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Regulatory Board Review

BOARD OF HEARING AID DEALERS AND FITTERS

AUDIT OVERVIEW

The Licensure of Hearing Aid Dealers and Fitters Is Needed to Protect Public Interest

The Board of Hearing Aid Dealers and Fitters Is Not in Compliance with Several of the General Provisions of Chapter 30

The Board of Hearing Aid Dealers and Fitters is Overcompensating Its Members by \$50 Per Diem

An Additional Lay Member Should Be Added to the Board of Hearing Aid Dealers and Fitters

The Department of Health and Human Resources Is Not Providing All of the Administrative Support for the Board of Hearing Aid Dealers and Fitters As Required by Statute



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EXECUTIVE SUMMARY

Issue 1: The Licensure of Hearing Aid Dealers and Fitters Is Needed to Protect Public Interest.

This report is a Regulatory Board Review required by law and is used to ascertain if there is a need for the continuation, consolidation or termination of the regulatory board. The Board of Hearing Aid Dealers and Fitters currently has between 70 and 80 licensees. This number is an estimate as the Secretary is unable to provide a roster. Currently, all 50 states regulate the profession of hearing aid dealers and fitters. Most states use licensure as a method to regulate the profession. Four states (Massachusetts, New York, Minnesota, and Pennsylvania) list themselves as having registration or certification. It must be noted that nine of the states have their regulatory board for hearing aid dealers combined with the professions of either speech-language pathologists and/or audiologists. The Legislative Auditor finds that the licensing of hearing aid dealers and fitters is necessary for protecting the citizens of West Virginia.

Currently, all 50 states regulate the profession of hearing aid dealers and fitters.

ISSUE 2: The Board of Hearing Aid Dealers and Fitters Is Not in Compliance with Several of the General Provisions of Chapter 30.

The Board of Hearing Aid Dealers and Fitters is not in satisfactory compliance with several of the general provisions of Chapter 30. These requirements which are found in the Board's enabling statute and in the general provisions of Chapter 30 are important for the effective operation of a licensing board. The Board is not in compliance with adopting an official seal, maintaining a record of proceedings, keeping a register and roster, submitting annual reports, maintaining a Charleston area telephone directory listing, and submitting meeting notifications to the Secretary of State.

The Board is not in compliance with adopting an official seal, maintaining a record of proceedings, keeping a register and roster, submitting annual reports, maintaining a Charleston area telephone directory listing, and submitting meeting notifications to the Secretary of State.

Additionally, the Board's fees are insufficient to cover its regulatory functions. The Board receives some administrative assistance from the Department of Health and Human Resources (DHHR). Although this assistance from the DHHR is required by code, this statutory requirement directly contradicts the financial self-sufficiency requirement by having some of the Board's expenses paid for out of another state agency's

budget. Furthermore, as this report indicates, the assistance DHHR is providing is insufficient for the Board to function effectively.

The Legislative Auditor is also concerned with the lack of public accessibility of the Board. The Legislative Auditor finds that the lack of a physical address and contact information is a significant accessibility issue. All state agencies should be easily accessible to the citizens of West Virginia upon whose behalf they function. Failure to provide appropriate access to the general public and licensee applicants, can allow a regulatory state agency to function as a trade association whose priority is to protect the profession including through the restraint of trade. This directly contrasts with the sole purpose of state licensure of professions which is to protect the general public's health and welfare.

ISSUE 3: The Board of Hearing Aid Dealers and Fitters is Overcompensating Its Members by \$50 Per Diem.

Paid invoice documents obtained from the Board of Hearing Aid Dealers and Fitters for FY 2007 through FY 2009 revealed that the Board is currently reimbursing board members \$150 per diem. According to the Board's code section, this is an overpayment of \$50 per diem. The Legislative Auditor consulted Legislative Services legal counsel for verification that the Board is overpaying its members. Counsel opined that the Board is overpaying, and cited a similar finding in a Post Audit Division report which had been based on his legal opinion. The Board should seek a statutory change if it determines that a higher amount than \$100 is preferred.

The Legislative Auditor finds that the lack of a physical address and contact information is a significant accessibility issue. All state agencies should be easily accessible to the citizens of West Virginia upon whose behalf they function.

ISSUE 4: An Additional Lay Member Should Be Added to the Board of Hearing Aid Dealers and Fitters.

West Virginia Code §30-26-3 establishes the Board of Hearing Aid Dealers and Fitters with five members appointed by the governor, by and with the advice and consent of the Senate. Additionally, WVC §30-1-4A requires one lay person to be added to every health professional licensing board. Currently, the Board lists six members including one lay

member. The Board should have two lay members for a total of seven members since WVC §30-1-4A states that:

If the total number of members on any of these boards after the appointment of one lay person is an even number, one additional lay person shall be appointed.

