WEST VIRGINIA LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION AND RESEARCH DIVISION

Sunrise Report

West Virginia Dental Hygienists Association

Dental hygienists are currently regulated by the West Virginia Board of Dental Examiners and the creation of a separate Board of Dental Hygienists would provide no additional protection to the public

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Executive Summary

Dental hygienists are currently regulated by the West Virginia Board of Dental Examiners and the creation of a separate Board of Dental Hygienists would provide no additional protection to the public.

A Sunrise application has been submitted by the West Virginia Dental Hygienists Association that proposes a separate licensing board be established for dental hygienists. There are currently 1,169 dental hygienists licensed by the West Virginia Board of Dental Examiners. The majority of dental hygienists are employed in private dental offices in the state. The Applicant argues that regulation of dental hygienists by dentists restricts trade and creates a conflict of interest that can be harmful to the public. However, **it is the opinion of the Legislative Auditor that a separate Board of Dental Hygienists would not provide additional protection to the public.**

A separate Board of Dental Hygienists would not provide additional protection to the public. The main concerns the Applicant raises are public policy issues that can be addressed by statutory changes, not by creating a separate board for dental hygienists.

According to the Applicant, the Board of Dental Examiners makes decisions regarding the licensure of dental hygienists that are in the best interest of the dental profession and not the public. However, in making this claim as an argument for the need to create a separate board for dental hygienists, the Applicant's concerns are primarily focused on public policy issues that have been approved by the Legislature. For example, the three primary concerns expressed by the Applicant are as follows:

1. "*Restrictive supervision laws for dental hygienists are the number one barrier to access to oral health care.*"

2. *"A dangerous precedent would be set if non-accredited [dental hygiene] programs were ever accepted.*"

3. "*Incompetent and erroneous service stems from preceptorship....Preceptorship means to have a practicing dentist train a worker on the job to perform dental hygiene duties, instead of going through a two-to-four-year formal accredited education program....*"

However, the first two concerns raised by the Applicant are public policy issues. The Legislature has placed in law (Dental Practice Act) the restrictive direct supervision requirement that specifies a licensed dentist be physically present in the dental office when dental auxiliary personnel (including dental hygienists) perform their profession. This is more restrictive than general supervision that does not require dentists to be physically present when dental

hygienists perform their duties. Changing supervision requirements from direct to general would not require the creation of a separate board but would require legislative action to change code. Moreover, evidence suggests that changing to general supervision does not necessarily result in an improvement in access to oral health care. In addition, the Legislature has permitted the Board of Dental Examiners by law to license dental hygienists from non-accredited programs if the program is substantially equivalent to an accredited program and the licensee can pass the examinations required of all licensees. Preceptorship, the Applicant's third concern, is prohibited by law, and the Applicant has provided no evidence that it is occurring. **Therefore, the Legislative Auditor does not recommend creating a separate board to license dental hygienists.**

Recommendation

1. *The Legislature should consider not creating a separate board to license dental hygienists.*

Finding 1: Dental hygienists are currently regulated by the West Virginia Board of Dental Examiners and the creation of a separate Board of Dental Hygienists would provide no additional protection to the public.

A Sunrise application has been submitted by the West Virginia Dental Hygienists Association that proposes a separate licensing board be established for dental hygienists. Dental hygienists are professionals who have specific training in oral health. Typically, they perform a complete prophylaxis, apply medicinal agents, take dental x-rays, and instruct patients on proper oral hygiene. There are currently 1,169 dental hygienists licensed by the West Virginia Board of Dental Examiners. The majority of dental hygienists are employed in private dental offices in the state.

The Applicant argues that regulation of dental hygienists by dentists restricts trade and creates a conflict of interest that can be harmful to the public. According to the Applicant, the Board of Dental Examiners makes decisions regarding the licensure of dental hygienists that are in the best interest of the dental profession and not the public. However, in making this claim as an argument for the need to create a separate board for dental hygienists, the Applicant's concerns are primarily focused on public policy issues that have been approved by the Legislature. For example, the three primary concerns expressed by the Applicant are as follows:

The main concerns the Applicant raises are public policy issues that can be addressed by statutory changes, not by creating a separate board for dental hygienists.

