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REGULATORY BOARD REVIEW BOARD OF DENTISTRY

AUDIT OVERVIEW

The Board of Dentistry Is Necessary to Protect the Public

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

Due to Inadequate Oversight of the Impaired Health Condition Treatment Program, the Board Does Not Have Reasonable Assurance that the Public Is Protected Against Improper Practice by Impaired Licensees

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



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Dear Chairs:

Pursuant to the West Virginia Performance Review Act, we are transmitting a Regulatory Board Review of the *Board of Dentistry*. The issues covered herein are “*The Board of Dentistry Is Necessary to Protect the Public.*,” “*The Board of Dentistry Complies with Most of the General Provisions of Chapter 30 of the W. Va. Code However, Improvement Is Needed.*,” “*Due to Inadequate Oversight of the Impaired Health Condition Treatment Program, the Board Does Not Have Reasonable Assurance that the Public Is Protected Against Improper Practice by Impaired Licensees.*,” and “*The Board’s Website Needs More Improvement to Enhance User-Friendliness and Transparency.*”

We transmitted a draft copy of the report to the *Board of Dentistry* on May 20, 2022. We received the agency response on May 31, 2022. If you have any questions, please let me know.

Sincerely,


John Sylvia

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EXECUTIVE SUMMARY

The Performance Evaluation and Research Division (PERD) within the Office of the Legislative Auditor conducted a Regulatory Board Review of the Board of Dentistry (Board) pursuant to the Performance Review Act, Chapter 4, Article 10. Objectives of this audit were to determine the need for the continuation of the Board, assess the Board's compliance with the general provisions of Chapter 30 and other applicable laws, determine if the Board's impaired health condition treatment program provides adequate protection to the public against improper practice by impaired providers, and evaluate the Board's website for user-friendliness and transparency. The issues of this report are highlighted below.

Frequently Used Acronyms in This Report:

CSR – Code of State Rules
CE – Continuing Education
GSA – General Services Administration (federal)
OASIS – Our Advanced Solution with Integrated Systems
PERD – Performance Evaluation and Research Division

Report Highlights:

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

- Dentistry is a highly specialized profession.
- The consequences of an incompetent or untrained person practicing dentistry could be life-threatening.
- Regulating the practice of dentistry and dental hygiene should continue as it is necessary to protect the public.

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

- The Board is financially self-sufficient and processes complaints in a timely manner with due process for the licensees.
- The Board has accumulated a cash balance that is nearly three times its actual annual expenditures.
- The Board's register is missing almost all license renewal dates after 2003.
- The Board reimburses board members and staff lodging expenses in a manner inconsistent with the guidelines of the Travel Management Office of the Department of Administration.
- The Board's annual reports are missing aggregate data on age and gender of its licensees required by W. Va. Code.

Issue 3: Due to Inadequate Oversight of the Impaired Health Condition Treatment Program, the Board Does Not Have Reasonable Assurance that the Public Is Protected Against Improper Practice by Impaired Licensees

- The Board has contracted with a third party to administer the Dental Recovery Network (DRN) for impaired licensees.

- PERD finds that the Board does not know if the DRN vendor implemented and consistently carries out the required procedures for effective operations.
- The Board should exercise greater oversight over the DRN program and receive all contract deliverables.
- The Board should amend the contract for the DRN to allow for a periodical independent review of the vendor's compliance with implementing and conducting contracted procedures.

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

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

PERD's Response to the Agency's Written Response

PERD received the Board's response to the draft copy of the regulatory board review on May 31, 2022. The Board's response can be seen in Appendix D. The Board agrees with PERD on the recommendation to continue regulation. It also generally agreed to consider use of the State Treasurer's Lockbox System, follow state travel rules, and to amend its register, annual report, and website. However, the Board disagrees with PERD on the following recommendations:

Board Response: The Board responded to recommendation three, saying that its cash accumulation occurred over the past several years due to two staff members leaving in 2019. The Board also stated that prior to 2018, it employed a full-time attorney assigned by the Attorney General's (AG) office. However, the AG's office made changes in 2018 that resulted in the Board sharing counsel with other boards. Subsequently, the Board hired an in-house counsel who retired at the end of 2019. These factors reduced the Board's expenses significantly over the past several years. The Board said that it has requested additional assistance from the AG's office.

PERD Response: In recommendation three, PERD stated that the Legislature should consider amending West Virginia Code to allow the transferring of excess funds from licensing boards to the state general revenue fund to be based on the sum of revenues of a board's last two fiscal years. PERD has made this recommendation multiple times over the years because it has found other boards' expenditure schedule budgets were not representative of its actual expenditures. Therefore, using the sum of a board's revenue for the previous two fiscal years would be a better method of achieving the intention of the law. Specifically, the Board of Dentistry's ending cash balance in FY 2021 was nearly three times its annual expenditures. The Board's budget, on which current law determines the transfer of excess funds, is between \$100,000 and \$200,000 greater than its actual expenditures. As such, under current law there is unlikely to be any transfer of funds even when a board's cash balance is well in excess of what is needed to operate.

Board Response: The Board informed PERD that during the 2022 legislative session, the Board's rules for its fee schedule were amended which led to nearly all fees being reduced. The Board indicated that this decrease should help the Board maintain an appropriate level of funding.

PERD Response: PERD confirmed the Board's statement that during the 2022 legislative session, the Legislature amended legislative rules CSR §5-3-2 that establishes the Board's schedule of fees. The amended rules lowered 52 of the Board's 59 separate fees, ranging from a decrease of \$2.00 to as much as \$150. The effective date of the amended fee schedule is August 7, 2022. The lower fee schedule will reduce the Board's revenues beginning in FY 2024 and end-of-year cash balance to be more in line with what the Board needs for operations. It is not clear if the Board will still have excess funds that may or may not be transferred to the state general fund in the future. The legislative auditor still recommends that the Legislature consider amending W. Va. Code §30-1-10 to have the transfer of accumulated excess funds of regulatory boards be based on the sum of revenues of a board's last two fiscal years in order to achieve the intentions of the law.

Board Response: The Board responded to recommendation six, specifically to the issue of Greenbrier meetings, that it schedules these meetings to coincide with the West Virginia Dental Association (WVDA) meeting which also takes place at the Greenbrier. The Board indicated that the WVDA invites it to the meetings, that the President of the Board speaks during the meetings, and the Board finds it a good opportunity to network with leaders and members of the WVDA.

PERD Response: In recommendation six, PERD takes issue with the Board's reasoning to justify the Greenbrier meetings because of the expense and the inconvenience to members of the public who might wish to attend. Furthermore, PERD takes issue with the Board scheduling meetings based on an entity that advocates for the dental profession while the Board is in part to ensure the public's safety from the same profession.

Board Response: The Board disagrees with PERD's statement in issue three that the Board does not have reasonable assurance that the public is protected against improper practice by impaired licensees. While the Board agrees that it can improve oversight of the program, the Board states in its response that prior to the impaired health condition treatment program, or Dental Recovery Network (DRN), licensees did not have the opportunity to enter treatment without fear of losing their licenses. The Board states that, prior to the DRN, it did not know how many impaired practitioners there may have been.

PERD Response: Recommendations 8 through 10 address the Board's impaired health condition treatment program. PERD agrees with the Board that having a recovery treatment program provides impaired licensees with the help they need to address their impairment and maintain their professional livelihood. The issue is whether the Board has reasonable assurance that the vendor is adequately providing the contracted services and impaired licensees are recovering and returning to the workplace restored. PERD finds that the Board does not receive all of the contract deliverables from its DRN vendor. The first of these deliverables is the vendor must immediately provide the Board with a detailed report for each licensee the vendor investigates and confirms that the licensee is impaired. The Board states that this contract provision only applies to those who the Board refers to the DRN, not those who have self-reported. However, the contract makes no distinction between licensees who are referred by the Board or who self-reported. Moreover, the Board made one referral to the DRN during the scope of this audit; yet, the Board did not provide PERD with the detailed

report for that referral. More importantly, there were 10 other licensees who self-reported during the scope of this audit that the Board knows nothing about or if the vendor is providing the services required by the contract. The legislative auditor asserts that the DRN program is an arm of the Board towards keeping the public safe, and being in the dark concerning the condition, progress, and status of self-reported licensees is a precarious position for the State to be in.

One contract deliverable the Board receives is a report showing the number of DRN participants that were Board-referred. This report indicates one person was reported by the Board in fiscal years 2019 through 2021. However, the Board's response to the draft states that, "*Most referrals to the DRN have been driven by disciplinary actions by the Board.*" This inconsistency as well as its statement that the DRN has not had to investigate any cases other than individuals who self-report illustrates the lack of oversight the Board exercises. Additionally, when PERD requested an explanation of this particular contract deliverable, the Board did not explain the report but rather forwarded an explanation of the report from the vendor.

A second deliverable the Board does not receive from the vendor is a monthly status report on the licensees in active treatment. The contract does not indicate the information that should be in the report; however, it would be an important report that could describe the status of all participants, Board-referred and self-reported, without divulging any confidential information.

A deliverable the Board received is an annual comprehensive statistical report, the first of which was just received by the Board for FY 2021. However, this annual report was a compilation of statistics that aggregates licensees for the Board of Pharmacy and the Board of Dentistry, which negates its value to the Board of Dentistry.

As to DRN contract performance requirements, the Board contends that detailed treatment information is kept on each participant. It further states that the treatment files include intake paperwork, releases, weekly treatment reports to monitor progress and drug screen rules. PERD concludes that the Board is reiterating what the vendor is telling it is in the files and what the vendor does, but the Board itself does not know these things. Taking the vendor's word for service provided is not sufficient contract management. The Board needs to take the appropriate steps to exercise appropriate contract management.