Issue 5: The Department of Health and Human Resources Is Not Providing All of the Administrative Support for the Board of Hearing Aid Dealers and Fitters As Required by Statute.

West Virginia Code §30-26-4 requires the Department of Health – which is now a part of the Department of Health and Human Resources (DHHR) - to provide administrative support for the Board of Hearing Aid Dealers and Fitters. Additionally, Code states that DHHR shall maintain the register and roster for the Board. DHHR is not maintaining Board meeting minutes, nor does it maintain the register or roster for the Board. The Acting Commissioner of the Bureau of Public Health (BPH) within DHHR stated that:

The Bureau has had very little contact and no significant relationship with the Board for many years.

In response to the Legislative Auditor’s inquiries, BPH stated that it intends to work with the Board in order to meet the statutory obligations of maintaining a register and roster. Going forward, the Bureau expressed a desire to statutorily modify its relationship with the Board.

DHHR is not maintaining Board meeting minutes, nor does it maintain the register or roster for the Board.

Recommendations

- 1. The Legislative Auditor recommends that the Legislature consider continuing the Board of Hearing Aid Dealers and Fitters.*
- 2. The Legislative Auditor recommends that the Board of Hearing Aid Dealers and Fitters comply with the following provisions of Chapter*

30 of the West Virginia Code:

- a. become self-sufficient,*
 - b. submit annual reports,*
 - c. complete meeting minutes,*
 - d. maintain a register,*
 - e. maintain a roster,*
 - f. include a listing in the Charleston telephone directory,*
 - g. submit meeting notices to the Secretary of State's Office,*
and
 - h. adopt an official seal.*

- 3. The Board of Hearing Aid Dealers and Fitters needs to improve its accessibility to the public.*

- 4. The Board of Hearing Aid Dealers and Fitters should attempt to combine with another licensing board such as the Board of Examiners for Speech-Language Pathology and Audiology.*

- 5. If the Board of Hearing Aid Dealers and Fitters cannot combine with another licensing board, the Legislature should consider removing the Board from under Chapter 30 and place its regulatory functions completely within the Department of Health and Human Resources.*

- 6. The Board of Hearing Aid Dealers and Fitters should compensate its members no more than the \$100 per diem authorized in West Virginia Code §30-26-3.*

- 7. The Legislative Auditor recommends that the Board of Hearing Aid Dealers and Fitters request that the Governor appoint individuals to fill the vacant positions on the Board. An additional lay member should be appointed per West Virginia code §30-1-4A in order to bring the total number of members to seven.*

- 8. The Legislative Auditor recommends that the Department of Health and Human Resources provide complete administrative support for*

the Board of Hearing Aid Dealers and Fitters as outlined in West Virginia Code §30-26-4 until statutory direction states otherwise.

OBJECTIVE, SCOPE & METHODOLOGY

This Regulatory Board Review of the Board of Hearing Aid Dealers and Fitters is required and authorized by the West Virginia Performance Review Act, Chapter 4, Article 10 of the *West Virginia Code*, as amended. The Board provides for the safety and protection of the consumer by providing licensure for hearing aid dealers and fitters.

Objective

The objective of this review is to determine if the Board of Hearing Aid Dealers and Fitters 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 2006 to 2009.

Methodology

Information compiled in this report has been acquired through communication with and documentation from the Board of Hearing Aid Dealers and Fitters and the Bureau for Public Health within the Department of Health and Human Resources. Information was also gathered from regulatory boards for the profession in other states and from the International Hearing Society. Every aspect of this review compiled with Generally Accepted Government Auditing Standards (GAGAS).

ISSUE 1

The Licensure of Hearing Aid Dealers and Fitters Is Needed to Protect Public Interest.

This report is a Regulatory Board Review required by law and is used to ascertain if there is a need for the continuation, consolidation or termination of the regulatory board. In determining the need for the regulatory board, the Legislative Auditor considers to the extent to which significant and discernable adverse effects on public welfare would occur if the board were abolished. The Legislative Auditor finds that the licensing of hearing aid dealers and fitters is necessary for protecting the citizens of West Virginia.

Statutory Definition of Hearing Aid Dealers and Fitters

Consumers Union states that “nearly 4 out of 10 Americans will suffer from hearing loss by age 65.” Hearing aids, which are intended to compensate for hearing loss, are regulated by the Food and Drug Administration (FDA). The FDA states that:

...over 35 million children and adults in the United States have some degree of hearing loss. Hearing loss can have a negative effect on communication, relationships, school/work performance, and emotional well-being.