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However, the first two concerns raised by the Applicant are public policy issues. The Legislature has placed in law (Dental Practice Act) the restrictive direct supervision requirement that specifies a licensed dentist be physically present in the dental office when dental auxiliary personnel (including dental hygienists) perform their profession. This is more restrictive than general

supervision that does not require dentists to be physically present when dental hygienists perform their duties. Changing supervision requirements from direct to general would not require the creation of a separate board but would require legislative action to change code. Moreover, evidence suggests that changing to general supervision does not necessarily result in an improvement in access to oral health care. In addition, the Legislature has permitted the Board of Dental Examiners by law to license dental hygienists from non-accredited programs if the program is substantially equivalent to an accredited program and the licensee can pass the examinations required of all licensees. Preceptorship, the Applicant's third concern, is prohibited by law, and the Applicant has provided no evidence that it is occurring. **Therefore, the Legislative Auditor does not recommend creating a separate board to license dental hygienists.**

The Applicant's Argument for Licensure

1. Dental Hygienists Trained through Preceptorship

Dental hygienists are currently regulated by the Board of Dental Examiners. The Applicant is seeking independence from the Board to: "*Eliminate the conflict of interest that exists when employer dentists regulate their own employees (restriction of trade) and often make decisions based on the economics of the dental practice rather than a patient's total welfare and safety and limit access to quality oral health care by a trained (formally educated) allied health care professional, the dental hygienist.*" **Essentially, the Applicant is alleging that the Board of Dental Examiners has often made decisions that are not in the best interest of public welfare and safety.** However, the Applicant does not clearly document what decisions have been made by the Board of Dental Examiners that are indifferent to public safety. For example, when the Applicant is asked to document the harm to the public if erroneous or incompetent dental hygiene services were provided, the Applicant responded as follows:

> *Incompetent and erroneous service stems from preceptorship and the acceptance of non-accredited dental hygiene programs. Preceptorship means to have a practicing dentist train a worker on the job to perform dental hygiene duties, instead of going through a two-to-four-year formal, accredited education program and national and regional examinations to obtain a license. On-the-job training is not adequate to prepare a dental hygienist to provide safe patient care. Providing a complete prophylaxis (teeth cleaning) that*

prevents oral disease is a complicated skill using a razor sharp instrument. An unskilled and inexperienced oral health care worker runs a greater risk of jeopardizing a patients health.

In the above response, the Applicant mentions "preceptorship" and "the acceptance of non-accredited dental hygiene programs." **Preceptorship, as defined by the Applicant, is prohibited under the West Virginia Dental Practice Act (§30-4), and the Board of Dental Examiners is responsible for ensuring that preceptorship does not occur.** It is not clear whether the Applicant considers preceptorship a potential risk or is alleging that preceptorship is actually occurring within the West Virginia dental profession. In either case, the Applicant did not provide documentation that preceptorship is occurring.

Preceptorship, as defined by the Applicant, is prohibited under the West Virginia Dental Practice Act (§30-4), and the Board of Dental Examiners is responsible for ensuring that preceptorship does not occur.

2. Acceptance of Non-accredited Dental Hygiene Programs by the Board

With respect to the statement "the acceptance of non-accredited dental hygiene programs" mentioned in the above response, it appears that the Applicant is referring to a section of the West Virginia Dental Practice Act (§30-4-3(1)) that states the following:

"Approved dental hygiene program" means a program that is approved by the board and is accredited or its educational standards are deemed by the board to be substantially equivalent to those required by the Commission on Dental Accreditation of the American Dental Association.

This section of the West Virginia Code allows the Board of Dental Examiners to licence individuals who have graduated from a non-accredited dental hygiene program that the Board of Dental Examiners has determined that the educational standard of the non-accredited program is substantially equivalent to an accredited program. However, it should be noted that the Dental Practice Act requires that individuals applying for a dental hygiene license, whether they have graduated from an accredited program or a non-accredited program, have to pass the American Dental Association's National Board Dental Hygiene Examination, a Regional or State Clinical Examination, and the State Law Examination (offered by the Board to all applicants for a dental hygiene license). The requirement of applicants to pass the National Dental Hygiene Exam provides some assurance of competency despite the applicant graduating from a non-accredited program.

