct onsite inspections of acupuncture facilities. Currently, the Code does not *require* the Board to conduct regular onsite inspections of acupuncture facilities. However, as illustrated by Issue 1 of this report, the practice of acupuncture could result in some danger to the public if left unmitigated by Board regulation. During the course of this review, the Board inquired with the Legislative Auditor as to whether it was permitted to conduct non-complaint inspections without amendment to the Code. Legislative Services legal counsel stated that this was permitted. **It is the opinion of the Legislative Auditor that the lack of onsite inspections could make the Board liable if an acupuncture patient were to become injured as a result of a contaminated or unsafe facility that is being operated by a licensee. However, despite the Board's willingness to conduct inspections in the future, the Legislative Auditor is concerned that it may not have the necessary resources to contract either a part-time or full-time inspector.**

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Due to the condition of a limited budget, which has been concluded as a possible cause for limited public accessibility and as a limiter of future inspection capacity, the Legislative Auditor finds that the Board's functions may be better carried out through a state agency or through another licensing board. A current arrangement with the Department of Health and Human Resources - Bureau of Public Health (DHHR-BPH) allows the Board of Registration for Sanitarians to exist as an independent board. However, office staff is provided by DHHR-BPH. The Legislative Auditor finds that a similar arrangement for the Board of Acupuncture may be prudent. In addition to staff, it may be possible to provide investigatory assistance to the Board through this mechanism. Another option for consideration would be for the Legislature to transfer the responsibility of licensing of acupuncture to another licensing board, such as the Board of Medicine. As shown in Table 1, twelve states in the U.S. regulate the Acupuncture through the Board of Medicine. If this occurred, it is the Legislative Auditor's opinion that at least one licensed acupuncturist serve on the Board of Medicine. In doing so, this would improve the accessibility of the Board and also promote the protection of the public.

*The Legislative Auditor finds that the Board's functions may be better carried out through a state agency or through another licensing board.*

## **Conclusion**

The Board of Acupuncture lacks a permanent location and staff, which creates accessibility problems for the public. Further, a limited budget may limit the Board's ability to conduct onsite inspections. This is not a new concern for the Legislative Auditor. In 2004, the Legislative Auditor made similar recommendations as a result of accessibility concerns. Therefore, it could be beneficial if the Board of Acupuncture was provided staff and possibly investigatory assistance by the Department of Health and Human Resources-Bureau of Public Health or transferred to the Board of Medicine.

## **Recommendations**

7. *The Legislative Auditor recommends that the Legislature consider requiring the Department of Health and Human Resources-Bureau of Public Health to provide staff and investigatory assistance to the Board of Acupuncture, in a manner similar to that between DHHR-BPH and the Board of Registration for Sanitarians; or*
8. *The Legislative Auditor recommends that the Legislature consider transferring all functions of the Board of Acupuncture to the Board of Medicine. If this recommendation is followed, the Legislative Auditor recommends that the Legislature ensure that professional acupuncture representation be placed on the Board of Medicine.*

# Appendix A: Transmittal Letter

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## WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0610  
(304) 347-4890  
(304) 347-4939 FAX



John Sylvia  
Director

June 27, 2007

C.P. Negri, OMD, President  
West Virginia Board of Acupuncture  
P.O. Box 252  
Huntington, WV 25707-0252

Dear President Negri:

This is to transmit a draft copy of the Regulatory Board Evaluation of the West Virginia Board of Acupuncture. This report is scheduled to be presented during the interim meeting of the Joint Committee on Government Operations and Joint Committee on Government Organization that is scheduled to be held sometime between July 27 and July 29, 2007. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us between June 28 and July 2, 2007. We need your written response by noon on July 6, 2007 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Tuesday, July 24, 2007 to make arrangements.

We request that you not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink that reads "Denny Rhodes".

Denny Rhodes  
Research Manager

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*Joint Committee on Government and Finance*

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# Appendix B: Agency Response

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Joe Manchin III,  
Governor

Michelle DeStefano, LAc  
Shepherdstown  
Marian Hollinger  
Morgantown  
Brian Stephen Love, MD  
Morgantown



~State of West Virginia~

Board of Acupuncture

P O Box 252  
Huntington, WV 25707-0252  
(304) 529-4558 Voice Mail

C. P. Negri, OMD, NMD  
Fairmont  
Darrell E. Samples, ND, OMD  
Huntington

5 July 2007

Mr. Denny Rhodes  
West Virginia Legislature  
Performance Evaluation and Auditing Division  
Bldg. 1, Room W-314  
1900 Kanawha Blvd. E,  
Charleston WV 25305-0610

RECEIVED  
JUL 05 2007

PERFORMANCE EVALUATION AND  
RESEARCH DIVISION

Dear Mr. Rhodes:

I have received your performance evaluation on the Board of Acupuncture and offer the following responses (your comments in bold):

**The Board does not keep a complete register of applicants as required by law.**

The Board of Acupuncture submitted to the Performance Evaluation and Auditing Division a roster of applicants and licensees in a form that was believed to satisfy the requirements of the auditors. Records containing the applicants' ages, education history, and examination information are kept with the Board Secretary in the applicants' personal files. Private information, of course, is not posted for the public on the Board's web site. The Board admits error in not keeping all data in one register for easy perusal by agencies such as yours. We are in the process of rectifying that by combining all applicant data into one document for ongoing updating. We regret the error. In particular, the question of whether the applicant has used any other names or aliases in the past will be given emphasis and recorded.

**The Legislative Auditor is concerned with Board Accessibility.**

The difficulties of having a permanent office and staff for the Board of Acupuncture have been debated many times in the past and various solutions have not proved satisfactory. The Board is now negotiating with the Board of Massage toward the goal of sharing office facilities and staff at their new location in Charleston. We would be able to share expenses on a pro-rated basis, and be easily accessible to the public. The new executive director of the Massage Therapy Board, Linda Lyter, has stated that she is willing to work toward this goal. The Board of Acupuncture will be able to maintain a permanent office under this arrangement and fulfill the Legislative Auditor's suggestion.

It should be noted that the Board has been able to achieve exemplary handling of public inquiries to date, within the limitations of post office box, members' addresses, voice mail and email. The

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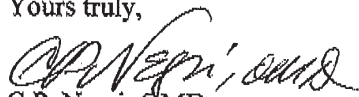
public should be more than adequately served with the addition of the Board's new office and staff.

**The Legislative Auditor is concerned that [the Board of Acupuncture] may not have the necessary resources to contract either a part-time or full-time inspector [for onsite inspections].**

The Board of Acupuncture feels that it can easily inspect 10% of the offices in West Virginia on an annual basis with its current funding level. This would be probably 3 offices. If each professional board member were to do one per year, that would only add three per diems to each year's budget, a total of \$450.00 plus mileage and travel expenses. The Board feels that it is capable of complying without undue strain on the Board's budget.

The Board of Acupuncture is anxious to comply with the Legislative Auditor's intent to improve public safety and service with regards to the Acupuncture profession, and thanks you for your re-affirmation of the need to regulate the profession for the good of the public.

Yours truly,

  
C.P. Negri, OMD  
President, WVBOA