The FDA requires consumers to first receive a medical evaluation of hearing loss six months prior to purchasing hearing aids. Consumers must sign a waiver if they choose to not to receive a medical evaluation.

West Virginia Code §30-26-1 defines “hearing aid dealers” and “hearing aid fitters” as any individual, partnership, trust, association, corporation or other like organization that deals in or fits hearing aids. Specifically the profession provides for:

- the measurement or other testing of human hearing by means of an audiometer;
- the selection, adaptation, fitting or sale of hearing aids; or
- the making of impressions for ear molds.

The Legislative Auditor finds that the licensing of hearing aid dealers and fitters is necessary for protecting the citizens of West Virginia.

All 50 States Regulate Hearing Aid Dealers and Fitters

Currently, all 50 states regulate the profession of hearing aid dealers and fitters. Most states use licensure as a method to regulate the profession. Four states (Massachusetts, New York, Minnesota, and Pennsylvania) list themselves as having registration or certification. It must be noted that nine states have their regulatory board for hearing aid dealers combined with the professions of either speech-language pathologists and/or audiologists.

The Board of Hearing Aid Dealers and Fitters Provides Protection to the Public

The Board of Hearing Aid Dealers and Fitters currently has between 70 and 80 licensees. This number is an estimate as the Secretary is unable to provide a roster. Having the profession regulated by a board assures the public that hearing aid dealers and fitters have met minimum competency standards in order to be a member of the profession. When asked what harm would occur if the profession were not licensed and what harm the profession has caused or would cause if it were unregulated, the Board President gave the following narrative:

If this profession would go unregulated it would be difficult to assess the damage this would cause to the industry and more importantly to the citizens of West Virginia. Our Senior Citizens suffer enough, and we do not need to add more to their difficult life by allowing this profession to be unregulated.

It appears that most of the harm or risk to the public by not having a competent hearing aid dealer and/or fitter is monetary loss. According to the Board, most complaints are of two categories: 1) customers who try to return hearing aids after the permitted 30 days, and 2) customers who returned hearing aids within 30 days of purchase and are not fully satisfied with the product or service. The large majority of complaints are handled by the Consumer Protection Anti-Trust Division of the West Virginia Attorney General's Office. The Attorney General received and

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resolved 51 complaints against hearing aid dealers and fitters in the past three years, while the Board only had 1. It is clear that the Attorney General's Office is the route that citizens are taking to have complaints resolved, although that may be a result of a section on the Attorney General's web-site that provides information on hearing aid dealers and fitters, and/or possibly because of the Board's limited public access (which is discussed in Issue 2).

Conclusion

Currently, the Board of Hearing Aid Dealers licenses approximately 70 – 80 individuals in the state. The Legislative Auditor finds that licensure of the profession is necessary to protect the public. Most of the risk to the public is potential monetary losses as a result of the high cost of hearing aids and poor performance of hearing aid devices due to incompetence. As a result, the Legislature should consider continuing the Board of Hearing Aid Dealers and Fitters.

The Attorney General received and resolved 51 complaints against hearing aid dealers and fitters in the past three years, while the Board only had 1.

Recommendation

1. *The Legislative Auditor recommends that the Legislature consider continuing the Board of Hearing Aid Dealers and Fitters.*

ISSUE 2

The Board of Hearing Aid Dealers and Fitters Is Not in Compliance with Several of the General Provisions of Chapter 30.

The Board of Hearing Aid Dealers and Fitters is not in satisfactory compliance with several of the general provisions of Chapter 30. These requirements which are found in the Board's enabling statute and in the general provisions of Chapter 30 are important for the effective operation of a licensing board. The Board is in compliance with the following general provisions:

- The Chair or Chief Financial officer must attend an orientation session conducted by the State Auditor (§30-1-2a(b)); and
- The Board meets at least once annually (§30-1-5(a)).

The Board Is Not in Compliance with the Following West Virginia Code standards:

- An official seal has not been adopted (§30-1-4);
- The Board has not maintained a record of its proceedings (§30-1-12(a));
- The Board has not kept a register of applicants and a roster of licensees (§30-1-12(a));
- Annual reports have not been submitted to the Governor and Legislature (§30-1-12(b));
- The Board has not complied with public access requirements as specified by having its address and telephone number published in the state government listings of the Charleston area telephone directory (§30-1-12(c)); and,
- Meeting notifications to the Secretary of State's office are not published in a timely manner (§6-9A-3).

