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PE 22-08-658

## REGULATORY BOARD REVIEW

# BOARD OF OSTEOPATHIC MEDICINE

### AUDIT OVERVIEW

The Board of Osteopathic Medicine Is Necessary to Protect the Public

The Board Complies with Most of the General Provisions of Chapter 30, Article I, of the West Virginia Code

The Board of Osteopathic Medicine Provides Adequate Oversight of Contractual Agreement with the West Virginia Medical Professionals Health Program, However the Board Should Determine if the Overall Costs of the Program Are Reasonable

The West Virginia Board of Osteopathic Medicine's Website Needs More Improvement to Enhance User-Friendliness and Transparency



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Glenn Jeffries  
Richard D. Lindsay II

### House of Delegates

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**John Sylvia  
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January 10, 2023

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The Honorable Brandon Steele  
West Virginia House of Delegates Building 1, Room E-213  
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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 Osteopathic Medicine. The issues covered herein are *"The Board of Osteopathic Medicine is Necessary to Protect the Public;" "The Board Complies with Most of the General Provisions of Chapter 30, Article 1, of the West Virginia Code;" "The Board Provides Adequate Oversight of the Contractual Agreement with the West Virginia Medical Professionals Health Program, However the Board Should Determine if the Overall Costs of the Program Are Reasonable;" and "The West Virginia Board of Osteopathic Medicine's Website Needs More Improvement to Enhance User Friendliness and Transparency."*

We transmitted a draft copy of the report to the Board of Osteopathic Medicine on December 6, 2022. We received the agency response on December 16, 2022.

Let me know if you have any questions.

Sincerely,

*John Sylvia*  
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 West Virginia Board of Osteopathic Medicine pursuant to West Virginia Code §4-10-10(b)(5). Objectives of this audit were to assess the continued need for the Board, its compliance with the general provisions of Chapter 30 and other applicable laws, assess its contract management practices concerning the West Virginia Medical Professionals Health Program, and evaluate the Board's website for user-friendliness and transparency. The issues of this report are highlighted below.

### Frequently Used Acronyms

PERD – Performance Evaluation and Research Division  
W. Va. Code – West Virginia Code  
D.O. – Doctor of Osteopathic Medicine  
OASIS – Our Advanced Solution with Integrated Systems  
CSR – West Virginia Code of State Rules  
CME – Continuing Medical Education  
P.A. – Allopathic Physician Assistant  
MPHP – West Virginia Medical Professionals Health Program  
M.D. – Medical Doctors  
D. P.M. – Doctor of Podiatry Medicine

### Report Highlights:

#### **ISSUE 1: The Board of Osteopathic Medicine Is Necessary to Protect the Public**

- The potential for harm from the osteopathic medical profession can be life threatening.
- The use of technology and telemedicine creates additional responsibility for the Board.
- The legislative auditor recommends that the Legislature continue the Board of Osteopathic Medicine as currently regulated.

#### **ISSUE 2: The Board Complies with Most of the General Provisions of Chapter 30, Article 1, of West Virginia Code**

- The Board is financially self-sufficient but should begin to evaluate its expenditures for ways to avoid its cash balance falling below the annual disbursement amount.
- The Board has established continuing education requirements.
- The Board resolved complaints timely and with due process.
- The Board's chairperson, executive director, and members should adhere to W.Va. Code §30-1-2(c) and attend the State Auditor's Seminar on Regulatory Boards as required.
- The Board has some financial management internal controls in place and its online payment system further reduces the risk of fraud, but it should consider the state treasurer's lockbox system.

#### **Issue 3: The Board of Osteopathic Medicine Provides Adequate Oversight of the Contractual Agreement with the West Virginia Medical Professionals Health Program, However the Board Should Determine if the Overall Costs of the Program Are Reasonable**

- Since 2007, the Board has been authorized to designate treatment, recovery, and monitoring physician health programs.
- A portion of licensure and renewal fees goes towards payment for the Medical Professionals Health Program.
- The Board provides adequate oversight of the vendor's compliance with contract requirements as the MPHP provides the Board with reports on a timely basis.
- However, given that the vendor may charge participating licensees additional fees along with what the Board pays in licensure fee pass-throughs, the Board should gain a better understanding of the overall cost of the MPHP to determine if licensure fees for the program are adequate.

#### **Issue 4: The West Virginia Board of Osteopathic Medicine's Website Needs More Improvement to Enhance User-Friendliness and Transparency**

- The Board's website is navigable, but more improvements are needed in the areas of user-friendliness and transparency.
- The Board has pertinent public information on its website. The Board's contact information is also provided. However, providing website users with additional elements and capabilities, as suggested in the report, would improve user-friendliness and transparency.

#### **PERD Response to Board Response**

The Board provided their response on December 16, 2022 which can be seen in Appendix D. The Board reported that they agree with the findings and recommendations set forth in the report and will thoroughly consider how it can implement those recommendations.

#### **Recommendations**

1. *The legislative auditor recommends the Legislature continue the Board of Osteopathic Medicine as currently regulated.*
2. *The Board should begin to evaluate its expenditures for ways to avoid its cash balance falling below the annual disbursement amount.*
3. *The Board members should adhere to W.Va. Code §30-1-2a(c)(3) and attend the State Auditor's Seminar on Regulatory Boards once per term as required.*
4. *The Board should adhere to W.Va. Code §30-1-5(c) and send status reports out within six months of the complaint being filed to the party filing the complaint and the Respondent by certified mail and issue a final ruling within one year of the status reports return receipt date.*
5. *The Board should adhere to W. Va. Code §30-1-13 and arrange the roster alphabetically by name and also the cities or counties in which their offices are situated.*



6. *The Board should consider utilizing the state treasurer's lockbox system to further reduce risk of fraud.*
7. *The Board should review the overall cost of the West Virginia Medical Professional Health Program to determine if the current contractual fee structure is adequate, and if the additional fees charged licensees by the MPHP are reasonable and do not inhibit impaired licensees from participating in the program.*
8. *The Board should consider more improvements to its website to provide more transparency and user friendliness for online public users.*



## ISSUE 1

### **The Board of Osteopathic Medicine Is Necessary to Protect the Public**

#### **Issue Summary**

This is a Regulatory Board Review of the Board of Osteopathic Medicine (Board) to determine if there is a need for the continuation, consolidation, or termination of the Board. The Board licenses Doctor of Osteopathic Medicine (D.O.s) and osteopathic physician assistants (P.A.s) in West Virginia to ensure the safety of the public. Along with establishing the minimum educational and training requirements for licensure, the Board reviews complaints and issues disciplinary action accordingly. Medical boards have been established in every state in the United States to ensure the safe practice of osteopathic medicine and osteopathic surgery. In determining the need for a regulatory board, the legislative auditor considers whether there would be adverse risk to the public if the profession lacked regulation. As this risk has been determined to exist, the legislative auditor recommends regulation by the Board continue as currently structured.