The applicant indicates in its response to another question of the Sunrise application that acceptance of non-accredited dental hygiene programs is only a potential risk. The following response states:

> *Non-accredited programs do not exist in West Virginia. A dangerous precedent would be set if non-accredited programs were ever accepted. The protection of the public's safety and welfare would be grossly diminished through non-accredited programs. The practice of dental hygiene requires highly skilled and trained individuals using extremely sharp instruments intraorally. The [proposed] Board of Dental Hygiene would strive to make sure that this standard remains intact in West Virginia.*

The Applicant expresses concern over the possibility of accepting non-accredited dental hygiene programs. However, this is allowed by law.

3. Restriction of Trade Limits Access to Dental Hygiene Services

An additional argument made by the Applicant is that direct supervision of dental hygienists is harmful to the public because it limits access to dental hygiene services. Direct supervision is defined by *Code 30-4-3(15)* as "*supervision of dental auxiliary personnel provided by a licensed dentist who is physically present in the dental office.*" This statutory requirement establishes a restriction of trade, according to the Applicant. Instead of direct supervision, the Applicant is seeking general supervision. The Applicant defines general supervision to mean that *"a dentist has authorized a dental hygienist to perform procedures but doesn't need to be present in the treatment facility while the care is being delivered."* The following quote from the Applicant's application describes the effect of direct supervision of dental hygienists.

> *All 14 of the states that participate in regulation permit general supervision as opposed to direct supervision. In fact, general supervision exists in 37 states.*[1] *This means a dentist has authorized a dental hygienist to perform procedures but doesn't need to be present in the treatment facility while the care is being delivered. Restrictive supervision laws for dental hygienists are the number one barrier to access to oral health care. Many segments of the*

[1] ***Six states have direct supervision explicitly set in code (Alabama, Georgia, Hawaii, Louisiana, Oklahoma, West Virginia); Eight additional states (Idaho, Ohio, Kansas, Tennessee, Kentucky, Wisconsin, New Jersey, and North Carolina) require direct supervision of dental hygienists until the hygienists satisfy a stringent set of requirements.***

US population such as the poor, elderly, disabled, and those who live in rural areas do not have access to regular oral health care. The US Department of Health and Human Services has reported "Dental Hygiene services are largely confined to private dental offices because of supervision requirements which differ from state to state and hinder dental hygienists' ability to disperse throughout the community and thereby improve access to oral health care."

This argument is also shared by the American Dental Hygienists Association (ADHA). According to the ADHA,

Access to preventive and therapeutic dental hygiene care can be increased by maximizing the services that dental hygienists are educated to provide, expanding dental hygiene practice settings, and removing restrictive supervision requirements. Disparities in access to oral health care services can be found today among various population groups according to socioeconomic levels, race and ethnicity, age and sex. Research has repeatedly demonstrated that oral disease rates and oral health needs are highest in low-income and special-needs populations, such as the elderly or disabled. As regulatory and legislative changes occur that allow dental hygienists to provide services in more settings with less restrictive supervision, it becomes imperative that high educational standards remain in place.

Direct supervision of dental hygienists is a policy issue, and to change from direct supervision to general supervision would require a change to code. This can be done without the creation of a separate board of dental hygienists.

The Legislative Auditor contends that **direct supervision of dental hygienists is a policy issue, and to change from direct supervision to general supervision would require a change to Code. This can be done without the creation of a separate board of dental hygienists**. Furthermore, as was previously stated, 37 states currently permit general supervision; yet access to care is still cited as a major concern by the health agencies indicated above. This suggests that changing from direct supervision to general supervision does not guarantee improvement in accessibility of dental care. This is suggested in a recent study by George Washington University. According to the study,

The alternative models we studied have had little impact on the preventive oral health care delivery systems in our study states. In states with dental hygienist alternative models (CT, NM, and SC), the law and models have not

yet significantly changed the way that dental hygienists work. In all three states, dental hygienists provide the same services they did before the law or model was enacted.