The Board Is Not Self-Sufficient Since It Receives Some Administrative Assistance from the Department of Health and Human Resources

In accordance with West Virginia Code §30-1-6(c), licensing boards must set fees that are sufficient for the board to effectively carry

out its licensing and disciplinary responsibilities. Currently, revenue for the Board of Hearing Aid Dealers and Fitters covers the expenses for the Board, but its fees are too low to sufficiently cover its regulatory functions. As a result, the Board receives some administrative assistance from the Department of Health and Human Resources (DHHR). Although this assistance from the DHHR is required by code, this statutory requirement directly contradicts the financial self-sufficiency requirement by having some of the Board's expenses paid for out of another state agency's budget. Furthermore, as this report indicates in Issue 5, the assistance DHHR is providing is insufficient for the Board to function effectively. One of the primary consequences of the lack of assistance is the Board lacks public accessibility. This has caused many complaints to be resolved by the Attorney General's Office instead of the Board.

The Board receives some administrative assistance from the Department of Health and Human Resources (DHHR).

The Board's current license fee is \$100 annually. Table 1 shows the Board's fees compared to that of the contiguous states. The state of West Virginia has lower fees than the surrounding states, with the exception of Virginia.

In order to address the financial insufficiency of the Board's fee structure, consideration should be given to several options. One, the Board should consider raising licensing fees so that it can hire staff and improve its accessibility. Although this is an option, it is likely impractical because the number of licensees may require too high of a fee. If it is infeasible to raise fees to a self-sufficient level, then efforts should be made for the Board to combine with another board pursuant to the recent statutory authority granted by §30-1-19. If such an arrangement cannot be established, the Legislature should consider removing the Board from the general provisions of chapter 30 and place the Board's regulatory functions completely within the DHHR.

The state of West Virginia has lower fees than the surrounding states, with the exception of Virginia.

	Kentucky	Maryland	Ohio	Pennsylvania**	Virginia	West Virginia
Application Fee	\$100	\$150	\$262	\$50	\$30	\$100
Exam Fee	\$150	\$150		\$150	\$110	
License	\$200		\$262			
Renewal	\$200	\$250	\$157	\$100	\$20	\$100
Late Renewal	\$250	\$300	\$183*	\$150	\$50	\$200
<i>* If submitted within a month. \$210 if submitted later than one month.</i>						
<i>**Regulation is by registration in Pennsylvania</i>						
<i>Source: West Virginia Code and State Licensing Boards.</i>						

Table 2 shows the annual financial data for the Board from FY 2006 through FY 2009. The Board has a positive ending balance for each fiscal year, and has increased its ending balance from \$28,773 in FY 2006 to \$40,451 in FY 2009.

	FY 2006	FY 2007	FY 2008	FY 2009
Revenues	\$8,300	\$7,375	\$8,200	\$5,300
Expenditures	\$1,670	\$3,644	\$4,642	\$912
EOY Cash Balance	\$28,773	\$32,504	\$36,063	\$40,451
<i>Source: Budget Division of the Legislative Auditor's Office</i>				

The Board has Established Continuing Education Requirements for Licensees

West Virginia Code §30-1-7(a) states that licensing boards require continuing education for licensees. The Board currently approves continuing education units obtained through the International Hearing Society, formerly the National Hearing Aid Society, and the National Board of Certification in Hearing Instruments Sciences. Licensees must complete at least twenty hours of continuing education biannually. The Board President stated:

Proof of continuing education is accepted at the same time they submit check for license renewal and their certificates of CEU's. There were no licenses denied due to lack of CEU's in the past three years.

The Board Has Established a Complaint Process by Legislative Rules

The Board's complaint process has been established in legislative rules. The Board President summarized the process when stating the following:

The process for investigating and resolving complaints is as follows: Customer contacts Board Members either by phone or by mail to express their complaint. We encourage them to put things in writing. After Board members review the complaint individually, we meet to discuss validity of claim. If we find that claim needs to be pursued we then send complaint information to the Hearing Instrument Specialist and ask him to respond within thirty days. When respond is made the Board then meets to look at both sides of the story. Questions may be asked of both parties to ascertain the ring of truth. A decision is made as to who is at fault and the Board notifies both parties involved and direction is given on how to resolve issue.

The Board has received one complaint within the past three years.

The Board has received one complaint within the past three years. The Board was unable to resolve this complaint because the licensee moved out of the state before it was resolved. However, the Legislative Auditor finds that the lack of accessibility is preventing more individuals from filing complaints.