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*In determining the need for a regulatory board, the legislative auditor considers whether there would be adverse risk to the public if the profession lacked regulation.*

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#### **The Potential for Harm from the Osteopathic Medical Profession Can Be Life Threatening**

The practice of medicine and surgery refers to the diagnosis or treatment of, or operation or prescription for, any human disease, pain, injury, deformity or other physical or mental condition (*W.Va. Code §30-3-4(3)*). Osteopathic physicians and surgeons licensed shall have the same rights and privileges as physicians and surgeons of other schools of medicine with respect to the treatment of cases (*W.Va. Code §30-14-9*). As some osteopathic physicians also perform surgery on people (and are, at times, responsible for prescribing medications), it would be harmful to the public for these professionals to be unregulated.

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*De-regulation of the osteopathic profession would result in a significant impact to the health and safety of the public in West Virginia.*

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The Board reported on the dangers associated with an unregulated practice of the profession as follows:

*De-regulation of the osteopathic profession would result in a significant impact to the health and safety of the public in West Virginia. The West Virginia Board of Osteopathic Medicine has been instrumental in the fight against the opioid epidemic. Among the many issues identified and addressed by the Board, it has identified licensees who have taken advantage of their role as medical providers to profit from the improper prescribing of medications; who have*

*used their roles to take advantage of patients sexually; who have provided medical care at a level that has or was likely to harm patients; and who have substance abuse disorders that have or could result in improper and potentially dangerous care being provided to patients. In the above-mentioned cases, the Board has taken immediate action to prevent any additional harm to the public and has worked with law enforcement, where appropriate, to ensure that justice is served.*

The complaints received by the Board throughout fiscal years (FY) 2020-2022 varied from improper treatment and unprofessional conduct to other issues surrounding prescribing practices. Throughout the period, the Board received 112 total complaints and issued appropriate disciplinary action when necessary. Potential for harm is evident in these complaints and demonstrates the need for regulation. The legislative auditor previously conducted regulatory board reviews of the Board in 2002, 2005, and 2011 which all resulted in the recommendation of continuing the regulation of this profession. **That recommendation is being reaffirmed in this board review as well.**

The Board reported on the need of its services to protect the public as follows:

*Licensure of osteopathic physicians and physician assistants ensures that those individuals providing medical care as such in the state of West Virginia meet specific minimum requirements. It ensures that those individuals have training that prepares them to safely offer medical care in the state. Licensure of these individuals also gives the Board the authority to oversee the care provided through the Board's complaint process, and to ensure that licensees are maintaining the proficiency and education necessary to offer competent care. Licensure also allows the Board to protect the public by giving the Board the authority to take action against those individuals who show a lack of competency to practice medicine or who intentionally place the public at risk. Finally, through the use of the West Virginia Medical Professionals Health Program, the Board can help those licensees with substance abuse problems seek the help they need and then safely return to providing competent medical care.*

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*Throughout the period, the Board received 112 total complaints and issued appropriate disciplinary action when necessary. Potential for harm is evident in these complaints and demonstrates the need for regulation.*

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## State Medical Boards Are Utilized in Every State

Every state in the United States has established a board to ensure the safe practice of osteopathic medical procedures, whether it be through a board of medicine or through an osteopathic board such as in West Virginia. According to the Federation of State Medical Boards, some of the core responsibilities of the boards are the following:

*The primary responsibility and obligation of state medical boards is to protect consumers of health care by ensuring that all physicians in a state not only are properly licensed but also comply with various laws and regulations pertaining to the practice of medicine. One of the important roles of state medical boards is the responsibility for disciplining physicians who engage in unprofessional, improper, or incompetent medical practice.*

One of the most important roles state medical boards plays is serving as a repository or database of publicly available information. This information can be useful to consumers in helping them choose a doctor when they need medical care. State medical boards provide a valuable service to consumers who are seeking information about doctors by disclosing if they are currently licensed, competent, and in good standing. This reiterates the role of the Board as a protector of the public through regulatory procedures such as licensure requirements and disciplinary processes.

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*State medical boards provide a valuable service to consumers who are seeking information about doctors by disclosing if they are currently licensed, competent, and in good standing. This reiterates the role of the Board as a protector of the public through regulatory procedures such as licensure requirements and disciplinary processes.*

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## The Use of Technology and Telemedicine Creates Additional Responsibility for the Board

The Legislature passed House Bill 4463 in March 2016, permitting licensed physicians to practice telemedicine. The bill also established standard of care, requirements regarding the maintenance of patient records, and limitations on prescriptions which may be prescribed in telemedicine appointments. Telemedicine is the practice of medicine involving electronic communication, information technology, audio-only telephone calls, or other means of interaction between a physician and a patient in two different locations. The practice of telemedicine still involves the establishment of a physician-patient relationship and issuing prescriptions (electronically). Therefore, telemedicine is subject to the same standard of care, professional practice requirements, and scope of practice limitations as traditional in-person physician-patient encounters.

There are currently three pathways for practitioners (D.O.s and P.A.s) to provide telehealth services. The first pathway is for those

individuals who are currently licensed by the Board. Licensees may provide telehealth services within the practitioner’s scope of practice to patients located at an originating site in West Virginia from any distant site. The second pathway is for those individuals who are not licensed in West Virginia but who become interstate-telehealth registered with the Board to provide services from outside the state to patients within West Virginia. According to *West Virginia Code of State Rules (CSR) Title 24, Series 10*, health care providers are only eligible for the interstate telehealth registration if they hold a valid, active medical license in another state, are in good standing, and are not subject of an administrative complaint or under investigation. Interstate telehealth initial registration and renewal fee is \$175 for D.O.’s and \$50 for P.A.s. The rule has a sunset provision to terminate and have no further force or effect upon August 1, 2027.