Additionally, PERD understands a contract provision to prohibit the vendor from charging more fees and/or assessing added charges not expressly provided for in the solicitation. The Board said in its response that the DRN charges monthly fees to participants. It also believes this statement refers to fees the DRN might charge the Board, not for other fees on licensees in the program. PERD notes two points in response. First, during the audit, the Board told PERD that the Board does not receive reports concerning the fees assessed on participants during their time in the DRN. Second, the legislative rules expressly indicate that a fee assessed to every licensee is for the operation of the DRN. As expressed by the Board, the DRN's income pays for utilities, travel, and the payroll of staff. Those are the cost of the program's operations. The Board goes on to contend that every impaired health condition treatment program in the state currently charges fees to their participants. This is irrelevant. If the vendor is charging additional fees to participating licensees, this should be clearly and explicitly stated in the contract, and the amount of the fees should be stated so that the Board can determine if the fees are reasonable and will not inhibit participation in the program.

Recommendations

1. *The legislative auditor recommends that the Legislature continue the Board of Dentistry as currently regulated.*
2. *The Board should consider utilizing the State Treasurer's Office lockbox system to process licensure application, renewal fees and further reduce risk.*
3. *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.*
4. *The Board should maintain a complete register of applicants as required by law and that the Board maintain applicant social security numbers separately from the register.*
5. *The Board should include in its annual report the aggregate data of licensees gender and age in order to facilitate planning for future workforce needs for dentists.*
6. *The Board should consider the cost and benefits of in-person meetings to determine if having more remote meetings is advantageous.*
7. *The Board should comply with state travel rules.*
8. *The Board should exercise greater oversight over the Dental Recovery Network program and receive all contract deliverables.*
9. *The Board should amend the contract for the Dental Recovery Network to allow for a periodical independent review, either by the Board or a third party, of the vendor's compliance with implementing and conducting contracted procedures.*
10. *The Board should consider whether the contract cost is appropriate.*
11. *The Board should improve the user-friendliness and transparency of its website by incorporating more of the website elements identified.*
12. *The Board should consider registering for a ".gov" domain.*

ISSUE 1

The Board of Dentistry Is Necessary to Protect the Public

Issue Summary

This report is a Regulatory Board Review required by law to find if there is a need for the continuation, consolidation, or termination of the regulatory board. In determining the need for the regulatory board, the legislative auditor considers the extent to which significant and discernable adverse effects on public welfare would occur if the board were abolished. In West Virginia, a nine-member appointed Board of Dentistry (Board) is the regulatory agency that licenses dentists and dental hygienists and approves dental assistants for the performance of certain procedures. Regulating the practice of dentistry and dental hygiene should continue as it is necessary to protect the public.

Regulating the practice of dentistry and dental hygiene should continue as it is necessary to protect the public.

Dentistry Is a Highly Specialized Profession

The West Virginia Dental Practice Act, W. Va. Code §30-4-1, states that to protect the health and safety of the public, any person practicing or offering to practice as a dentist or dental hygienist must give evidence that he or she is qualified. Dentist applicants must document graduation from an accredited dental school. Additionally, dentist applicants must pass a national board examination and a clinical examination that shows competency in such areas that include endodontics, fixed prosthodontics, periodontics, and restoration. Dental hygienist applicants must document they earned a degree in dental hygiene from an approved dental hygiene program and pass a national board examination and a clinical skills examination.

The scope of dentistry requires regulation to protect the public because dentistry includes diagnosing and treating oral diseases and disorders; making dental prostheses; administering anesthesia and prescribing drugs. Surgical procedures are also part of the treatment necessary for certain dental conditions. Advanced treatment techniques, such as those needing the use of anesthesia or lasers, make the necessity for regulation even more imperative. Thus, the consequences of an incompetent or untrained person practicing dentistry could be life-threatening. The Board has also established teledentistry rules under an emergency legislative rule, W. Va. Code of State Rules (CSR) §5-16. According to W. Va. CSR §5-16-2.8, “*Teledentistry Services’ means the use of synchronous or asynchronous telecommunications technology or audio only telephone calls by a dentist or dental hygienist to provide health care services....*” These rules allow dentists licensed and in good

The consequences of an incompetent or untrained person practicing dentistry could be life-threatening.

standing with other states who register and pay a fee to the Board to perform teledentistry for patients in West Virginia.

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

It is the Board's belief licensing of the Dental Profession makes for the safest delivery of treatment to patients in West Virginia. Steps taken during the licensure application process helps protect the public from unqualified individuals or unsafe practice. Accredited education, examinations and continuing education are the basis for licensure and protection of the public. The public could be harmed or suffer death if not regulated.

The previous PERD reviews in 2002, 2005, and 2011 concluded that the unregulated practice of dentistry could put the public at risk for harm. As the occupational tasks of dentistry have not changed since the 2011 report, the legislative auditor finds that the State has a continuing interest in regulating the two professions of dentists and dental hygienists.

Dentistry Is Regulated by all 50 States

All 50 states and the District of Columbia regulate the dental profession through licensure. Thirty-six (36) states regulate the practice of dentistry through a centralized agency. West Virginia is one of 15 states that regulate dentistry through an independent board. The five states neighboring West Virginia vary in their approach to licensing dentists and dental hygienists, with Kentucky and Ohio also having independent boards while Maryland, Pennsylvania, and Virginia issue licenses through a centralized agency.

On average, the Board annually issues 2,609 dentists and dental hygienists licenses.

West Virginia Issues About 2,600 Licenses Annually

On average, the Board annually issues 2,609 dentists and dental hygienists licenses (see Table 1). Of this total, on average, 894 of the dentists, and 1,041 of the dental hygienists are in-state. The average annual number of out-of-state dentists is 322 and 352 dental hygienists.

Table 1
Board of Dentistry
Number of Licensees
FY 2019 through FY 2021

Fiscal Year	Dentists			Dental Hygienists			Total
	In-State	Out-of-State	Total	In-State	Out-of-State	Total	
2019	894	320	1,214	1,083	315	1,398	2,612
2020	882	317	1,199	938	426	1,364	2,563
2021	906	330	1,236	1,101	315	1,416	2,652
Averages	894	322	1,216	1,041	352	1,393	2,609

Sources: Board's annual reports and roster of licensees.

Dental Assistants Have Expanded Duties

The Board also regulates the duties of dental assistants in the dental office. Under W. Va. CSR§5-13, the Board specifies the work that the dental assistant can undertake. The Board approves dental assistants performing specific procedures upon completion of board-approved training and examination for procedures such as chemical conditioning of the tooth to accept a restoration and/or bracket by topical application. Dental assistants can also receive approval for the expanded duties of monitoring sedation by nitrous oxide.

The Board approves dental assistants performing specific procedures upon completion of board-approved training and examination for procedures such as chemical conditioning of the tooth to accept a restoration.

Conclusion

The complexity and scope of modern dentistry requires that the public be protected through the regulation of the profession. Without regulation, the public could face life-threatening consequences. The Board serves this function through licensure, monitoring continuing education, receiving complaints, position statements regarding the use of modern treatment techniques, and the revision of state code to qualify practitioners and maintain the standard of patient care while recognizing modern advancements and current practices in dental offices. The Board also approves dental assistants for expanded duties in dental offices. The legislative auditor concludes that regulation of dentists and dental hygienists is necessary to protect the public.

Recommendation

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

ISSUE 2

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

Issue Summary

The Board is financially self-sufficient, has continuing education (CE) requirements, and attends the Annual Seminar for State Licensing Board as required by law. However, the Board does not retain a complete register of all applicants with appropriate information specified in code, including the date of renewals. The Board does not have sufficient segregation of duties for handling revenues and should consider using the state treasurer's lockbox system. Furthermore, after review of expenditures, it is the legislative auditor's opinion that the Board should consider reducing the number of out-of-state trips to national meetings and discontinue holding an annual board meeting at the Greenbrier Resort due to the expense. Furthermore, the Board should reimburse lodging expenses consistent with the policies of the Department of Administration's Travel Management Office.

The Board Complies with Most General Provisions of Chapter 30

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

- The chair, executive director, or chief financial officer annually attended the orientation session conducted by the state auditor (§30-1-2a(c)(2)).
- Each board member attended at least one orientation session during each term of office (§30-1-2a (c)(3)).
- The Board adopted an official seal (§30-1-4).
- The Board met at least once annually (§30-1-5(a)).
- The Board sent status reports to the complainant and respondent within six months of the complaint being filed (§30-1-5(c)).
- The Board provided public access on a website to all completed disciplinary actions in which discipline was ordered (§30-1-5(d)).
- The Board is financially self-sufficient in carrying out its responsibilities (§30-1-6(c)).
- The Board established continuing education requirements (§30-1-7a).

The Board does not retain a complete register of all applicants with appropriate information specified in code, including the date of renewals.

- The Board promulgated rules specifying the investigation and resolution procedure of all complaints (§30-1-8(k)).
- The Board submitted the annual report to the governor and legislature describing transactions for the previous two years (§30-1-12(b)).
- The Board complied with the public access requirements as specified by (§30-1-12(c)).
- The Board maintains a roster of licensees' names and office addresses, practicing in the state arranged alphabetically by name and also by the cities or counties in which their offices are situated (§30-1-13).

The Board is not in compliance with the following provisions:

- The Board's register of all applicants includes social security numbers. This is concerning since the register is a public document. Also, the register does not have the dates of license renewals (§30-1-12(a)).
- The Board reimburses board members and staff lodging in manner inconsistent with the guidelines of the Department of Administration's Travel Management Office (§30-1-11(c)).
- The Board's annual reports have the aggregate data on its licensees anticipated retirement dates, percentage of time working direct services, percentage of time working administration, and county of practice, in order to facilitate planning for future workforce needs for health care professionals. However, it does not include the aggregate data on age and gender (§30-1-20).

The Board has accumulated a cash balance in FY 2021 that is nearly three times its annual expenditures.