The Board Has Not Filed Public Notice of Meetings in Some Cases

West Virginia Code §30-1-5(a) requires licensing boards to meet at least once annually. According to travel documents provided by the Board, meetings have been held at least once annually in 2007, 2008

and 2009. Travel documents are the only evidence that the Board has of meetings, since meeting minutes are not available. However, the only public notices provided to the Secretary of State's office were as follows:

- June 22, 2007 to approve and vote on Legislative Rules and Regulations; and
- January 31, 2008 to listen to complaints against a licensee.

The proceedings of all meetings of any governing body shall be open to the public according to West Virginia Code §6-9A-3. Thus, the Legislative Auditor recommends that the Board submit meeting notices to the Secretary of State's office as required by statute.

Travel documents are the only evidence that the Board has of meetings, since meeting minutes are not available.

The Board Lacks Public Accessibility

The Legislative Auditor is concerned with the lack of public accessibility of the Board of Hearing Aid Dealers and Fitters. In order to begin this review, the Legislative Auditor attempted to contact the Board through various forms of communication. As stated previously, the Board does not have its address and telephone number published in the Charleston telephone directory. Additionally, the Board does not have an internet website. Thus, other resources had to be used. Several addresses and phone numbers were found from various resources, but none provided direct contact with representatives from the Board. After nearly a month, the Legislative Auditor was able to obtain the Board President's contact information, and correspondence finally began to take place. However, the secretary for the Board had access to all the information needed to conduct the audit, and it took several days for the President to contact her. Initial contact with the Board began on September 14, 2009, but the Legislative Auditor was not able to review the Board's records until October 22, 2009.

With the small number of licensees and limited revenue of only \$5,000 - \$8,500 per year, the Board's options for accessibility are limited.

The Legislative Auditor finds that the lack of a physical address and contact information is a significant accessibility issue. The primary reason for the Board's inaccessibility is that it does not have a permanent office space, and only has one part-time employee. With the small number of licensees and limited revenue of only \$5,000 - \$8,500 per year, the Board's options for accessibility are limited. The Board also lacks an

internet website. A website can be used to put all contact information, licensure requirements, instructions for how to file complaints and other valuable information. The Legislative Auditor recommends that the Board create a website that includes physical address, telephone information, email address, list of fees, a complaint form, continuing education requirements, Board meeting minutes, annual reports and other pertinent information.

Without proper accessibility, consumers may need to file a complaint but are not able to contact anyone to assist them. It must be noted that the Legislative Auditor contacted both the Board of Examiners for Speech Language Pathology and Audiology and the Commission for the Deaf and Hard-of-Hearing in order to get contact information for the Board of Hearing Aid Dealers and Fitters. Representatives from both agencies were unable to give contact information for the Board, and both stated that they have been contacted by the public regarding problems with the lack of accessibility to the Board of Hearing Aid Dealers and Fitters.

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Conclusion

The Board of Hearing Aid Dealers and Fitters is not in compliance with several general provisions of Chapter 30 of the West Virginia Code. The Board has by rule a written complaint process, and it has established continuing education requirements. Also, it has not completed meeting minutes, submitted annual reports, maintained a register and roster, and does not have a listing in the Charleston telephone directory. The Legislative Auditor finds that in general the Board lacks adequate public accessibility. In order to address the lack of financial self-sufficiency and the resulting lack of accessibility, three options should be considered.

First, the Board should consider raising its fees so that staff and office space can be provided. If this is impractical because the fee would be too high, then attempts should be made to have the Board combine with another licensing board. Nine states have one entity regulate the three professions of hearing aid dealers and fitters, speech pathologists, and audiologists. Consideration should be given to having hearing aid dealers and fitters come under the Board of Examiners for Speech-Language Pathology and Audiology. If combining these boards cannot be established, the Legislature should consider removing the Board from the general provisions of Chapter 30 and place the Board's regulatory functions completely within the DHHR.

Recommendations

2. *The Legislative Auditor recommends that the Board of Hearing Aid Dealers and Fitters comply with the following provisions of Chapter 30 of the West Virginia Code:*
 - a. *become self-sufficient,*
 - b. *submit annual reports,*
 - c. *complete meeting minutes,*
 - d. *maintain a register,*
 - e. *maintain a roster,*
 - f. *include a listing in the Charleston telephone directory,*
 - g. *submit meeting notices to the Secretary of State's Office,*
and
 - h. *adopt an official seal.*
3. *The Board of Hearing Aid Dealers and Fitters needs to improve its accessibility to the public.*
4. *The Board of Hearing Aid Dealers and Fitters should attempt to combine with another licensing board such as the Board of Examiners for Speech-Language Pathology and Audiology.*
5. *If the Board of Hearing Aid Dealers and Fitters cannot combine with another licensing board, the Legislature should consider removing the Board from under Chapter 30 and place its regulatory functions completely within the Department of Health and Human Resources.*

ISSUE 3

The Board of Hearing Aid Dealers and Fitters is Overcompensating Its Members by \$50 Per Diem.