The last pathway for practitioners to provide telehealth services who are not licensed by the Board are those authorized in accordance with the emergency temporary permit issued by the Board pursuant to *West Virginia CSR §24-9*. This rule established procedures for D.O.s and P.A.s licensed in another state to provide medical care in West Virginia under special provisions during the period of a declared state of emergency. The permit for both D.O.s and P.A.s does not require payment of any fee. The rule shall terminate and have no further force or effect upon April 6, 2026. It is the opinion of the legislative auditor that the additional oversight and responsibilities of telemedicine further warrants the need for the Board to protect the public.

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*It is the opinion of the legislative auditor that the additional oversight and responsibilities of telemedicine further warrants the need for the Board to protect the public.*

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## Conclusion

The Board licenses osteopathic doctors, physician assistants, and out of state telehealth practitioners. The Board also gives a licensed practitioner the ability to prescribe controlled substance, along with register medical corporations and finally provide a process to resolve complaints from patients. The Board is also tasked with preserving public safety through regulation of these professionals. With the introduction of telemedicine, the Board has taken on additional responsibilities in overseeing the registration of in-state and out-of-state practitioners. All states utilize regulation of the osteopathic profession, and due to the prevalence of the medical profession in the state and the potential for significant harm to the public if the profession was unregulated, it is the legislative auditor’s conclusion that the Board of Osteopathic Medicine is necessary to protect the public and to ensure the safe practice of medicine.

## Recommendation

1. *The legislative auditor recommends the Legislature continue the Board of Osteopathic Medicine as currently regulated.*

## ISSUE 2

### **The Board Complies with Most of the General Provisions of Chapter 30, Article 1, of West Virginia Code**

#### **Issue Summary**

The Board complies with most of the general provisions of Chapter 30, Article 1 of *W.Va. Code*, including being financially self-sufficient as well as investigating and resolving complaints with due process and in a timely manner. The Board must also ensure the attendance of board members at the State Auditor’s Annual Seminar on Regulatory Boards, as required by *W.Va. Code §30-1-2a (c)(2)*. Finally, the Board should adhere to *W. Va. Code §30-1-13* and arrange the roster alphabetically by name and the cities or counties in which their offices are situated and should consider utilizing the state treasurer’s lockbox system to further reduce risk of fraud and abuse.

#### **The Board Complies with the General Provisions of Chapter 30 with only a few Exceptions**

The Board complies with most of the general provisions of Chapter 30 of *W.Va. Code*. These provisions are important for the effective operation of regulatory boards. The Board complies with the following provisions:

- The Board meets at least once annually (§30-1-5(a)).
- The Board has adopted an official seal (§30-1-4).
- 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 when discipline was ordered (§30-1-5(d)).
- The Board is financially self-sufficient in carrying out its responsibilities (§30-1-6(c)).
- The Board has established continuing education requirements (§30-1-7a).
- The Board’s complaints are investigated and resolved with due process (§30-1-8).
- The Board has promulgated rules specifying the investigation and resolution procedure or all complaints (§30-1-8(k)).
- The Board has submitted an annual report to the Governor and the Legislature describing transactions for the preceding two years (§30-1-12(b)).
- The Board has complied with public access requirements as specified by (§30-1-12(c)).
- The Board has a register of all applicants with appropriate information specified in code, such as the date of the application, name, age, education, and other qualifications, place of residence,

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*The Board complies with most of the general provisions of Chapter 30, Article 1 of W.Va. Code, including being financially self-sufficient as well as investigating and resolving complaints with due process and in a timely manner.*

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examination required, whether the license was granted or denied, suspensions, etc. (§30-1-12(a)).

- A roster has been prepared and maintained of all licenses that includes names and office addresses (§30-1-13).
- The Board gathers and includes the retirement information of licensees in annual reports (§30-1-20(c)(6)).
- The Board waives initial licensure fees for military and low-income individuals (§30-1-23).
- The Board considers all necessary components of a licensure applicant's prior criminal record in determining authorization to practice (§30-1-24).
- The Board requires state and national criminal background checks for persons applying for licensure to the Board (§30-1D-1).

The Board is not in compliance with the following provisions:

- Each board member has not attended at least one annual orientation session conducted by the State Auditor during each term of office (§30-1-2a(c)(3)).
- Not all complaints have six-month status reports sent out within the timeframe (§30-1-5(c)).
- The roster of all licensees has not been arranged alphabetically by name and by the cities or counties in which their offices are situated (§30-1-13).

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*Although the Board's cash reserves are at one to two times annual expenditures, it is precariously close to falling below its average expenditure amount. Therefore, the Board should begin to evaluate its expenditures for ways to avoid its cash balance falling below the annual disbursement amount, at which time, the Board can evaluate the possibility of fee increases.*

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## The Board Is Financially Self-Sufficient

Boards are required to be financially self-sufficient by *W.Va. Code §30-1-6(c)*. Table 1 below shows that the Board maintains an end-of-year cash balance which exceeds the one-year average of expenditures. Although the Board's cash reserves are at one to two times annual expenditures, it is precariously close to falling below its average expenditure amount. **Therefore, the Board should begin to evaluate its expenditures for ways to avoid its cash balance falling below the annual disbursement amount, at which time, the Board can evaluate the possibility of fee increases.**



**Table 1**  
**Board of Osteopathic Medicine Budget Information**  
**FY 2020-2022**

<b>Fiscal Year</b>	<b>Beginning Cash Balance</b>	<b>Revenue</b>	<b>Disbursements</b>	<b>Ending Cash Balance</b>
<b>2020</b>	\$484,983	\$398,848	\$427,039	\$456,792
<b>2021</b>	\$456,792	\$459,648	\$395,291	\$521,149
<b>2022</b>	\$521,149	\$448,483	\$459,653	\$509,979
<b>Average</b>	\$487,641	\$435,660	\$427,328	\$495,973

*Source: West Virginia Our Advanced Solution Integrated System (OASIS) report WV-FIN-GL-151.*

The Board's annual revenues are collected from fees for applications and licensure, registrations, and license renewals. Annual disbursements include salaries for staff, employee benefits such as insurance and retirement, postal services, utilities, telecommunications expenses, rent, and office supplies. As of August 2022, there were 1,564 licensed D.O.s, 247 licensed P.A.s, and 10 out-of-state practitioners licensed for telemedicinal services. Additionally, there were 28 registered professional limited liability companies and 12 corporations.