The Board Is Financially Self Sufficient

Table 2 below shows that the Board is financially self-sufficient as required by W. Va. Code §30-1-6(c). It is the legislative auditor's opinion that cash reserves that are from one to two times a board's annual expenditures are at a prudent level. However, as can be seen, the Board has accumulated a cash balance in FY 2021 that is nearly three times its annual expenditures. The Board's revenues come from dentist and dental hygienist fees for initial applications, licensure, and renewals. Annual disbursements include staff salaries and benefits, utilities, travel costs, website servicing costs, and legal costs paid to the Attorney General's Office. In fiscal year 2019, the Board used an in-house counsel and the Attorney General's Office. For fiscal years 2020 and 2021 the Board only used the Attorney General's Office for legal counsel and investigations

relating to complaints, which contributed to the decrease in expenditures. Additionally, expenditures declined because the COVID-19 pandemic and the later executive order to halt out-of-state travel resulted in lesser travel costs.

**Table 2
Board of Dentistry
Budget Information
FY 2019 through FY 2021**

Fiscal Year	Beginning Cash Balance	Revenues	Expenditures	Ending Cash Balance	End-of-Year Cash as a Percentage of Annual Expenditures
2019	\$530,366	\$489,090	\$407,430	\$612,027	150%
2020	\$612,027	\$487,711	\$348,243	\$751,495	216%
2021	\$751,495	\$505,673	\$329,692	\$927,475	281%
Average	\$631,296	\$494,158	\$361,788	\$763,666	216%

Source: Our Advanced Solution with Integrated Systems (OASIS) WV-FIN-GL-151 Cash Balance report. PERD calculations of percentages.

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

PERD’s 2005 regulatory board review found that the Board experienced cash-flow issues following every fiscal year until it received renewal revenue. The review concluded this may show that revenues were approaching a point where they were becoming insufficient for prudent operations. Following the 2005 evaluation, the Board increased fees in both dollar amount and the number of fees. When PERD conducted the last regulatory board review in 2011, we noted that the Board’s expenses increased by \$151,754 from FY 2007 through FY 2010. We further noted in FY 2010 that expenditures exceeded revenues. The report said, “The Legislative Auditor agrees that in light of increasing expenses and stagnant revenues, an analysis must be done to identify corrective actions to ensure the long-term financial stability of the Board.” In that review the Board said it would “. . . review its expenses and revenues to determine a plan of action to keep the Board financially sound.” Subsequently, in April 2012, the Board again increased fees in

In April 2012, the Board increased fees in both dollar amount and the number of fees which generated an estimated added \$125,000 annually. Then, in May 2014, the Board added fees for mobile and portable dental facilities. From FY 2019 through FY 2021, these added fees alone generated an average of \$4,233 annually in revenue.

both dollar amount and the number of fees which additionally generated an estimated \$125,000 annually. Then, in May 2014, the Board added fees for mobile and portable dental facilities. From FY 2019 through FY 2021, these added fees alone generated an average of \$4,233 annually in revenue.

Although the legislative auditor understands that the Board needed to raise fees to keep financial self-sufficiency, the higher fee schedule over the last 10 years has resulted in the accumulation of a cash balance that is nearly three times the Board's actual expenditures in FY 2021. This raises the question of whether revenue generated by the Board is beyond what is sufficient for operating. The Legislature may have had this in mind when it established W. Va. Code §30-1-10(a), which states that *“any board accumulates to an amount which exceeds twice the annual budget of the board...the excess amount shall be transferred by the State Treasurer to the State General Revenue Fund.”* The intent may have been to prevent regulatory boards from accumulating more funds than needed for operations.

According to the State Treasurer's Office, it interprets “annual budget” in statute to be what a board reports as its budget on its expenditure schedule. While the state treasurer's interpretation of annual budget may fulfill the Legislature's intent, it becomes problematic when many boards report in their expenditure schedules budget amounts that are well in excess of what their actual annual expenditures will be. Table 3 shows the Board of Dentistry's “annual budget” as represented on its expenditure schedule in comparison to its actual annual expenditures. The difference between the two is between \$100,000 to \$200,000. The monetary difference as a percentage of actual expenditures ranges from 25.7 percent in FY 2019 to 55.3 percent in FY 2021. While it is understandable that a board would want to budget beyond what it may likely need to account for contingencies and unexpected expenses, it becomes questionable when the annual budget is as much as 25 to 50 percent higher than actual expenditures each year. In 2005, PERD showed that it was not uncommon for boards to submit expenditure schedules with “annual budgets” that were 30 to 100 percent above their actual expenditures. Therefore, the legislative auditor concludes that in many cases the expenditure schedules of regulatory boards are not representative of an “annual budget.” Consequently, the current mechanism for transferring excess funds from boards to the state general revenue fund is flawed and prevents the objective of W. Va. Code §30-1-10(a) from being accomplished.

The higher fee schedule over the last 10 years has resulted in the accumulation of a cash balance that is nearly three times the Board's actual expenditures in FY 2021.

The Board of Dentistry's “annual budget” as represented on its expenditure schedule is between \$100,000 to \$200,000 its actual annual expenditures.

Table 3
Board of Dentistry
“Annual Budget” vs. Actual Expenditures
FY 2019 through FY 2021

Fiscal Year	“Annual Budget” Expenditure Schedule	Actual Expenditures	Difference	Difference as a Percent of Actual Expenditures
2019	\$512,000	\$407,430	\$104,570	25.7%
2020	\$512,000	\$348,243	\$163,757	47.0%
2021	\$512,000	\$329,692	\$182,308	55.3%

Source: PERD calculations based on OASIS reports WV-FIN-GL-151 and WV-AB-ES-011.

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

If the intent to transfer a board’s excess funds to the state general revenue fund is to avoid boards accumulating more than is sufficient for operations, then the Legislature should consider an alternative method of making this transfer.

Table 4 below shows how excess transfers would occur under alternative transfer mechanisms. Using total revenue of the previous two fiscal years does not result in any excess transfers for fiscal years 2019-2021. However, in FY 2021, the cash balance is 95 percent of the sum of revenue for the previous two fiscal years. This suggests that an excess transfer may occur in the near future if revenue is the basis for excess transfers. Using expenditures as the basis for excess transfers would have resulted in transfers in FY 2020 and 2021 for a total of \$323,100. After both transfers, the Board’s year-end cash balance for FY 2021 would have been \$659,384 instead of the current \$927,475. If there is

a concern of transferring more funds from a board than is prudent, the statute could specify the maximum amount that may be transferred from a board in any fiscal year. **Therefore, the Legislature should consider amending W. Va. Code §30-1-10 to state that transfers from licensing boards to the state general revenue fund be based on the sum of a board's actual revenues for the previous two fiscal years.**

Fiscal Year	Current Transfer Method	Based on Current Year Expenditures	Based on Revenue of Previous Two Years
2019	\$0	\$0	\$0
2020	\$0	\$55,009	\$0
2021	\$0	\$268,091	\$0
Total	\$0	\$323,100	\$0
<i>Source: PERD calculations based on OASIS WV-FIN-GL-151.</i>			

The Legislature should consider amending W. Va. Code §30-1-10 to state that transfers from licensing boards to the state general revenue fund be based on the sum of a board's actual revenues for the previous two fiscal years.

The Board's Initial and Renewal Licensure Fees for Dentists and Dental Hygienists Are in the Middle of Those of Surrounding States

West Virginia and surrounding states' licensure and renewal fees can be seen in Table 5. The initial licensure and annual renewal fee for West Virginia dentists is \$185 and for dental hygienists it is \$75. On an annual basis, the licensure and renewal fees for dentists and dental hygienist are higher than those of Kentucky and Pennsylvania. The state of Ohio's initial licensure fees is higher than in West Virginia, but the renewal fees are lower. In contrast, on an annual basis, the licensure and renewal fees for dentists and dental hygienist are usually lower than in Maryland and Virginia.

Table 5
Dentists and Dental Hygienists
Licensure Fees
West Virginia and Surrounding States

State	Dentists		Dental Hygienists		Renewal Cycle
	Initial Fee	Renewal Fee	Initial Fee	Renewal Fee	
Kentucky	\$325	\$295	\$125	\$110	biennial
Maryland	\$450	\$560	\$275	\$182	biennial
Ohio	\$454	\$312	\$184	\$144	biennial
Pennsylvania	\$200	\$263	\$75	\$42	biennial
Virginia	\$400	\$285	\$175	\$75	annual
West Virginia	\$185	\$185	\$75	\$75	annual

Source: PERD's analysis of other state dental boards websites and statutes.

The Board Resolves Complaints in a Timely Manner

PERD reviewed a sample of 50 of the 130 complaints the Board received in FY 2019 through FY 2021. Per W. Va. CSR §5-5-5.1, anyone can file a complaint against licensees with the Board. Table 6 provides an overview of the sampled complaints and average time to resolve the complaints. According to W. Va. Code §30-1-5(c), each regulatory board must resolve a complaint within 18 months of the initial filing. Furthermore, the Board is required to send status reports to the party filing the complaint and the respondent within six months after the complaint was initially filed if the case has not been resolved within six months. During the scope of the audit, all sampled complaints were resolved within 18 months of their receipt date, and the Board sent status reports to the parties filing the complaints and the respondents within six months of the complaints being filed.

During the scope of the audit, all sampled complaints were resolved within 18 months of their receipt date, and the Board sent status reports to the parties filing the complaints and the respondents within six months of the complaints being filed.

Table 6			
Board of Dentistry			
Complaint Resolution Statistics			
FY 2019 through FY 2021			
Fiscal Year	Number of Complaints Sampled	Number of Cases with Disciplinary Actions	Average Resolution Time in Days
2019	22	4	123
2020	11	0	94
2021	17	1	77

Source: Board's complaint files. Average resolution times are calculated based on resolved complaints not total number of complaints.

The Board Has Established Continuing Education Requirements

The Board has established CE requirements for its licensees. W. Va. CSR §5-11-3.1 states that each licensed dentist shall complete biennially a minimum of 35 hours of CE, and that each licensed dental hygienist shall complete biennially a minimum of 20 hours of CE. Table 7 provides the CE requirements in West Virginia and the surrounding states.

Each licensed dentist is to complete biennially a minimum of 35 hours of CE, and that each licensed dental hygienist shall complete biennially a minimum of 20 hours of CE.