Paid invoice documents obtained from the Board of Hearing Aid Dealers and Fitters for FY 2007 through FY 2009 revealed that the Board is currently reimbursing board members \$150 per diem. According to the Board's code section, this is an overpayment of \$50 per diem. West Virginia Code §30-26-3 states that:

...each member of the board shall receive for each day actually engaged in the duties of his office, a per diem salary of one hundred dollars.

The Board is paying its members the same amount that legislators receive for interim duties, and may have assumed that its per diem rates increased as well since West Virginia Code §30-1-11 states that:

...each member of every board in this chapter is entitle to receive compensation for attending official meetings or engaging in official duties not to exceed the amount paid to members of the Legislature for their interim duties...

The Legislative Auditor consulted Legislative Services legal counsel for verification that the Board is overpaying its members. Counsel opined that the Board is overpaying, and cited a similar finding in a Post Audit Division report which had been based on his legal opinion. **Thus, the Legislative Auditor recommends that the Board immediately discontinue paying its members \$150 per diem salary.** The Board should seek a statutory change if it determines that a higher amount than \$100 is preferred.

The Legislative Auditor consulted Legislative Services legal counsel for verification that the Board is overpaying its members. Counsel opined that the Board is overpaying, and cited a similar finding in a Post Audit Division report which had been based on his legal opinion.

Recommendation

6. *The Board of Hearing Aid Dealers and Fitters should compensate its members no more than the \$100 per diem authorized in West Virginia Code §30-26-3.*

ISSUE 4

An Additional Lay Member Should Be Added to the Board of Hearing Aid Dealers and Fitters.

West Virginia Code §30-26-3 establishes the Board of Hearing Aid Dealers and Fitters with five members appointed by the governor, by and with the advice and consent of the Senate. Additionally, WVC §30-1-4A requires one lay person to be added to every health professional licensing board. Currently, the Board lists six members including one lay member. Only four of those positions are filled. The lay member position is vacant along with the position that is represented by a person that practices medicine. WVC §30-1-4A also states that:

If the total number of members on any of these boards after the appointment of one lay person is an even number, one additional lay person shall be appointed.

Thus, the Board should have two lay members for a total of seven members.

Thus, the Board should have two lay members for a total of seven members. The Legislative Auditor recommends that the Board request that the Governor fill the two vacant positions, and appoint an additional lay member to bring the total number of members to seven.

Recommendation

- 7. The Legislative Auditor recommends that the Board of Hearing Aid Dealers and Fitters request that the Governor appoint individuals to fill the vacant positions on the Board. An additional lay member should be appointed per West Virginia code §30-1-4A in order to bring the total number of members to seven.*

ISSUE 5

The Department of Health and Human Resources Is Not Providing All of the Administrative Support for the Board of Hearing Aid Dealers and Fitters As Required by Statute.

West Virginia Code §30-26-4 requires the Department of Health – which is now a part of the Department of Health and Human Resources (DHHR) - to provide administrative support for the Board of Hearing Aid Dealers and Fitters. Code specifically states:

The administrative work of the board shall be performed by and in the state department of health. The department shall keep full and complete records of all of the proceedings of the board and of its accounts, which said records and accounts shall be open to public inspection at all reasonable times.

Additionally, Code states that DHHR shall maintain the register and roster for the Board. DHHR is not providing most of the administrative duties for the Board. DHHR is maintaining records of the Board's financial accounts. The Acting Commissioner of the Bureau for Public Health (BPH) stated that receipts for licensees go directly to the Finance office of DHHR, and expenses are paid by DHHR from the Board's special revenue fund. DHHR is not maintaining Board meeting minutes, nor does it maintain the register or roster for the Board.

DHHR is not maintaining Board meeting minutes, nor does it maintain the register or roster for the Board as required by law.

One of the addresses and telephone numbers that the Board lists for contact information is the Office of Laboratory Services within the Bureau for Public Health. While attempting to contact the Board in order to initiate the Regulatory Board Review, the Legislative Auditor reached the Office of Laboratory Services, but no one was able to assist in contacting the Board. The Acting Commissioner of BPH stated that she recently contacted the Board's President to request that a new address be listed as the Board's contact information so the public can reach it since BPH has little contact with the Board. The Acting Commissioner continued by stating that:

The Bureau has had very little contact and no significant relationship with the Board for many years.