The study concludes that several additional factors must be present in addition to any laws being changed in order to change access to care:

- Support from the dental profession;
- Reimbursement mechanisms for providers in the alternative model;
- State Medicaid agency support;
- A referral mechanism for treatment services;
- The type or design of alternative models and the providers involved.
- An incremental approach to changing oral health care delivery system;
- Outreach and training on the alternative model; and
- Professional recognition and acceptance of the need for the alternative model.

Changing from direct supervision to general supervision does not guarantee improvement in accessibility of dental care. It has been recognized by both the Legislature and the Legislative Auditor's Office that combining boards with similar functions has the ability to increase efficiency.

This same idea is reiterated in a letter received from the Dean of the WVU School of Dentistry. According to the Dean,

It is true that a lack of access to oral health care is one of the most pressing issues we face today. However, the formation of a separate regulatory system for one component of the oral health care team will do nothing to improve that access to care.

Separating Boards with Similar Functions Decreases Efficiency

In addition to the reasons listed above, it has been recognized by both the Legislature and the Legislative Auditor's Office that combining boards with similar functions has the ability to increase efficiency. According to WV *Code §22B-1-1,* the Legislature combined the administrative, support, and overhead of the three environmental appeal boards.

The boards shall share physical facilities, hearing rooms, technical and support staff and general overhead. In addition, it is the policy of this state to retain and maintain adequate funding and sufficient support personnel to ensure knowledgeable and informed decisions.

It is clear from the above *Code* that the Legislature recognizes the ability of combining boards to make more efficient use of financial resources. Furthermore, it has been the recommendation of the Legislative Auditor to combine boards, resulting in reduced overhead and other cost savings. For example, a 1997 report issued by the Legislative Auditor's Office on the Board of Land Surveyors states:

The Legislature recognizes the ability of combining boards to make more efficient use of financial resources.

> *Consolidation provides boards with the budgetary needs for a centralized staff and required location which will provide greater accessibility to the public. In addition, the consolidation can provide the funding needed to hire an investigator who can investigate complaints for the four boards. This will allow the current staff to increase their focus on the day to day operations of the office and provide the board with an individual trained to conduct investigations therefore improving protection of the public.*
>
> *The combining of administrative functions of the four boards provides an opportunity for the economy of scale to occur which is difficult to achieve with autonomous boards. Having four similar boards and staff located in different cities in West Virginia duplicates overhead cost for similar processes.* ***The cost sharing of office space, telephone system, centralized storage of records and purchasing of new computer technology will provide a more efficient operation. A combined administrative effort will increased utilization of staff time and better use of office equipment which will further reduce operational cost****. Administrative processes should become more uniform in nature and testing for all professions can be held in a centralized location simultaneously. [Emphasis added]*

To illustrate the potential inefficiencies which can result from the separation of boards with similar functions, consider the potential budget submitted by the Applicant. The Applicant has proposed a budget of $29,100. Given the number of individuals to be licensed as well as the duties which would need to be performed, this budget seems inadequate. According to the Board of Dental Examiners, the total revenue which would be available to establish a separate board based on the current fee structure is nearly $54,000. It is likely that for a separate board to regulate dental hygienists to be self sufficient, the fees for dental hygienists would need to be increased. Also, if the licensure fees for dental hygienists are removed from the budget of the Board

of Dental Examiners, it is likely that dentist fees would need to be increased as well. According to the Director of the Board of Dental Examiners, *"A loss of 20% or more of the revenues would have a tremendous financial impact to the West Virginia Board of Dental Examiners to the extent that, in the undersigned's opinion, would result in the immediate need to increase fees to maintain the Board's current budget."*

Conclusion

According to the Sunrise application submitted by the West Virginia Dental Hygienists Association, having dental hygienists regulated by a board composed predominantly by dentists creates a conflict of interest which necessitates the creation of a separate board to license dental hygienists. According to the Applicant, the Board of Dental Examiners makes decisions regarding the licensure of dental hygienists that are in the best interest of the dental profession and not the public. The Applicant expressed three primary concerns:

The Legislative Auditor does not recommend creating a separate board to license dental hygienists.

- preceptorship;
- licensing hygienists who have graduated from non-accredited programs; and,
- restricted trade and limited access to oral health care through direct supervision requirements.