Table 7			
Dentists and Dental Hygienists			
Number of Required Continuing Education Hours			
West Virginia and Surrounding States			
State	Dentists	Dental Hygienists	Renewal Cycle
Kentucky	30	30	biennial
Maryland	30	30	biennial
Ohio	40	24	biennial
Pennsylvania	30	20	biennial
Virginia	15	15	annual
West Virginia	35	20	biennial

Source: PERD's analysis of other state dental boards websites, statutes, and rules.

The Board requires each first-time licensee to complete at least three hours of CE regarding drug diversion training and best practice prescribing of controlled substances training. The Board sets out a list of approved CE providers in W. Va. CSR §5-11-3.3(b) including the American Dental Association and the National Dental Hygiene Association. Furthermore, W. Va. CSR §5-11-3.6 sets out CE requirements for licensees who hold anesthesia certificates from the Board. These rules require class 2 anesthesia certificate holders complete 6 of their required 35 CE hours in specified areas, and classes 3 and 4 anesthesia permit holders must have 16 of their required 35 CE hours in specified areas.

The Board requires each first-time licensee to complete at least three hours of CE regarding drug diversion training and best practice prescribing of controlled substances training.

The Board Should Continue to Request a Citizen Appointment to the Board

As of October 2020, the Board has been without a citizen member. W. Va. Code §30-4-4(4), requires that one of the nine-member dental board be a citizen who is not licensed by the Board and who does not perform any services related to dentistry. It is important that a citizen member be on the Board to represent the public's interests. The Board's executive director indicated that two names were submitted to the Governor's Office in 2021. However, one did not respond to the Governor's Office request to see if the person was interested, and the Governor's Office disqualified the other. The legislative auditor recommends the Board continue to request a citizen appointee.

It is important that a citizen member be on the Board to represent the public's interests.

The Board Has Some Internal Controls in Place but Should Consider Utilizing the State Treasurer's Lockbox System

The Board has two full-time employees, the executive director and administrative assistant, who manage the Board's finances. To have adequate segregation of duties, there should be controls in place that prevent one person from performing two or more control activities associated with purchasing and receiving revenue, such as authorizing transactions, receiving merchandise, receiving and depositing revenue, recording transactions, and maintaining custody of assets.

To have adequate segregation of duties, there should be controls in place that prevent one person from performing two or more control activities associated with purchasing and receiving revenue.

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

- collection
- depositing
- disbursement, and
- reconciling.

While the Board has an insufficient number of employees to maintain adequate segregation of duties, the Board has established certain cash-handling procedures to reduce the risk of fraud. The Board's executive director provided PERD a narrative on procedures for disbursements and revenue collections which states:

The Administrative Assistant opens all the mail and prepares the deposits. Deposits are entered into a spreadsheet and each check or payment logged in a column for the type of revenue collected, i.e., dental application, dental renewal, etc. The deposits are given to the Executive Director for review and signature prior to being deposited with the bank. The Administrative Assistant or Executive Director take the deposits to the bank.

Furthermore, 36 percent of the Board's revenue was received as online payments in FY 2019, 37 percent was received online in FY 2020, and 41 percent was received online in FY 2021. Revenues received online mainly consist of application fees and license renewals.

To minimize the handling of any revenue, the Board should consider the utilization of the state treasurer's lockbox system. The State Treasurer's Office provides a lockbox operation whereby remittances can be picked up from a post office box, opened and sorted, imaged, deposited, and the information forwarded to the Board by the State Treasurer's Office for a fee. Use of the lockbox operation helps to mitigate the risk of fraud and is beneficial to boards with little or no staff to handle such procedures. Therefore, the legislative auditor recommends the Board consider utilizing the state treasurer's lockbox system to further reduce risk.

To assess the risk of fraud on the revenue side, PERD calculates the minimum expected revenue for a board by multiplying annual fees by the number of reported licensees. Table 8 provides a comparison of actual and expected revenues for the Board for FY 2019 through FY 2021. The actual revenues were more than expected for all years examined. As the overall balance over a three-year period exceeds the expected revenue, the legislative auditor deems the likelihood of fraud having occurred on the revenue side as relatively low.

While the Board has an insufficient number of employees to maintain adequate segregation of duties, the Board has established certain cash-handling procedures to reduce the risk of fraud.

The Board should consider the utilization of the state treasurer's lockbox system to further reduce risk.

Table 8			
Board of Dentistry			
Expected Revenue and Actual Revenue			
FY 2019 through FY 2021			
Fiscal Year	Expected Revenue	Actual Revenue	Difference
2019	\$442,440	\$489,090	\$46,650
2020	\$445,569	\$487,711	\$42,142
2021	\$452,525	\$505,673	\$53,148
Average	\$446,845	\$494,158	\$47,314
<i>Source: PERD calculations based on OASIS WV-FIN-GL-151 and board information.</i>			

To assess the risk of fraud on the expenditure side, PERD calculated the percentage of expected and required expenditures for FY 2019 through FY 2021 (see Table 9). The legislative auditor determines that the risk of fraud is relatively low on the expenditure side when required and expected expenditures are 90 percent or more of total annual expenditures. PERD's evaluation of the Board's expenditures shows that on average 91 percent of expenses are expected and required. Therefore, PERD assesses the risk of fraud to be relatively low.

PERD's evaluation of the Board's expenditures shows that on average 91 percent of expenses are expected and required.

Table 9	
Board of Dentistry	
Percentage of Expected and Required Expenditures	
FY 2019 through FY 2021	
Fiscal Year	Percent
2019	93%
2020	90%
2021	90%
<i>Source: PERD calculations based on OASIS WV-FIN-GL-062.</i>	

While the percentage of expected/required expenditures were, on average, above 90 percent, PERD's analysis of board travel expenditures showed certain instances of non-compliance with the state travel rules. The Board reimbursed lodging expenses above the per diem rate for

annual board meetings held at the Greenbrier Resort, and in 2019 for the American Association of Dental Administrators, and the American Association of Dental Boards meetings in Chicago. State travel rules allow reimbursement of up to 300 percent above per diem rate with approval from the agency's travel coordinator, in this case the Board's executive director. As seen in Table 10, the reimbursed rate would have been less than the 300 percent above per diem rate. However, the Board did not provide documentation of approval to exceed the per diem.

Table 10
Board of Dentistry
Lodging Reimbursement in Excess of Authorized Rate
FY 2019 through FY 2021

Fiscal Year	Reimbursed Rate	Authorized Rate	Difference	300 percent above Authorized Rate
2019*	\$165.32/\$291.15	\$93/\$131	\$72.32/\$160.15	\$279/\$393
2020	\$173.60	\$94	\$79.60	\$282
2021	\$173.60	\$96	\$77.60	\$288

Source: PERD calculations, authorized travel rates, and OASIS WV-FIN-GL-062.
**West Virginia rate/Chicago, IL (March 2019) rate.*
***No out-of-state travel occurred in fiscal years 2020 or 2021 in compliance with the Governor's executive order prohibiting out-of-state travel.*

In September 2018, the Board's executive director attended the American Association of Dental Administrators and an American Association of Dental Boards meetings in Chicago at a cost of \$2,841. The mileage, lodging, and meals reimbursed were mostly consistent with the federal General Services Administration (GSA) rates for Chicago. Lodging reimbursements were less than eight dollars higher than the GSA rate. However, in March 2019, both the Board's executive director and one board member attended the American Association of Dental Boards meeting in Chicago. The total cost of this trip was \$4,133 and while the mileage, airfare, and meal reimbursements were consistent with travel rules, the lodging costs reimbursed of \$291 were over twice the maximum rate allowed by the GSA of \$131 for March 2019 in Chicago. It is the legislative auditor's opinion that out-of-state travel for national association meetings can assist board members with knowledge that may assist in better operations of the agency. However, consideration should be given to keeping the lodging expenses reimbursed at the maximum allowable rate set by the GSA.

It is the legislative auditor's opinion that out-of-state travel for national association meetings can assist board members with knowledge that may assist in better operations of the agency. However, consideration should be given to keeping the lodging expenses reimbursed at the maximum allowable rate set by the GSA.

The Board holds a meeting at the Greenbrier Resort annually. According to a note by the Board's executive director in the Travel

Expense Account Settlement forms, “. . . (T)he Board held it’s [sic] meeting at the Greenbrier ahead of the Dental Association meeting so those members attending the Dental Association meeting would only make one trip to that area of the State.” Table 11 documents the Board’s total costs for an annual board meeting at the Greenbrier Resort. The decrease in costs from fiscal year 2019 to fiscal year 2020 is attributable to decreased food and beverage service expenditures. Meanwhile, the decrease in costs from fiscal year 2020 to fiscal year 2021 is attributable to the number of attendees.

The Board held its meeting at the Greenbrier ahead of the Dental Association meeting so those members attending the Dental Association meeting would only make one trip to that area of the State.

Table 11 Board of Dentistry Greenbrier Resort Costs FY 2019 through FY 2021			
Fiscal Year	Number of board members/staff attending	Number of board members/ staff staying at Greenbrier	Costs
2019	12	6	\$9,171
2020	12	6	\$6,993
2021	6	5	\$4,938
<i>Source: PERD calculations based on OASIS WV-FIN-GL-062.</i>			

In addition to the Greenbrier, the Board meets remotely, at its board office, and at other locations throughout the state. Remote meetings have no associated travel costs. The Board met remotely four times in 2019, eight times in 2020, and in 2021 three times. When the Board does travel to board meetings whether at its office or elsewhere throughout the state, it incurs travel costs. However, the average cost of these meetings while less than the cost of the Greenbrier Resort meetings can still cost thousands of dollars as is shown in Table 12.

In addition to the Greenbrier, the Board meets remotely, at its board office, and at other locations throughout the state. Remote meetings have no associated travel costs. The Board met remotely four times in 2019, eight times in 2020, and in 2021 three times.