In response to the Legislative Auditor's inquiries, BPH stated that it intends to work with the Board in order to meet the statutory obligations of maintaining a register and roster. Going forward, the Bureau expressed a desire to statutorily modify its relationship with the Board. A representative from the Bureau stated that during the 2009 session:

...the Board of Barbers and Cosmetologists was removed from under the auspices of the Bureau by a bill which substantially revised that article. We hope that (legislation) could achieve a similar end for this Board.

The Legislative Auditor recommends that DHHR continue administrative support for the Board of Hearing Aid Dealers and Fitters until statute states otherwise. The register and roster should be completed, and DHHR should maintain meeting minutes as required. Representatives from the Board should contact representatives from DHHR in order to re-establish a relationship in order for DHHR to carry out the functions.

In response to the Legislative Auditor's inquiries, BPH stated that it intends to work with the Board in order to meet the statutory obligations of maintaining a register and roster.

Recommendation

8. *The Legislative Auditor recommends that the Department of Health and Human Resources provide complete administrative support for the Board of Hearing Aid Dealers and Fitters as outlined in West Virginia Code §30-26-4 until statutory direction states otherwise.*

Appendix A: Transmittal Letters

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

November 30, 2009

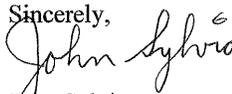
Cesar Anderson, President
Board of Hearing Aid Dealers and Fitters
216 Leon Sullivan Way
Charleston, West Virginia 25301

Dear Mr. Anderson:

This is to transmit a draft copy of the Regulatory Board Review of the Board of Hearing Aid Dealers and Fitters. This report is scheduled to be presented during the December interim meeting of the Joint Committee on Government Organization and the Joint Committee on Government Operations. December interim meetings are scheduled for December 7 – 9, 2009. We will inform you of the exact meeting 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 committees may have.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us as soon as possible. We need your written response to the report by noon on December 7, 2009 in order for it to be included in the final version of the report.

If your agency intends to distribute additional material to committee members, please contact the House Government Organization staff at 304-340-3192. We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation. If you have any questions or concerns please contact Denny Rhodes, Research Manager, at 304-347-4890.

Sincerely,

John Sylvia

Joint Committee on Government and Finance

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

November 30, 2009

Chris Curtis, Acting Commissioner
Bureau for Public Health
350 Capitol Street
Charleston, West Virginia 25301

Dear Ms. Curtis:

This is to transmit a draft copy of the Regulatory Board Review of the Board of Hearing Aid Dealers and Fitters. This report is scheduled to be presented during the December interim meeting of the Joint Committee on Government Organization and the Joint Committee on Government Operations. December interim meetings are scheduled for December 7 – 9, 2009. We will inform you of the exact meeting 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 committees may have.

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Sincerely,

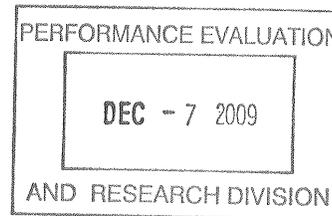
A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

c. Patsy Hardy, Cabinet Secretary, Department of Health and Human Resources

_____ *Joint Committee on Government and Finance* _____

Appendix B: Agency Response



December 7, 2009

Mr. John Silvia
Office of the Legislative Auditor
Performance Evaluation & Research Division
Building 1, Room W-314
1900 Kanawha Blvd., East
Charleston, WV 25305-0610

RE: *Performance Evaluation of the West Virginia Board of Hearing Aid Dealers and Fitters*

Dear Mr. Sylvia:

The undersigned, as President of the West Virginia Board of Hearing Aid Dealers and Fitters (hereinafter "Board"), hereby submits the following response to the Performance Evaluation and Research Division's draft copy of findings and recommendations received November 30, 2009.

First, the Board appreciates the recommendations and conclusions of the Legislative Auditor in recommending to the Legislature of West Virginia that there be a continuation of the Board of Hearing Aid Dealers and Fitters for the regulation of the practice of dealing and fitting hearing aids and the protection of the public as set forth in Issue one of the performance evaluation report.

With regard to Issue two of the report, concerning the need of the Board to be in compliance with several of the general provisions of Chapter 30, the Board respectfully concedes that it does need to improve compliance with all the provisions set forth in Chapter 30, as well as other applicable laws outlined in the performance evaluation report. The Board will take the appropriate steps to establish and adopt an official seal. The Board will make a greater effort to maintain better records as well as a register of applicants and a roster of licensees. Additionally, the Board has been taking affirmative steps to comply with public access requirements and has been looking into the development of a webpage

and will have the appropriate information listed in state government and Charleston area directories. The Board has been informed by its AG counsel that meetings must be properly noticed and will be sure to be in compliance with notice requirements for future meetings.