Table 2 shows the initial licensure and renewal fees for West Virginia and neighboring states. These fees for D.O.s in West Virginia are each \$400. This exceeds the average cost of the surrounding states and is higher than the fees for all surrounding states except Maryland. However, West Virginia's current licensure and renewal fees remain the same as they were during PERD's previous review of the Board in 2011.

**Table 2**  
**Board of Osteopathic Medicine D.O. Licensure Fees for West Virginia and Surrounding States**

<b>State</b>	<b>Initial Licensure Fee</b>	<b>Renewal Fee</b>	<b>Renewal Cycle</b>
<b>Kentucky</b>	\$300	\$150	Annual
<b>Maryland</b>	\$790	\$486	Biennial
<b>Ohio</b>	\$305	\$305	Biennial
<b>Pennsylvania</b>	\$170	\$330	Biennial
<b>Virginia</b>	\$302	\$337	Biennial
<b>Surrounding States Average</b>	\$373	\$322	Biennial
<b>West Virginia</b>	\$400	\$400	Biennial

*Sources: Individual state licensing boards websites and enabling statutes.*

Table 3 shows the initial licensure and biennial renewal fees for P.A.s for West Virginia and the surrounding states. These fees for P.A.s in West Virginia are each \$100. West Virginia's P.A. licensure and renewal fees are below the average cost of the surrounding states and are only higher than Pennsylvania. All licensees are required to renew their licenses every two years, which is the same renewal cycle for most surrounding states.

**Table 3**  
**Board of Osteopathic Medicine P.A. Licensure Fees for West Virginia and Surrounding States**

State	Initial Licensure Fee	Renewal Fee	Renewal Cycle
Kentucky	\$100	\$150	Biennial
Maryland	\$200	\$135	Biennial
Ohio	\$400	\$200	Biennial
Pennsylvania	\$30	\$40	Biennial
Virginia	\$130	\$135	Biennial
Surrounding States Average	\$172	\$132	Biennial
West Virginia	\$100	\$100	Biennial

*Sources: Individual state licensing boards websites and enabling statutes.*

Fees for D.O.s exceed the average and the fees for P.A.s are below the average for surrounding states. However, renewal fees, application fees, and initial licensure fees for D.O.s and P.A.s licensed by the Board have led to a sufficient cash balance. While the Board's cash reserves are currently at a sufficient level, it is close to falling below its average annual disbursement amount and the annual expenditures should be reviewed to avoid them falling further.

## The Board Has Established Continuing Education Requirement

The Board has established continuing medical education (CME) requirements for D.O.s and P.A.s. The CME requirement for D.O.s is 32 hours every two years to renew their licenses. A P.A. is required to complete 100 hours of CME every two years for renewal. While the CME requirements for D.O.s are below the average of surrounding states, the CME requirements for P.A.s are the same as that of all the surrounding states except Maryland.

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*While the Board's cash reserves are currently at a sufficient level, it is close to falling below its average annual disbursement amount and the annual expenditures should be reviewed to avoid them falling further.*

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Table 4 demonstrates the CME hours required to renew D.O. licenses, as well as the renewal periods, for West Virginia and surrounding states. *West Virginia Code §30-14-10(b)* states that to renew their licenses, D.O.s must complete 32 hours of continuing medical education. This is less than half of the average required CME hours of surrounding states.

<b>Table 4 Neighboring States' CME Requirements for D.O.s</b>		
<b>State</b>	<b>Hours</b>	<b>Renewal Period</b>
<b>Kentucky</b>	60	3 Years
<b>Maryland</b>	50	2 Years
<b>Ohio</b>	50	2 Years
<b>Pennsylvania</b>	100	2 Years
<b>Virginia</b>	60	2 Years
<b>Surrounding States Average</b>	64	2 Years
<b>West Virginia</b>	32	2 Years
<i>Source: Individual state licensing boards.</i>		

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*West Virginia Code §30-14-10(b) states that to renew their licenses, D.O.s must complete 32 hours of continuing medical education. This is less than half of the average required CME hours of surrounding states.*

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Table 5 demonstrates the CME hour requirements and the renewal periods for P.A.s licensure renewal in West Virginia and surrounding states. In West Virginia, as well as in surrounding states, the CME requirements for P.A.s are dictated by the National Commission on Certification of Physician Assistants as certification from this organization is required by the Board as a prerequisite to licensing (per *W.Va. Code §24-2-3(3.3e.)*).

<b>Table 5 Neighboring States' CME Requirements for Physician Assistants</b>		
<b>State</b>	<b>Hours</b>	<b>Renewal Period</b>
<b>Kentucky</b>	100	2 Years
<b>Maryland</b>	50	2 Years
<b>Ohio</b>	100	2 Years
<b>Pennsylvania</b>	100	2 Years
<b>Virginia</b>	100	2 Years
<b>Surrounding States Average</b>	90	2 Years
<b>West Virginia</b>	100	2 Years
<i>Source: Individual state licensing boards.</i>		

The Board conducts annual CME audits to ensure practitioners are complying with the requirements. During the scope of PERD's review, the Board received 13 complaints associated with failure to comply with CME audits from FY 2020-2022.

## **The Board Resolved Complaints Timely and with Due Process**

For fiscal years 2020-2022, the Board resolved a total of 91 complaint cases. Forty-one (41) were resolved in FY 2020, 19 were resolved in FY 2021, and 31 were resolved in FY 2022. Additionally, there are currently 2 ongoing cases received in FY 2021 and 16 ongoing cases received in FY 2022, and there were 3 complaint processes that had been started but ultimately were not filed, for an overall total of 112 complaints. To determine the timeliness of the Board's complaint process, PERD staff examined all 112 complaint files. The majority of resolved complaints reached resolution within 6 months, with only 29 complaints taking more than 6 months to be resolved. However, two complaint cases which are ongoing have exceeded the resolution timeline according to law.

Any person may submit a written complaint through the Complaint Questionnaire that is available on the Board's website. After receiving a complaint, the Board notifies the complainant of its receipt and forwards a copy of the complaint to the respondent. The respondent then has 20 days to respond, which the Board forwards a copy of to the complainant. The Board's Complaint Committee reviews all complaints and recommends what actions should be taken by the Board to investigate and resolve the complaint. If, after six months, a complaint is still pending, the Board will send a status report update to both the complainant and the respondent after which point, the Board is required to resolve the complaint within one year. However, the parties may agree to extend the time.