Table 12
Board of Dentistry
Board Meetings Costs
FY 2019 through FY 2021

Location	2019	2020	2021
Bridgeport	-	-	\$4,022
Charleston	\$4,261	\$4,444	\$2,393
	\$963	-	-
Clarksburg	-	\$2,290	-
Crab Orchard	-	\$3,763	
Morgantown	\$5,548	-	-
Parkersburg	\$3,745	-	\$4,416
White Sulphur Springs	\$9,171	\$6,993	\$4,938
Average	\$4,738	\$4,373	\$3,942

*Source: PERD calculations based on OASIS WV-FIN-GL-062.
Average does not include meetings where there was no reimbursement for travel.*

The legislative auditor concludes that the travel expenses were legitimate, and that fraud or abuse did not likely occur. However, the legislative auditor questions having an annual board meeting at the Greenbrier Resort for the reasons given by the Board, given the expenses and inconvenience for the public to attend.

The legislative auditor concludes that the travel expenses were legitimate, and that fraud or abuse did not likely occur. However, the legislative auditor questions having an annual board meeting at the Greenbrier Resort for the reasons given by the Board, given the expenses and inconvenience for the public to attend. The Board should evaluate the cost and benefits of these Greenbrier Resort meetings to determine if they should be continued. However, if the Board continues having Greenbrier Resort meetings, the Board should reimburse the lodging expenses at a rate consistent with the guidelines of the Travel Management Office. Similarly, given the Board's ability to hold remote board meetings, the Board should evaluate the cost and benefits of in-person meetings to determine if more remote board meetings would be advantageous.

The Board's Register Does Not Maintain a Complete Register of Applicants as Required by Code

The board's register does not maintain a complete register of applicants required by W. Va. Code §30-1-12(a) which 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 PERD lists most required items. However, most licensees' renewal dates are missing after 2003. Of concern is inclusion of each applicant's social security number. W.Va. Code §30-1-13 formerly required licensee social security numbers to be in each Chapter 30 board's roster, but legislation removed this requirement in 2002. According to W.Va. Code §30-1-12, the board's register shall be open to public inspection at all reasonable times. As such, the legislative auditor recommends the Board redact applicant social security numbers from the register. The register can be made available upon request.

The register of applicants provided by the Board to PERD lists most required items. However, most licensees' renewal dates are missing after 2003.

The Board Did Not Provide Public Access to Its Open Teleconference Meetings During the COVID-19 Pandemic

In response to the COVID-19 circumstances, the West Virginia Ethics Commission stated the following:

“The current staff guidance regarding the coronavirus and the Open Meetings Act is that allowing citizens to attend a meeting in person is not required if the governing body determines, based upon guidance issued by the federal government, the state of West Virginia, the Centers for Disease Control and Prevention or other government agencies authorized to make these types of decisions, that it constitutes a public health risk to allow citizens to attend in person. The governing body may instead provide citizens with a call-in number or provide access via web link to a livestream of the meeting.”

The Board conducted 9 teleconference meetings during the COVID-19 pandemic, 6 of which were emergency meetings. The notices the Board filed with the Secretary of State's Office did not state the call-in number for public attendance.

The Board conducted 9 teleconference meetings during the COVID-19 pandemic, 6 of which were emergency meetings. While it is not an issue to have telephonic meetings, the notices the Board filed with the Secretary of State's Office did not state the call-in number for public

attendance. Therefore, the notices did not meet the requirements of the Open Governmental Proceedings Act W. Va. Code 6-9A-3. When the Board conducts meetings by teleconference or virtually, it should provide the access credentials to the public so that citizens may attend. This will aid the Board in complying with W.Va. Code §6-9A-et al.

Conclusion

The Board complies with most of the general provisions of Chapter 30. However, the Board should consider using the State Treasurer's Office lockbox system to process fees to reduce the risk of fraud. Furthermore, the Board's register of applicants is incomplete and lists the social security numbers of the applicants. The Board should also consider if having more remote meetings is advantageous. Additionally, the Board should comply with state travel rules, specifically with the allowable reimbursement rates for lodging. Overall, while the Board has generally good practices, it needs to comply with Chapter 30 requirements in all instances to ensure consistency and adherence to state laws.

The Board should consider discontinuing holding its board meetings at sites unless there is evidence that the benefits to licensees exceed the costs.

Recommendations

2. *The Board should consider utilizing the State Treasurer's Office lockbox system to process licensure application, renewal fees and further reduce risk.*
3. *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.*
4. *The Board should maintain a complete register of applicants as required by law and that the Board maintain applicant social security numbers separately from the register.*
5. *The Board should include in its annual report the aggregate data of licensees gender and age in order to facilitate planning for future workforce needs for dentists.*
6. *The Board should consider the cost and benefits of in-person meetings to determine if having more remote meetings is advantageous.*
7. *The Board should comply with state travel rules.*

ISSUE 3

Due to Inadequate Oversight of the Impaired Health Condition Treatment Program, the Board Does Not Have Reasonable Assurance that the Public Is Protected Against Improper Practice by Impaired Licensees

Issue Summary

West Virginia Code §30-4-6(a)(20) requires that the Board promulgate legislative rules to establish an alcohol and chemical dependency treatment program for impaired licensees. The Board has contracted with a third party to administer the Dental Recovery Network (DRN) for impaired licensees. The DRN is meant to support intake, referrals, treatment, rehabilitation, monitoring, and post-treatment support for licensed dentists and dental hygienists who are struggling with alcohol and chemical dependency or other impairing health conditions that may compromise their ability to practice dentistry. The DRN is an important component of the Board's responsibility to protect the public. However, PERD finds that the Board does not know if the DRN has implemented and consistently carries out the required procedures for effective operations. Given the importance of the DRN program in protecting the public, the Board should not be in the dark concerning the vendor's compliance with essential procedures of the contract. Therefore, the legislative auditor recommends that the DRN contract should require an independent review of the vendor's implementation of and compliance with the procedures required in the contract.

The Board Contracted a Vendor to Run the Day-to-Day Operations of Its Impaired Health Condition Treatment Program

The Board's enabling statute requires that it issue rules for an alcohol and chemical dependency program and set up standards and requirements for agreements with organizations to form professional recovery networks. In 2015 the Board set up its DRN to support the intervention, referrals, monitoring, treatment, rehabilitation, and post-treatment support of licensed dentists and dental hygienists who have potentially impaired health conditions (e.g., mental illness, chemical dependency, physical illness) that may compromise their ability to practice dentistry.

The Dental Recovery Network (DRN) for impaired licensees. is meant to support intake, referrals, treatment, rehabilitation, monitoring, and post-treatment support for licensed dentists and dental hygienists who are struggling with alcohol and chemical dependency or other impairing health conditions that may compromise their ability to practice dentistry. The DRN is an important component of the Board's responsibility to protect the public.

The Board should not be in the dark concerning the vendor's compliance with essential procedures of the contract.

The Board provides the DRN through a contracted vendor for the day-to-day operations of doing intakes for licensees referred to the DRN and for the monitoring of licensee recovery and treatment. The Board pays the vendor from a DRN-specific assessment added to each dentist (\$10) and dental hygienists (\$5) annual renewal fee. Pursuant to W. Va. CSR §5-15-13, any revenue generated by the assessment is to be dedicated to the operation of the DRN. Since fiscal year 2016, the Board has annually engaged the same vendor through a sole source contract to administer the DRN at an annual cost of \$15,000. Eleven (11) licensees have been admitted into the DRN from FY 2019 through FY 2021. Between FY 2019 and FY 2021, the DRN had between 5 and 9 participants at any given time. Table 13 shows the revenues the Board collects from its licensees and its expenditures to its DRN vendor.

The Board provides the DRN through a contracted vendor for the day-to-day operations of doing intakes for licensees referred to the DRN and for the monitoring of licensee recovery and treatment.

Table 13			
Impaired Health Condition Treatment Program			
Revenues and Expenditures			
FY 2019 through FY 2021			
FY	Revenues	Expenditures	Difference
2019	\$18,160	\$15,000	\$3,160
2020	\$18,040	\$15,000	\$3,040
2021	\$18,180	\$15,000	\$3,180
Total	\$54,380	\$45,000	\$9,380

Source: Board's Biennial Reports and DRN contract.

On average there are 9 participants each year, which calculates to about \$1,667 per participant annually. Although the annual cost for the program is relatively low, the Board does not know what the DRN's actual costs are to administer this program for a relatively small number of participants. This is compounded by the vendor serving other professionals besides dentists and hygienists, and the possibility that the vendor assesses each participant additional fees. The same vendor is also contracted to provide the same treatment services for the Board of Pharmacy. Under the Board of Pharmacy contract, the vendor assesses each working participating pharmacist a one-time administrative fee of \$100 and \$50 for pharmacy technicians, interns, and non-working pharmacists. The Board of Dentistry stated that it does not receive reports indicating if the DRN vendor assesses additional fees on participants, and if additional fees are charged, the Board is unaware how such fees are factored into the overall cost structure. However, the DRN contract says, "[The] Vendor is not permitted to charge additional fees or assess additional charges that were not...expressly provided for in the solicitation...." **Appropriate contract management requires that**

The Board does not know what the DRN's actual costs are to administer this program for a relatively small number of participants.

the Board know whether the DRN vendor is assessing added fees to program participants, and what the vendor’s actual costs are to administer the program.

The Board Does Not Provide Adequate Contract Oversight of the DRN

The Board’s contract with the DRN mirrors extensively the Board’s rules established by CSR §5-15. The DRN is an important component to the Board’s mandate of protecting the public against harm from the dentistry profession. If the DRN vendor does not adequately perform the contract requirements, impaired licensees may be allowed to continue practicing or impaired licensees may not receive adequate services to become rehabilitated.