However, the applicant has provided no evidence that preceptorship is occurring or has occurred, and licensing dental hygienists who graduate from non-accredited programs is allowed by law. Changing supervision requirements from direct supervision to general supervision would not require the creation of a separate board but would require legislative action to change code. Moreover, evidence suggests that changing supervision requirements does not necessarily result in an improvement to access to oral health care. **Therefore, the Legislative Auditor does not recommend creating a separate board to license dental hygienists.**

Recommendation

1. *The Legislature should consider not creating a separate board to license dental hygienists.*

Appendix A: Transmittal Letter

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John Sylvia
Director

June 28, 2004

Mr. Jason Webb
West Virginia Dental Hygienists Association
6 Crestmont Drive, Apt. 71
Charleston, WV 25311

Dear Mr. Webb:

This is to transmit a draft copy of the Sunrise Report on the Licensing of Dental Hygienists which had been applied for by the West Virginia Dental Hygienists Association. If you would like to have an exit conference during the week of June 29, 2004 - July 8, 2004, please notify me when we can meet. If you would like to have a written response to the report included in the final report, provide it by July 12, 2004. If you have any questions, please contact me.

Sincerely,

John Sylvia

John Sylvia

Appendix B: Composition of Dentistry Boards

Composition of Dentistry Board for Each State				
State	**Dentists**	**Dental Hygienists**	**Dental Assistants**	**Public Members**
Alabama	5	1		
Alaska	6	2		1
Arizona	6	2		3
Arkansas	6	1		2
California	8	1	1	4
Colorado	5	2		3
Connecticut	NA	NA	NA	NA
Delaware	5	1		3
Florida	7	2		2
Georgia	9	1		1
Hawaii	8	2		2
Idaho	5	2		1
Illinois	8	2		1
Indiana	9	1		1
Iowa	5	2		2
Kansas	6	2		1
Kentucky	7	1		1
Louisiana	10	1		
Maine	5	1		1
Maryland	9	3		3
Massachusetts	6	1		2
Michigan	8	4	2	3
Minnesota	5	1	1	2
Mississippi	7	1		
Missouri	5	1		1
Montana	5	2		2
Nebraska	6	2		2

State	Dentists	Dental Hygienists	Dental Assistants	Public Members
Nevada	7	2		1
New Hampshire	6	2		1
New Jersey	8	1		2
New Mexico	5	2		2
New York	13	3	1	
North Carolina	6	1		1
North Dakota	5	1		1
Ohio	7	1		1
Oklahoma	8	1		2
Oregon	6	2		1
Pennsylvania	7	1		2
Rhode Island	7	2		4
South Carolina	7	1		1
South Dakota	5	1		1
Tennessee	7	2	1	
Texas	8	2		5
Utah	6	2		1
Vermont	5	2		2
Virginia	7	2		1
Washington	NA	NA	NA	NA
West Virginia	6	1	1	1
Wisconsin	6	3		2
Wyoming	5	1		

Source: The data for this table were taken from each state's Board of Dental Examiners

Appendix C: Supervision Requirements

Supervision Requirements for Dental Hygienists	
State	**General/Direct Supervision**
Alabama	Direct
Alaska	General
Arizona	General
Arkansas	General
California	General
Colorado	General
Connecticut	General
Delaware	General
Florida	General
Georgia	Direct
Hawaii	Direct
Idaho	Direct
Illinois	General
Indiana	General
Iowa	General
Kansas	Direct
Kentucky	Direct
Louisiana	Direct
Maine	General
Maryland	General
Massachusetts	General
Michigan	General
Minnesota	General
Mississippi	General
Missouri	General
Montana	General

Nebraska	General
Nevada	General
New Hampshire	General
New Jersey	Direct
New Mexico	General
New York	General
North Carolina	Direct
North Dakota	General
Ohio	Direct
Oklahoma	Direct
Oregon	General
Pennsylvania	General
Rhode Island	General
South Carolina	General
South Dakota	General
Tennessee	Direct
Texas	General
Utah	General
Vermont	General
Virginia	General
Washington	General
West Virginia	**Direct**
Wisconsin	Direct
Wyoming	General

Source: Data for this table was taken from each state's code