After concluding its investigation of a complaint, the Board will consider how to resolve it. If no probable cause is found to substantiate the complaint, the Board will dismiss the case and send a copy of the dismissal order to both the complainant and the respondent. If the Board does find probable cause, the Board may offer a consent order to the respondent to resolve the matter, or it may issue a statement of charges before proceeding with an administrative hearing. After the conclusion of the administrative hearing, the hearing examiner will recommend a decision for the Board's consideration, which the Board will then consider after receipt of all necessary case materials (transcripts, exhibits, recommended decision, etc.) before voting and entering the final order. Copies of the final order are then provided to all parties and any disciplinary action against a licensee is posted onto the board website and reported to the State Register and the National Practitioner Data Bank by the Board.

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*To determine the timeliness of the Board's complaint process, PERD staff examined all 112 complaint files. The majority of resolved complaints reached resolution within 6 months, with only 26 complaints taking more than 6 months to be resolved.*

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The complaints made against practitioners within the scope of this audit included failure to respond to CME audits, improper treatment, improper prescribing practices, failure to access CSMP Database, unprofessional conduct, refusal to treat patients, unprofessional conduct related to boundary issues, late renewal of educational permits, unprofessional conduct related to improper treatment, improper billing practices, felony conviction involving prescription drugs, improper patient dismissal, improper delegation, arrest/false statement on application, failure to provide medical records, unprofessional conduct involving refusal of treatment, HIPAA violations, failure to complete online death certificates, and other state actions. Of the disciplinary actions issued by the Board, 13 consent orders were issued with 4 resulting in license revocation and 2 licenses were revoked following felony convictions.

*W.Va. Code §30-1-5(c) states, “Every board referred to in this chapter shall investigate and resolve complaints it received and shall, within six months of the complaint being filed, send a status report to the party filing the complaint and the Respondent by certified mail with a signed return receipt and within one year of the status report’s return receipt date issue a final ruling, unless the party filing the complaint and the board agree in writing to extend the time for the final ruling.”* Table 6 demonstrates the number of complaints resolved in each fiscal year, the number of disciplinary actions taken, and the average number of days taken to resolve complaints. PERD did not utilize the ongoing complaints as part of the average resolution time.

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*Of the disciplinary actions issued by the Board, 13 consent orders were issued with 4 resulting in license revocation and 2 licenses were revoked following felony convictions.*

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**Table 6**  
**Complaint Decision Statistics**  
**FY 2020-2022**

<b>Fiscal Year</b>	<b>Total Number of Complaints Received</b>	<b>Number of Resolved Complaints</b>	<b>Number of Disciplinary Actions</b>	<b>Average Resolution Time in Days</b>
2020	43	43	3	205
2021	21	19	4	116
2022	48	32	8	103

*Source: Compilation of statistics from the Board of Osteopathic Medicine.*

Of the resolved complaints, PERD found 29 that passed the six-month threshold before resolution. The Board adhered to sending out six-month status reports on all occasions; however, while the Board adhered to code by sending out six-month status reports to all parties, on one occasion the six-month status report was not sent out until 10 months and on two occasions the status report was late by 16 days. Also, on average the Board is completing complaints within the required timeline, however there are currently two open complaints from FY 2021 that have

exceeded the timeline to be open. **Therefore, the Board should adhere to *W.Va. Code §30-1-5(c)* and send status reports out within six months of the complaint being filed to the party filing the complaint and the Respondent by certified mail and issue a final ruling within one year of the status reports return receipt date.**

## **The Board Must Ensure that Board Members Attend the Required Orientation Sessions**

*W.Va. Code §30-1-2a(c)(2)* requires that the chairperson, executive director, or the chief financial person of a board shall attend the annual State Auditor’s Seminar on Regulatory Boards. Per *W.Va. Code §30-1-2a(c)(3)*, each member of the board is required to attend at least one seminar during each term. Currently, of the seven members, three members are on their second term, three members have terms that expired, and one member is on his first term. Upon examining the seminary attendance for fiscal years 2013-2021, PERD noted that the chairperson, executive director, or chief financial person has attended each year during the scope; however, one member whose term has expired did not attend during his first term and one member whose term has also expired did not attend during his first and second term. Both members are listed as current board members. According to a legal opinion from the Legislative Services Division within the Office of the Legislative Auditor, a board member who continues to serve after an original term has expired, must attend the required seminar at least once as though he or she is serving a new appointed term. **Therefore, it is the Legislative Auditor’s opinion that board members should adhere to *W.Va. Code §30-1-2a(C)(3)* and attend the State Auditor’s Seminar on Regulatory Boards at least once per term.**

## **The Board Does Not Maintain a Complete Roster of Licensees as Required by Code**

*W. Va. Code §30-1-13* states that the secretary of every board shall prepare and maintain a complete roster of the names and office addresses for all persons licensed, or registered, and practicing the profession of the board in West Virginia, and arranged alphabetically by name and by the cities or counties in which their offices are situated. Based on the current roster received by PERD, the roster has the information, but it is not arranged alphabetically. **Therefore, the legislative auditor recommends the Board adhere to *W. Va. Code §30-1-13* and arrange the roster alphabetically by name and the cities or counties in which their offices are situated.**

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*Upon examining the seminary attendance for fiscal years 2013-2021, PERD noted that the chairperson, executive director, or chief financial person has attended each year during the scope; however, one member whose term has expired did not attend during his first term and one member whose term has also expired did not attend during his first and second term.*

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*W. Va. Code §30-1-13 states that the secretary of every board shall prepare and maintain a complete roster of the names and office addresses for all persons licensed, or registered, and practicing the profession of the board in West Virginia, and arranged alphabetically by name and by the cities or counties in which their offices are situated.*

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## The Board Has Some Internal Controls in Place and Its Online Payment System Reduces the Risk of Fraud but It Should Consider the State Treasurer’s Lockbox System

The Board currently has a total of two full-time employees, the executive assistant and licensure analyst, who are responsible for handling revenue. To have adequate segregation of duties, there should be some controls in place to prevent one person from performing two or more control activities associated with purchasing and receiving revenue, such as authorizing transactions, receiving merchandise, receiving and depositing revenue, recording transactions, and maintaining custody of assets.