The rule that govern the DRN program contained significant provisions for confidentiality:

“All information, interviews, reports, statements, memoranda, or other documents furnished to or produced by the program, all communications to or from the program, and all proceedings, findings, and conclusions of the program, including those relating to intervention, treatment, or rehabilitation, that in any way pertain to or refer to a person participating in a dentist recovery network shall be privileged and confidential.”

and:

“All records and proceedings of the program that pertain or refer to a person participating in a dental recovery network shall be privileged and confidential, used by the program and its members only in the exercise of the proper function of the program, not be considered public records, and not be subject to court subpoena, discovery, or introduction as evidence in any civil, criminal, or administrative proceedings, except as provided in subsection 10.1 of this rule.” [Subsection 10.1 refers to the detailed information that the executive director is required to immediately report to the Board after the initial investigation of the licensee.]

If the DRN vendor does not adequately perform the contract requirements, impaired licensees may be allowed to continue practicing or impaired licensees may not receive adequate services to become rehabilitated.

PERD finds that the Board does not adequately oversee the DRN contract or the vendor’s performance.

PERD finds that the Board does not adequately oversee the DRN contract or the vendor’s performance. The contract imposes important requirements and deliverables on the vendor that either the Board does

not receive or know if the vendor is performing them. In addition, the Board has not inquired as to why certain deliverables were not provided or insist that the deliverables be provided by the vendor. Below is a list of the various requirements of the DRN contract along with the status of if the vendor has responded or if the Board knows the vendor's compliance.

1. DRN Contract Reporting Requirements:

- a. **Immediate Detailed Report** -- When a licensed dentist or hygienist is reported as possibly impaired or self-reports being impaired, the executive director of the DRN shall investigate to determine if a licensee is impaired. After investigation and review of a licensee, if impairment is confirmed, the DRN program “shall report immediately to the Board detailed information obtained during the investigation.” **Such report is not received by the Board.**
- b. **Monthly Status Report** – The contract requires a monthly report be provided to the Board on the status of any licensee that is going through active treatment. The monthly report on specific licensees continues “until a time mutually agreed to” by the Board and the DRN. **Such report is not received by the Board.**
- c. **Quarterly Status Report** -- The contract requires a quarterly report be provided to the Board on the status of all licensees involved in the program who were previously reported to the Board. These are licensees who may not be in active treatment but are required to be monitored. These licensees may be back in the workplace. **The Board receives this report annually not each quarter.**
- d. **Annual Comprehensive Statistical Report** -- The contract requires an annual report be provided to the Board that compiles comprehensive statistics on suspected impairments, impairments, self-referrals, post-treatment support, and other significant demographic and substantive information collected through the program. **The Board received one annual report over the three-year scope of this audit.** However, the annual report that was received is a compilation of statistics that aggregates licensees for the Board of Pharmacy and the Board of Dentistry. Therefore, the annual report has little to no value to the Board of Dentistry.

After investigation and review of a licensee, if impairment is confirmed, the DRN program “shall report immediately to the Board detailed information obtained during the investigation.” Such report is not received by the Board.

The annual report that was received is a compilation of statistics that aggregates licensees for the Board of Pharmacy and the Board of Dentistry.

2. Contract Performance Requirements:

a. When a licensed dentist or hygienist is reported as possibly impaired or self-reports being impaired, the executive director of the DRN shall make contact with the licensee to confirm the information. If it is determined there is sufficient reason for action, the executive director of the DRN shall encourage the licensee to present himself or herself to the DRN within 48 hours. If the licensee resists going to the DRN, the executive director will make another attempt. If after two unsuccessful attempts within a period not to exceed 14 days, the executive director shall inform the licensee that the case will be disclosed to the Board. **The Board does not know if the DRN complies with these timeframes.**

The Board does not know if the vendor develops and maintains appropriate case information.

b. Once a licensee has entered into the program and intervention is to begin, the executive director of the DRN shall draw up a final agreement between the licensee and the DRN to enter into a treatment program. The executive director shall also collect and maintain appropriate paperwork as specified in the contract concerning treatment progress, group therapy participation, and urine and blood analysis. **The Board does not know if the vendor develops and maintains appropriate case information.**

The Board does not know if monitoring requirements have been developed for each licensee in the program.

c. The executive director shall work with treatment providers to determine treatment guidelines and consult with the primary care giver on a regular basis. **The Board does not know if the vendor adequately works with treatment providers or consults with primary care givers as required by the contract.**

d. The DRN must designate monitoring requirements for each licensee in the program. **The Board does not know if monitoring requirements have been developed for each licensee in the program.**

The Board does not have reasonable assurance that the DRN is operating as required and that licensees returning to the workplace after treatment can practice safely.

Conclusion

The function of the Dental Recovery Network is an important component of the Board's statutory mandate to protect the public from harm due to the dentistry profession. Given the importance of the DRN program to the Board's responsibilities, the Board cannot be in the dark concerning the vendor's compliance with critical procedures that are necessary for effective operation and public safety. Consequently, the Board does not have reasonable assurance that it is protecting the public's health and safety from impaired dentists and dental hygienists, or that the DRN is operating as required and that licensees returning to the workplace after treatment can practice safely. PERD received no evidence that the vendor has complied with some of the reporting requirements, nor has the Board insisted on receiving such reports. This indicates that the Board has not exercised adequate oversight of the DRN contract. To reduce the risk of harm to the public, the Board should insist on receiving all deliverables of the contract and have a contract provision requiring an independent evaluation be performed concerning the vendor's compliance with implementing and conducting contract procedures.

The Board should insist on receiving all deliverables of the contract and have a contract provision requiring an independent evaluation be performed concerning the vendor's compliance with implementing and conducting contract procedures.

Recommendations

8. *The Board should exercise greater oversight over the Dental Recovery Network program and receive all contract deliverables.*
9. *The Board should amend the contract for the Dental Recovery Network to allow for a periodical independent review, either by the Board or a third party, of the vendor's compliance with implementing and conducting contracted procedures.*
10. *The Board should consider whether the contract cost is appropriate.*

ISSUE 4

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

Issue Summary

In order to actively engage with a state agency online, citizens must first be able to access and comprehend the information on government websites. Every website should include some elements, such as a search tool and contact information including physical and email address, telephone number and the names of administrative officials. Other elements such as social media links, graphics, and audio/video features may not be necessary or practical for some state agencies. Table 14 shows the Board integrates 40 percent of the checklist items in its website. This measure indicates that the Board needs to make more improvement in the user-friendliness and transparency of its website.

Table 14			
Board of Dentistry			
Website Evaluation Score			
Substantial Improvement Needed	More Improvement Needed	Modest Improvement Needed	Little or No Improvement Needed
0-25%	26-50%	51-75%	76-100%
	Board 40%		
<i>Source: PERD’s review of the Board of Dentistry website as of August 26, 2021.</i>			

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

It has become common and expected that governments convey to the public what it is doing through website technology. Therefore, government websites should be designed to be user-friendly. A user-friendly website is understandable and easy to navigate from page to page. Government websites should also provide transparency of an agency’s operation to promote accountability and trust. A number of organizations have developed assessment criteria to evaluate federal and state government websites for transparency and user-friendliness. The Office of the Legislative Auditor conducted a literature review on assessments of governmental websites and developed an assessment checklist to evaluate West Virginia’s state agency websites (Appendix C). The assessment checklist lists several website elements including a search tool, public records, budget data, mission statement, an organizational chart, Freedom of Information request, agency history, and website

update status. An agency can score a total of 50 points on the checklist, 18 in user-friendliness and 32 in transparency. As illustrated in Table 15, the Board’s website scored a total of 20 points. This total comprises 6 points, or 33 percent, for user-friendliness and 14 points, or 44 percent, of the possible points for transparency. This means the website needs more improvements in user-friendliness and transparency. **The Board should consider making website improvements to provide a better online experience for the public.**

Table 15
Board of Dentistry
Website Evaluation Score

Category	Possible Points	Agency Points	Percentage
User-Friendly	18	6	33%
Transparency	32	14	44%
Total	50	20	40%

Source: PERD’s review of the Board of Dentistry website as of August 26, 2021.

The Board’s Website Is Navigable but Needs Additional User-Friendly Features

The Board’s website is easy to navigate as every page links to the Board’s homepage. Furthermore, it has a site map and a help link that allows users to access an often-asked questions section. However, the Board is missing several checklist items: a search tool, site functionality, and foreign language accessibility, among others. Although the average readability of the homepage was at a 7th grade reading level which is recommended, the complaint form average readability was at a 15th grade reading level, which is higher than the recommended 7th grade level for general readability.

User-Friendly Considerations

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

- **Search Tool** – The website should contain a search box, preferably on every page.
- **Foreign Language Accessibility** – A link to translate all webpages into languages other than English.
- **Site Functionality** – The website should use sans serif fonts, include buttons to adjust the font size, and resizing the text should not distort site graphics or text.

The Board’s website is easy to navigate as every page links to the Board’s homepage, it has a site map and a help link that allows users to access an often-asked questions section. However, the Board is missing several checklist items: including a search tool, site functionality.

- **Mobile Functionality** – The website should be available in a mobile version and/or a mobile application (app).
- **Feedback Options** – A page where users can voluntarily submit feedback about the website or particular sections of the website.
- **Online survey/poll** – A short survey that pops up and requests users to evaluate the website.
- **Social Media Links** – The website should contain buttons that allow users to post an agency’s content to social media pages such as Facebook and Twitter.
- **RSS Feeds** – RSS stands for “Really Simple Syndication” and allows subscribers to receive regularly updated work (i.e. blog posts, news stories, audio/video, etc.) in a standardized format.

The Board’s Website Needs Additional Transparency Features

A website that is transparent should promote accountability and provide information for citizens about how well the Board is performing, as well as encouraging public participation. The Board’s website has 44 percent of the core elements that are necessary for a general understanding of the Board’s mission and performance. The Board’s website contains important transparency features including its email, physical address, telephone number, names and contact information for administrators, and public records such as statutes, rules, and meeting minutes. However, the Board is missing several checklist items: an online complaint form, budget data, performance measures/outcomes, audio/video access, and website update status.

The Board’s website contains important transparency features including its email, physical address, telephone number, names and contact information for administrators, and public records such as statutes, rules, and meeting minutes.