The Board is in full agreement with the Legislative Auditor's finding that the Board is not financially self-sufficient because its fees are insufficient to cover its regulatory functions. The State of West Virginia does have lower fees than all surrounding states, with the exception of Virginia. The Board accepts the Legislative Auditor's recommendation of attempting to combine administrative functions with another licensing board, as it believes that this will help to address both issues of maintain registers and rosters, as that is an administrative function, and improve its accessibility to the public. The Board does not think that placing its regulatory functions entirely within the Department of Health and Human Resources (hereinafter "DHHR) is warranted at this time as the Board is committed to taking affirmative steps to remedy these issues.

With regard to Issue three, the Board will comply with the recommendation and shall only compensate its members no more than the one hundred dollars (\$100.00) per diem authorized by West Virginia Code § 30-26-3.

The Board is in agreement with the Legislative Auditor's recommendation for Issue four, that the Board request that the Governor appoint individuals to fill the vacant positions on the Board and that an additional lay member should be appointed to bring the total number of members to seven in accordance with West Virginia Code § 30-1-4A. As is true with any licensing board, it is important to have vacant seats filled for the board to adequately carry out its statutory duties.

With regard to Issue five, the Board accepts the recommendation that DHHR resume and continue administrative support for the Board in accordance with the current statutes. A representative from the Board will contact DHHR in order to re-establish the relationship thereby permitting DHHR to carry out the statutorily prescribed functions until the statute states otherwise.

In conclusion, the West Virginia Board of Hearing Aid Dealers and Fitters appreciates the opportunity to work with the Legislative Auditor's Office to address and remedy any and all deficiencies that exist. The Board will continue in its endeavor and takes pride in discharging its duties on behalf of the residents of the State of West Virginia.

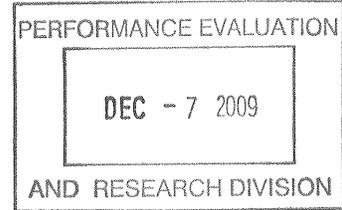
Respectfully submitted,



Cesar Anderson
Board President

Cc: Board Members
West Virginia Board of Hearing Aid Dealers and Fitters
Nicole A. Cofer, Assistant Attorney General

Appendix C: DHHR Response



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BUREAU FOR PUBLIC HEALTH**

**Joe Manchin III
Governor**

Commissioner's Office
350 Capitol Street, Room 702
Charleston, West Virginia 25301-3712
Telephone: (304) 558-2971 Fax: (304) 558-1035

**Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary**

Mr. Denny Rhodes, Research Manager
Joint Committee on Government and Finance
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610

December 7, 2009

Dear Mr. Rhodes,

I received your letter of December 2, 2009, inviting my agency to attend the meeting of the Joint Committees on Government Organizations and Operations next Wednesday. I regret to inform you that I will not be able to attend due to a prior commitment to represent West Virginia at the Association of State and Territorial Health Officers meeting. I will have Ann Goldberg, Director of Public Health Regulations, attend on our behalf.

Ann and I have reviewed the draft PERD report. We are in basic agreement with your findings and recommendations but would like to offer some additional comments. We are working to secure the register of applicants and roster of licensees in an electronic format that can be used to continue to administer and track licensees in the future. We certainly agree that the Board needs to establish better public access.

The BPH strongly supports your recommendation to combine the Board of Hearing Aid Dealers and Fitters with another licensing board. This Board should then be listed under the Department of Administration and be shown in the Budget on the list of 0900 Independent Agencies. If this recommendation is followed we would propose that legislation be introduced to amend §30-26-4 to remove the statutory requirement that the Bureau for Public Health perform the administrative work for the Board of Hearing Aid Dealers and Fitters. That statutory section, last amended in 1977, is no longer appropriate. There is little or no connection between the duties and activities of this board and the Bureau.

During the last session the legislature passed a bill which, among other things, removed the Board of Barbers and Cosmetologist from under the quasi-supervision of the Bureau. This Board is similarly situated and perhaps even more tenuously connected to the Bureau for Public Health. Your suggestion of pairing it with the Board of Examiners for Speech-Language Pathology and Audiology makes sense.

Thank you for the opportunity to comment on this report.

Sincerely,

A handwritten signature in black ink that reads "Chris Curtis". The signature is written in a cursive style with a large initial "C".

Chris Curtis, Acting Commissioner

cc Patsy Hardy, Secretary, DHHR



WEST VIRGINIA 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