As an example of appropriate segregation of duties for cash handling, the West Virginia 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. Since 2012, for new applications and renewal fees, the Board accepts payment online via the eGov system of the West Virginia Treasurer’s Office. Additionally, payments for data file requests, license verifications, and other miscellaneous fees are accepted over the phone. The Board also reported some checks are received by mail, but these are generally from three sources, remittance of application/renewal fees from the Interstate Medical Licensure Compact, remittance for license verifications processed by VeriDoc and fees paid by some P.A. licensees for filing new or amended practice agreements. Any checks received are deposited by the executive assistant. 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, open 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 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 the risk of fraud.**

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*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.*

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*The State Treasurer’s Office provides a lockbox operation whereby remittances can be picked up from a post office box, open 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 mitigate the risk of fraud and is beneficial to boards with little or no staff to handle such procedures.*

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The Board reported all payments are processed through West Virginia Our Advanced Solution Integrated System (WVOASIS) and payments are made using the state purchasing card by the executive assistant. The Board utilizes state agency payments via IET documents, vendor payments via GAX documents, travel via TVE documents and deposits via CR documents. All payment activity is reviewed by the Board's executive director and in addition, the Board reviews all payment activity at quarterly board meetings.

To evaluate 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. PERD examined the Board's revenue and expenditures (see Table 7 below). PERD expects actual revenue to at least equal expected revenue. For revenue, PERD calculated the minimum expected revenue for the Board by multiplying annual fees by half the number of active D.O.s, P.A.s, and corporations, educational permits and professional limited liability companies (PLLC) and annual renewals, so the total amount was included. The information used was included within the Board's meeting minutes.

Utilizing the formula of half the licensees paying biennial fees and those with educational permits and PLLC's paying annual renewals, the expected revenues are less than actual revenues. The Legislative Auditor understands that utilizing a formula will not account for all of those that pay during a biennial renewal process, however after analysis, PERD determined that the likelihood of fraud occurring on the revenue side during the scope of this audit is low.

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*The Legislative Auditor understands that utilizing a formula will not account for all of those that pay during a biennial renewal process, however after analysis, PERD determined that the likelihood of fraud occurring on the revenue side during the scope of this audit is low.*

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**Table 7**  
**Board of Osteopathic Medicine**  
**Expected and Actual Revenues**  
**FY 2020-2022**

<b>Fiscal Year</b>	<b>Licenses</b>	<b>Total Number of Active Licenses</b>	<b>Expected Revenue</b>	<b>Actual Revenue</b>
2020	D.O., P.A., Permit, Corporations, PLLC	1,692	\$287,650	\$398,848
2021	D.O., P.A., Permit, Corporations, PLLC	1,882	\$326,600	\$459,648
2022	D.O., P.A., Permit, Corporations, PLLC	1,931	\$340,600	\$448,483

*Source: PERD calculations based off information from Board Meeting Minutes which documents end of the year statistics.*



To evaluate the risk of fraud on the expenditure side, PERD calculated the percentage of the total expected and required expenditures (see Table 8). PERD determined for FY 2020-2022 that on average each year the Board’s expected and required expenditures made up about 88 percent of its expenses. It is the legislative auditor’s opinion that the likelihood of fraud having occurred on the expenditure side is relatively low when a Board’s expected and required expenditures are 90 percent or more of its total expenditures annually. If expected and required expenditures are significantly less than 90 percent, while other expenditures are unusually high, this would suggest a higher risk of fraud or questionable and/or abusive expenditures, in which case PERD would conduct a further inquiry into the expenditures of the Board. However, as the percentage of the expected and required expenditures were near to 90 percent, the legislative auditor concluded that further review of the Board’s expenditures for FY 2020–2022 was unnecessary.

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*PERD determined for FY 2020-2022 that on average each year the Board’s expected and required expenditures made up about 88 percent of its expenses. However, as the percentage of the expected and required expenditures were near to 90 percent, the legislative auditor concluded that further review of the Board’s expenditures for FY 2020–2022 was unnecessary.*

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<b>Table 8</b> <b>Board of Osteopathic Medicine’s</b> <b>Percentage of Expected and Required</b> <b>Expenditures</b>	
<b>Fiscal Year</b>	<b>Percent of Expected and Required Expenditures</b>
2020	88%
2021	89%
2022	88%

*Source: PERD calculations based on data from OASIS, report WV-FIN-GL-151.*

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*From FY 2020-2022, the Board contracted with Albertson Consulting in the amounts of \$10,000 in FY 2020, \$0 in FY 2021 and \$14,455 in FY 2022. In August 2012, Albertson Consulting was secured for the purchase, set up, training, and implementation of the Big Picture licensure management software program.*

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### **The Board of Osteopathic Medicine Utilizes a Vendor to Implement a Licensure Management Software Program**

As part of the review of expenditures to assess the risk of fraud, PERD recognized expenditures to a vendor for uncertain services. Therefore, PERD further reviewed the expenses and inquired the Board concerning their purposes. From FY 2020-2022, the Board contracted with Albertson Consulting in the amounts of \$10,000 in FY 2020, \$0 in FY 2021 and \$14,455 in FY 2022. In August 2012, Albertson Consulting was secured for the purchase, set up, training, and implementation of the Big Picture licensure management software program. The Board gave the following statement to indicate the services provided by Albertson Consulting:

*Albertson Consulting hosts and maintains the Board's licensure management system and recently built the Board's website and redeveloped many of the licensure applications used in the management system. According to the Board's 2015 meeting minutes, the final component of the contract was for the redesign of the Board's website. The Board's licensure management system integrates with the Board's website to offer the processing of licensure applications and renewals, and reinstatements through the Board's website and allows licensees to login to view the status of all licensure actions. When needed, Albertson Consulting provides training on how to use the licensure management system, for instance for new Board staff. Albertson consulting also provides the Board with 5 hours per month of non-billable troubleshooting/maintenance support.*

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*While PERD's additional review of expenditures was created due to the size of the expenses, the percentage of expected/required expenditures was still near or above 90 percent, and no further review is necessary.*

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While PERD's additional review of expenditures was created due to the size of the expenses, the percentage of expected/required expenditures was still near or above 90 percent, and no further review is necessary.