Transparency Considerations

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

- **Location of Agency Headquarters** – The agency’s contact page should include an embedded map that shows the agency’s location.
- **Administrator(s) biography** – A biography explaining the administrator(s) professional qualifications and experience.
- **Complaint Form** - An online complaint form.
- **Budget** – Budget data should be available at the checkbook level, ideally in a searchable database.
- **FOIA Information** – Information on how to submit a FOIA request, ideally with an online submission form.
- **Agency History** – The agency’s website should include a page

explaining how the agency was created, what it has done, and how, if applicable, has its mission changed over time.

- **Graphic capabilities** – Allows users to access relevant graphics such as maps, diagrams, etc.
- **Audio/video features** – Allows users to access and download relevant audio and video content.
- **Performance measures/outcomes** – A page linked to the homepage explaining the agencies performance measures and outcomes.
- **Website Updates** – The website should have a website update status on screen and ideally for every page.

The Board’s Website Is Not Identifiable as a Government Website

The Board has an encrypted website which means that its data are protected from interception or alteration. However, the board’s website is “.us” and not “.gov” making it hard to identify as a government website. Government websites should be easily identifiable. The United States GSA’s DotGov Program (DotGov) makes the “.gov” domain available to US-based government organizations. DotGov works to recommend security best practices so that users have confidence in a secure site. The legislative auditor recommends the Board consider registering for a “.gov” domain.

The Board has an encrypted website which means that its data are protected from interception or alteration. However, the board’s website is “.us” and not “.gov” making it hard to identify as a government website.

Conclusion

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

Recommendation

11. *The Board should improve the user-friendliness and transparency of its website by incorporating more of the website elements identified.*
12. *The Board should consider registering for a “.gov” domain.*

Appendix A Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

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



John Sylvia
Director

May 20, 2022

Susan Combs, Executive Director
Board of Dentistry
1319 Robert C. Byrd Drive
Crab Orchard, WV 25827


Dear Executive Director Combs:

This is to transmit a draft copy of the regulatory board review of the Board of Dentistry. This report is tentatively scheduled to be presented during the June 12-14, 2022 interim meetings of the Joint Committee on Government Operations, and the Joint Committee on Government Organization. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions committee members may have during or after the meeting.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us by Tuesday, May 24, 2022. In addition, we need your written response by noon on Tuesday, May 31, 2022 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 304-340-3192 by Thursday, June 9, 2022 to make arrangements.

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

Sincerely,


John Sylvia

Enclosure

————— *Joint Committee on Government and Finance* —————

Appendix B

Objectives, Scope and Methodology

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

Objectives

An objective of this review is to determine if the Board should be continued, consolidated, or terminated, and if conditions warrant a change in the degree of regulations. In addition, this review assesses the Board's compliance with the general provisions of Chapter 30, Article 1 of the West Virginia Code, the Board's enabling statute W. Va. §30-4-et al., and other applicable rules and laws. A further objective is to determine if the Board's impaired health condition treatment program provides adequate protection to the public against improper practice by impaired providers. Finally, the review includes an assessment of the Board's website for user-friendliness and transparency.

Scope

The scope of this review is the Board's meeting minutes, a sample of 51 complaint files, complaint-resolution process, disciplinary procedures and actions, budget, revenues and expenditures, the Board's impaired health condition treatment program contract and received deliverables, and key features of the Board's website. The review also includes an examination of open meeting notices, executive appointment and oath of office records, state auditor licensing board seminar rosters, and the state treasurer transfer of revenues list. The time period covered from fiscal years 2019 through 2021.

Methodology

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

PERD staff visited the Board's Crab Orchard office in Raleigh County and met with its staff. Testimonial evidence was gathered to gain an understanding of the Board's policies and procedures. Interviews with the Board's staff or other agencies were confirmed by written statements and in some cases by corroborating evidence.

PERD collected and analyzed the Board's complaint files, meeting minutes, annual reports, budget information, procedures for investigating and resolving complaints, and continuing education. PERD also

obtained information from the State Auditor's Office, Secretary of State's Office, the State Treasurer's Office, the Department of Administration's Purchasing Division, and the Ethics Commission. This information was assessed against statutory requirements in §30-1 and §6-9A of the West Virginia Code as well as the Board's enabling statute §30-4-et al. to determine the Board's compliance with such laws. Some information was also used as supporting evidence to determine the sufficiency and appropriateness of the overall evidence.

PERD compared the Board's actual revenues to expected revenues in order to assess the risk of fraud, and to obtain reasonable assurance that revenue figures were sufficient and appropriate. Expected revenues were approximated by applying license fees to the number of licensees for the period of fiscal years 2019 to 2021. The number of licensees and actual revenues were relatively consistent during the scope of the review. Therefore, our evaluation of expected and actual revenues allowed us to conclude that the risk of fraud on the revenue side was low within the context of the audit objectives, would not affect the audit objectives, and actual revenues were sufficient and appropriate.

PERD also tested the Board's expenditures for fiscal years 2019 through 2021 to assess the risk of fraud on the expenditure side. The test involved determining if required and expected expenditures were at least 90 percent of total expenditures. Required and expected expenditures include salaries and benefits, travel reimbursement, board-member compensation, insurance, office rent, payments to other agencies, and utilities. PERD determined that during the scope of the review, required and expected expenses were between 90 and 93 percent of total expenditures. These percentages gave reasonable assurance that the risk of fraud on the expenditure side was relatively low and would not affect the audit objective, findings, and conclusions.

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

The Office of the Legislative Auditor reviews the statewide single audit and the Division of Highways financial audit annually with regards to any issues related to the State's financial system known as the West Virginia Our Advanced Solution with Integrated Systems (OASIS). The legislative auditor's staff on a quarterly basis request and reviews any external or internal audit of OASIS. In addition, through its numerous audits, the Office of the Legislative Auditor continuously tests the financial information contained in OASIS. PERD also asks audited agencies if they have encountered any issues of accuracy with OASIS data. Based on

these actions, along with the audit tests conducted on the audited agency, it is our professional judgement that the information in OASIS is reasonably accurate for auditing purposes under the 2018 Government Auditing Standards (Yellowbook). However, in no manner should this statement be construed as a statement that 100 percent of the information in OASIS is accurate.

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

Appendix C

Website Criteria Checklist and Points System

Board of Dentistry Website Criteria Checklist and Points System			
User-Friendly	Description	Total Points Possible	Total Agency Points
Criteria	The ease of navigation from page to page along with the usefulness of the website.	18	6
		Individual Points Possible	Individual Agency Points
Search Tool	The website should contain a search box (1), preferably on every page (1).	2 points	0 points
Help Link	There should be a link that allows users to access a FAQ section (1) and agency contact information (1) on a single page. The link's text does not have to contain the word help, but it should contain language that clearly indicates that the user can find assistance by clicking the link (i.e. "How do I...", "Questions?" or "Need assistance?")	2 points	2 points
Foreign language accessibility	A link to translate all webpages into languages other than English.	1 point	0 points
Content Readability	The website should be written on a 6 th -7 th grade reading level. The Flesch-Kincaid Test is widely used by Federal and State agencies to measure readability.	No points, see narrative	
Site Functionality	The website should use sans serif fonts (1), the website should include buttons to adjust the font size (1), and resizing of text should not distort site graphics or text (1).	3 points	0 points
Site Map	A list of pages contained in a website that can be accessed by web crawlers and users. The Site Map acts as an index of the entire website and a link to the department's entire site should be located on the bottom of every page.	1 point	1 point
Mobile Functionality	The agency's website is available in a mobile version (1) and/or the agency has created mobile applications (apps) (1).	2 points	0 points
Navigation	Every page should be linked to the agency's homepage (1) and should have a navigation bar at the top of every page (1).	2 points	2 points
FAQ Section	A page that lists the agency's most frequent asked questions and responses.	1 point	1 point
Feedback Options	A page where users can voluntarily submit feedback about the website or particular section of the website.	1 point	0 points
Online survey/poll	A short survey that pops up and requests users to evaluate the website.	1 point	0 points
Social Media Links	The website should contain buttons that allow users to post an agency's content to social media pages such as Facebook and Twitter.	1 point	0 points
RSS Feeds	RSS stands for "Really Simple Syndication" and allows subscribers to receive regularly updated work (i.e. blog posts, news stories, audio/video, etc.) in a standardized format.	1 point	0 points

Board of Dentistry Website Criteria Checklist and Points System			
Transparency	Description	Total Points Possible	Total Agency Points
Criteria	A website which promotes accountability and provides information for citizens about what the agency is doing. It encourages public participation while also utilizing tools and methods to collaborate across all levels of government.	32	14
		Individual Points Possible	Individual Agency Points
Email	General website contact.	1 point	1 point
Physical Address	General address of stage agency.	1 point	1 point
Telephone Number	Correct telephone number of state agency.	1 point	1 point
Location of Agency Headquarters	The agency's contact page should include an embedded map that shows the agency's location.	1 point	0 points
Administrative officials	Names (1) and contact information (1) of administrative officials.	2 points	2 points
Administrator(s) biography	A biography explaining the administrator(s) professional qualifications and experience.	1 point	0 points
Privacy policy	A clear explanation of the agency/state's online privacy policy.	1 point	1 point
Complaint form	A specific page that contains a form to file a complaint (1), preferably an online form (1).	2 points	1 point
Budget	Budget data is available (1) at the checkbook level (1), ideally in a searchable database (1).	3 points	0 points
FOIA information	Information on how to submit a FOIA request (1), ideally with an online submission form (1).	2 points	0 points
Calendar of events	Information on events, meetings, etc. (1) ideally imbedded using a calendar program (1).	2 points	1 point
Mission statement	The agency's mission statement should be located on the homepage.	1 point	1 point
Agency history	The agency's website should include a page explaining how the agency was created, what it has done, and how, if applicable, has its mission changed over time.	1 point	0 points