## Conclusion

The Board of Osteopathic Medicine complies with most of the general provisions of Chapter 30. The Board is currently financially self-sufficient by the collection of application and renewal fees, however the Board should begin to evaluate its expenditure for ways to avoid its cash balance falling below the annual disbursement amount. These fees are mostly comparable to surrounding states. The Board has established and institutes the compliance with continuing education requirements for D.O.s and P.A.s. The Board should comply with *W.Va. Code §30-1-2a(c) (3)* by ensuring the attendance of all board members at the annual State Auditor's Seminar on Regulatory Boards at least once per each term the member serves. The Board should also continue to follow complaint and due process procedures and send status reports out within six months of the complaint being filed and issue a final ruling within one year of the status reports return receipt date. Finally, the Board should adhere to *W.Va. Code §30-1-13* and arrange the roster alphabetically by name and the city or county in which their office is situated, as well as consider utilizing the state treasurer's lockbox system to further reduce the risk of fraud.

## Recommendations

2. *The Board should begin to evaluate its expenditures for ways to avoid its cash balance falling below the annual disbursement amount.*
3. *The Board members should adhere to W.Va. Code §30-1-2a(c) (3) and attend the State Auditor's Seminar on Regulatory Boards once per term as required.*
4. *The Board should adhere to W.Va. Code §30-1-5(c) and send status reports out within six months of the complaint being filed to the party filing the complaint and the Respondent by certified mail and issue a final ruling within one year of the status reports return receipt date.*
5. *The Board should adhere to W. Va. Code §30-1-13 and arrange the roster alphabetically by name and also the cities or counties in which their offices are situated.*
6. *The Board should consider utilizing the state treasurer's lockbox system to further reduce risk of fraud.*



## ISSUE 3

### **The Board of Osteopathic Medicine Provides Adequate Oversight of Contractual Agreement with the West Virginia Medical Professionals Health Program, However the Board Should Determine if the Overall Costs of the Program Are Reasonable**

#### **Issue Summary**

In March 2007, the West Virginia Legislature passed Senate Bill 573 that authorized the Board of Medicine and the Board of Osteopathy to establish physician health programs for physicians, podiatrists, and physician assistants who need treatment and recovery for alcohol abuse, chemical dependency, or major mental illness. Senate Bill 573 allows for confidential participation so that neither board has full knowledge of any licensee if treatment is related to self-reporting and if there is no evidence of harm to patients. The West Virginia Medical Professionals Health Program (MPHP) is an important component of the Board's responsibilities to protect the public. The MPHP and the Board meet monthly to discuss the progress of each practitioner and the MPHP's compliance with contractual reporting requirements to the Board. The MPHP is funded by licensee application and renewal fees totaling over \$30,000 each year, and the MPHP also charges enrolled licensees other fees. PERD finds that the Board provides adequate oversight of the vendor's compliance with contract requirements. However, given that the MPHP serves between 16 to 20 medical licensees at any time, and charges licensees fees in addition to what the Board pays, the Board should determine if the overall costs of the program are reasonable.

#### **Since 2007 the Board Has Been Authorized to Designate Treatment, Recovery and Monitoring Physician Health Programs**

Senate Bill 573, which passed March 8, 2007, authorized the Board of Medicine and the Board of Osteopathy to establish physician health programs that would be available to all members who pursue treatment for drug and alcohol addiction without being the subject of disciplinary action. In response to Senate Bill 573, the West Virginia Medical Professionals Health Program (MPHP) was developed and subsequently registered as a corporation August 17, 2007. The Board's current agreement with the MPHP became effective February 15, 2019. The contractual agreement shall terminate five years from the effective date.

When the Board designates a physician health program for

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*The West Virginia Medical Professionals Health Program (MPHP) is an important component of the Board's responsibilities to protect the public. The MPHP and the Board meet monthly to discuss the progress of each practitioner and the MPHP's compliance with contractual reporting requirements to the Board.*

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*In response to Senate Bill 573, the West Virginia Medical Professionals Health Program (MPHP) was developed and subsequently registered as a corporation August 17, 2007. The Board's agreement with the MPHP became effective May 19, 2008.*

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licensees, the program is an arm of the Board towards protecting the public against harm from impaired licensees. Any designated program is to include all requirements established by statute and as the Board deems necessary (*W. Va. Code §30-3D-2(a)(7)*). Designated programs must work collaboratively with the Board in developing model compliance agreements and there must be reporting requirements that keep the Board informed of the number of licensees who are in the program by the type of license held, the number of compliant licensees, and the number of licensees who have successfully completed the program. However, in making reports to the Board, the vendor shall not disclose any personally identifiable information related to any physician, podiatrist, or physician assistant when the participant voluntarily enters the program.

According to the agreement the Board has with the MPHP, the vendor has a variety of responsibilities and reporting requirements. The MPHP assigns an identification number to each participant and within five days of executing an agreement with the practitioner, the MPHP notifies the Board's executive director with a case number that references the practitioner by the designated identification number only and provides a statement of the history of the participating practitioner, a detailed statement of the practitioner's present physical, emotional, and mental condition, and a statement of the procedures expected to be employed in handling the case.

If the MPHP determines or is otherwise informed that a practitioner constitutes a danger to himself/herself or the public interest, health, safety, or welfare, the MPHP shall immediately report this information to the Board. Reporting to the Board can also occur if the practitioner prematurely ceases to participate, refuses to participate, or refuses to cooperate, if the participant is non-compliant, the participant refuses to submit to treatment, the practitioner remains impaired after treatment, or the practitioner exhibits professional incompetence and there are grounds to believe that criminal conduct has occurred or is about to occur.

Nothing in the agreement shall operate or limit the Board's ability to investigate or impose discipline upon practitioners who are alleged to have engaged in conduct which may subject their license to discipline. However, according to the agreement, the Board will not initiate any investigation or seek to impose discipline upon a participating practitioner who has entered the MPHP voluntarily. However, this does not preclude the Board from investigating or disciplining a practitioner who has a voluntary agreement with the MPHP if the Board has information in which the practitioner may violate the West Virginia Medical Practice Act or the Board's legislative rules, the practitioner is non-complaint with the voluntary agreement, or the practitioner constitutes a danger to himself/herself or the public.