Board of Dentistry Website Criteria Checklist and Points System			
Public Records	The website should contain all applicable public records relating to the agency’s function. If the website contains more than one of the following criteria the agency will receive two points: <ul style="list-style-type: none"> • Statutes • Rules and/or regulations • Contracts • Permits/licenses • Audits • Violations/disciplinary actions • Meeting Minutes • Grants 	2 points	2 points
e-Publications	Agency publications should be online (1) and downloadable (1).	2 points	2 points
Agency Organizational Chart	A narrative describing the agency organization (1), preferably in a pictorial representation such as a hierarchy/organizational chart (1).	2 points	1 point
Graphic capabilities	Allows users to access relevant graphics such as maps, diagrams, etc.	1 point	0 points
Audio/video features	Allows users to access and download relevant audio and video content.	1 point	0 points
Performance measures/outcomes	A page linked to the homepage explaining the agencies performance measures and outcomes.	1 point	0 points
Website updates	The website should have a website update status on screen (1) and ideally for every page (1).	2 points	0 points
Job Postings/links to Personnel Division website	The agency should have a section on homepage for open job postings (1) and a link to the application page Personnel Division (1).	2 points	0 points

Appendix D Agency Response

Members

Samuel V. Veltri, DDS
President

Mary Beth Shea, RDH
Secretary

John E. Bogers, II, DDS

Stan W. Kaczkowski, DDS

Lewis D. Gilbert, DDS

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WEST VIRGINIA BOARD OF DENTISTRY

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May 31, 2022

Mr. John Sylvia
West Virginia Legislature
Performance Evaluation and Research Division
1900 Kanawha Blvd., E.
Building 1, Room W-314
Charleston, WV 25305-0610

RE: Response to Draft Copy of Regulatory Board Review

Dear Mr. Sylvia:

Thank you for the opportunity to respond to the draft of the Board's review by the Performance Evaluation and Research Division. The Board appreciates the time and effort taken to ensure the proper regulation of professions in West Virginia as effectively and efficiently as possible.

The Board will respond to some of the issues and the recommendations of the draft report. The response will be made in the order of the issues and recommendations as presented in the report.

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

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

The Board agrees with the recommendation the Board of Dentistry should continue as currently regulated.

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

Accumulation of Cash - The Board, for many years, employed three staff members. In 2019, the

Board had two staff members leave, one through retirement and the other transferring to another job in State Government. During Covid, the Board has fared well with two full-time staff members. However, we have kept a vacancy open and money in the budget to hire an additional staff member should it be necessary.

Prior to 2018, the Board had a full-time attorney assigned by the Attorney General's office whose salary was paid by the Board. Changes were made by the AG's office such that the assigned attorney for the Board also represented various other Boards. The Board hired a part-time in-house counsel to advise the Board and work on cases that could be settled by Consent Decrees. The in-house counsel retired at the end of 2019. These factors have reduced our expenses significantly over the past several years. The workload of the assigned attorney has somewhat slowed down our ability to close cases in a more timely manner. Additional assistance from the AG's office has been requested and received in the past. The Board will continue to request additional assistance as necessary.

Citizen Board Member - The Board has been in contact with the Governor's Office on several occasions to check the status of the Citizen member appointment. It is my understanding there is a candidate who has completed the questionnaire and may be appointed to the Board as the Citizen member.

Travel Expenses - Travel Management Guideline - The Board will undertake a review of these guidelines in order to ensure reimbursements are consistent with the Department of Administration's Travel Management Office and include proper documentation. In regard to meetings held at the Greenbrier, the Board has historically held a meeting in July of each year at the same time or ahead of the West Virginia Dental Association (WVDA) meeting. The Board interacts with the Executive Council of the WVDA on their first day of meetings. The Board is invited to attend and the President of the Board speaks during this meeting and answers questions. It is a good time to network with leaders and members of the WVDA as well as representatives of the only dental school in the state. While we will not always agree with the WVDA, it is important to have a relationship with them.

Telephone Conference Meetings - The Board will review different ways to provide public access to telephone conference calls or virtual meetings via Skype, WebEx, Teams, Facebook, etc. in order to ensure compliance with the Open Meetings Act.

Recommendation 2 *The Board should consider utilizing the State Treasurer's Office lockbox system to process licensure application, renewal fees and further reduce risk.*

Board staff will make contact with the State Treasurer's Office to obtain more information about the Lockbox System and how it works.

Recommendation 3 *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.

The Board will not attempt to tell the Legislature what to do with this recommendation. The Board is aware of the accumulation of funds and the circumstances that have occurred over the past several years that have attributed to it. During the 2022 legislative session the Board's fee rules, 5CSR3, were opened by the House Government Organization Committee and all fees were decreased by 10%. This decrease should help the Board to maintain an appropriate level of funding.

Recommendation 4 *The legislative auditor recommends that the Board maintain a complete register of applicants as required by law and that the Board maintain applicant social security numbers separately from the register.*

The application register has been amended by removing the social security number column. When converting our old data to Excel, in order to ensure data retention, the social security number must have been incorporated, which was unintentional for this register.

The Board has an updated contract with GL Solutions effective May, 2022. We will review the system and try to incorporate the renewal records into the register of applicants.

Recommendation 5 *The legislative auditor recommends the Board include in its annual report the aggregate data of licensees gender and age in order to facilitate planning for future workforce needs for dentists.*

The Board will adjust the retirement data to include the age and gender of licensees.

Recommendation 6 *The Board should consider the cost and benefits of all its meetings to decide if it should continue to have physical board meetings.*

The Board will review the issues surrounding this recommendation and take it under consideration.

Recommendation 7 **The legislative auditor recommends the Board comply with state travel rules.**

The Board will undertake a review of the state travel rules in order to ensure reimbursements are consistent with the Department of Administration's Travel Management Office and include proper documentation.

Issue 3: Due to Inadequate Oversight of the Impaired Health Condition Treatment Program, the Board Does Not Have Reasonable Assurance that the Public Is Protected Against Improper Practice by Impaired Licensees

In 2014, the Board of Dentistry requested HB4538 to provide the Board authority to

promulgate legislative rules concerning agreements with organizations to create alcohol or chemical dependency treatment programs, to form dentist recovery networks and authorize the Board to defer disciplinary action with regard to an impaired licensee who voluntarily enters an approved treatment program. The Dental Recovery Network (DRN) is a fairly new program, less than 10 years old. While the Board agrees we can do better in the oversight of the program, we disagree that there is not reasonable assurance that the public is protected against the improper practice by impaired licensees. Prior to this program, licensees did not have the opportunity to submit to treatment without the fear of loss of their license. Prior to this program, while the Board took actions on several occasions dealing with impairment or opioid violations, the Board does not know how many impaired practitioners there may have been. Cases investigated by the DRN, that are not self-reports, would be reported to the Board. It's the Board's understanding there have not been any such cases.

The DRN is a non-profit organization whose income pays for utilities, travel, and the payroll of the staff, some of which are on call 24/7, including holidays. The DRN charges monthly fees to their participants. "*[The] Vendor is not permitted to charge additional fees or assess additional charges that were not...expressly provided for in the solicitation...*" we believe this refers to additional charges or fees the WVPRN may try to charge the Board in the solicitation for any additional costs. Every program in the state currently charges fees to their participants.

DRN Contract Reporting Requirements - The DRN was meant to be an alternative to discipline program, a self-report program with the ability to investigate impairment cases reported by another. Self-reports are not to be reported to the Board unless there is diversion involved or a failure to comply with their contract. This program is meant to encourage those with impairment issues to come forward instead of hiding. The DRN has not had to investigate any cases other than individuals who self-report, which have a higher level of anonymity afforded to them.

DRN Contract Performance Requirements - Most referrals to the DRN have been driven by disciplinary actions by the Board. According to the Executive Director of the DRN, there has not been a case where a self-reporting individual has refused to present themselves after the initial report. Detailed treatment information is kept concerning each participant. Treatment files include, but are not limited to, intake paperwork, releases, weekly treatment reports to monitor progress and drug screen results. Unless a participant is non-complaint, the DRN does not share confidential information with the Board. Each participant's contract with the DRN is specifically designed for the individual based on their diagnosis and history. The DRN is in touch with treatment providers/counselors on a regular basis. Aftercare is always coordinated with the treatment center for intensive outpatient program counseling.

The Board will review the contract and the rules, in regard to reporting, to determine proper and reasonable reporting requirements in order to maintain proper oversight. The Board has a committee to review the Dental Recovery Network rules. This committee will review the rules to make any modifications needed in order to ensure proper oversight and contract performance.

The Board advertised the contract for solicitation, as a sole source purchase, and an ASSD

document was entered into WVOASIS on or about May 26, 2021. With this document the sole source purchase information is included with the solicitation, including the costs of the contract. There were no responses by any other vendors to indicate the contract could be provided at a lessor cost. However, once the Board has reviewed the contract and rules, there will be questions raised in order to determine if the contract price is appropriate or not.

Recommendation 8 *The Board should exercise greater oversight over the Dental Recovery Network program and receive all contract deliverables.*

Recommendation 9 *The Board should amend the contract for the Dental Recovery Network to allow for a periodical independent review of the vendor's compliance with implementing and conducting contracted procedures.*

Recommendation 10 *The Board should consider whether the contract cost is appropriate.*

As mentioned above, the Board will undertake a review of the contract and rules in regard to recommendations 8 through 10.

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

The Board agrees improvements can be made to the website. Board staff is already looking at ways to make some of the improvements suggested this year. The Board's contract with GL Solutions involves the development of our database as well as the development and hosting of our website. Board staff will work with GL Solutions to make necessary improvements for user-friendliness and transparency.

Recommendation 11 *The Board should improve the user-friendliness and transparency of its website by incorporating more of the website elements identified.*

The Board will improve the user-friendliness and transparency of its website.

Again, thank you for the opportunity to respond to the issues and recommendations of the draft report. Representatives from the Board will be in attendance, at the interim meeting, to respond to the report and answer any questions members may have.

Respectfully,



SUSAN M. COMBS
Executive Director



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