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*If the MPHP determines or is otherwise informed that a practitioner constitutes a danger to himself/herself or the public interest, health, safety, or welfare, the MPHP shall immediately report this information to the Board.*

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## A Portion of Licensure and Renewal Fees Goes Towards Payment for MPHP

According to *W.Va. Code §30-3D-2(b)(1)*, the MPHP shall “*Set and collect reasonable fees, grants and donations for administration and services provided.*” According to the Board, the fee structure related to the MPHP is the annual amount paid to the Board and is based on licensure renewals and applications at \$25 per year. According to the Board, “*The \$25 fee from licensure renewals and applications was negotiated by the Board’s former Executive Director.*” Due to each year having a different number of renewals and applications, the amount paid will vary. Table 11 below shows the annual payments for FY 2020-2022, with the average annual payment being \$34,217. The MPHP also receives donations from private donors and institutions. Regarding the annual fee, the Board reported “*it is my opinion that the fee is fair, given the resources available to the Board of Osteopathic Medicine and the importance of this program for the Board’s licensees.*”

PERD requested information from the Board regarding the program’s finances and other pertinent questions. While the Board contributes to the MPHP, the MPHP also charges participating licensees various fees. When asked if the vendor reports to the Board its annual costs for services or if the Board tracks the revenues or expenditures of the program, the Board reported, “*The Board has not had detailed budget discussions with the WVMPHP regarding annual costs,*” and the Board also reported, “*The Board does not track the revenue or expenditures of the WVMPHP.*” The Board did report that the funding provided by the Board does not go towards treatment but towards the administration of services. Finally, when asked if there has ever been a discussion as to whether the amount sent by the Board is excessive, the Board reported, “*The Board has discussed the fee amount with the WVMPHP and understands the following to be true: In 2021, the Board’s fees accounted for 6% of the WVMPHP’s income, and the WVMPHP has displayed a willingness to discuss its overall financial status on a regular basis as we move forward.*”

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*According to W.Va. Code §30-3D-2(b)(1), the MPHP shall “Set and collect reasonable fees, grants and donations for administration and services provided.” According to the Board, the fee structure related to the MPHP is the annual amount paid to the Board and is based on licensure renewals and applications at \$25 per year.*

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## Twenty (20) Participants Are Currently in the Program

The Board provided PERD with MPHP statistical data for the scope of the audit. Table 9 reports the end-of-year statistics from FY 2020-2022. As of June 30, 2022, there were 20 active participants in the program. The number of active participants will vary from month to month with new intakes and graduates, therefore these data represent fixed points in time. The totals represent D.O.s, P.A.s, medical residents, and medical students.

**Table 9**  
**West Virginia Medical Professionals Health Program Data**  
**FY 2020-2022**

<b>Fiscal Year as of June 30<sup>th</sup></b>	<b>Annual Payment to MPHP from Licensure Fees</b>	<b>Number of Active, Compliant Participants</b>	<b>Number of Participants Successfully Completed Program</b>	<b>Number of Participants Failing to Complete the Program</b>	<b>Number of Participants Reported to Board for Non-Compliance</b>
2020	\$35,050	16	5	1	1
2021	\$37,200	15	3	2	1
2022	\$30,400	20	3	0	2
Average	\$34,217	17	4	1	1

*Source: West Virginia Board of Osteopathy.*

The Board reported that during the scope of the audit, “No licensees were involuntarily placed in the WVMPHP for FY 2020-2022. However, five who were voluntary participants later entered into consent orders with the Board agreeing to continue their participation in the WVMPHP to resolve open complaints against them.” Also, regarding the individuals deemed non-complaint, the Board reported, “The Board reviews all reports of non-compliance to determine whether additional treatment measures should be required and whether public disciplinary action should be taken. In the two cases of non-compliance for FY 2020-2022, the Board determined that no further action was required beyond continued participation in the WVMPHP.”

## **The MPHP Provides the Board with Reports on a Timely Basis**

As part of the review, PERD identified that the MPHP contract imposes important requirements and deliverables on the vendor. PERD found that the vendor provides the Board with the practitioner information required by the contract. Below is a list of the various requirements of the MPHP contract along with the status of if the vendor has responded or if the Board knows the vendor’s compliance.

### **1. MPHP Contract Reporting Requirements:**

- a. Immediate Detailed Report** – The MPHP shall assign an identification number to each participant. Within five days of executing a written agreement with a practitioner, the

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*As part of the review, PERD identified that the MPHP contract imposes important requirements and deliverables on the vendor. PERD found that the vendor provides the Board with the practitioner information required by the contract.*

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MPHP shall provide the executive director of the Board with a case summary, which references the practitioner by identification number and the statement of the history of the participating practitioner, a detailed statement of the physical, emotional, and mental condition, and a statement of procedures to be employed. The Board supplied PERD with the documentation of the current case files of the practitioners within the program. **In all but two cases, the vendor submitted to the Board the appropriate paperwork within the required timeframe.**

- b. Report for Non-Compliance or Danger** -- The MPHP shall immediately report to the executive director of the Board if a practitioner prematurely ceases to participate, refuses to cooperate, is non-compliant, refuses to submit to treatment, is impaired after treatment, exhibits professional incompetence, or if there are grounds for reasonable belief that criminal conduct has occurred or is about to occur. **The Board provided PERD with documentation for noncompliant cases received from the vendor.** The Board further reported, “Typically, (the Executive Director) reports non-compliance to me through a phone call, then he follows up with a written report within 24 hours.”
- c. Six-Month Status Report** – Within six months of the effective date of the Agreement and every six months thereafter, the MPHP shall provide a written report to the executive director of the Board that does not disclose personally identifiable information but identifies a break down by category of practitioners served during the period, the number of compliant practitioners served during the period, the number of practitioners who successfully completed the term of treatment, and the number who were deemed non-compliant. **The Board provided the information from the vendor which indicates this occurring every July and January of each year of the audit scope.**

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*The MPHP shall immediately report to the executive director of the Board if a practitioner prematurely ceases to participate, refuses to cooperate, is non-compliant, refuses to submit to treatment, is impaired after treatment, exhibits professional incompetence, or if there are grounds for reasonable belief that criminal conduct has occurred or is about to occur.*

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## 2. Contract Performance Requirements:

- a. Identify qualified providers** – The MPHP and the Board shall work cooperatively to identify qualified providers as may be needed for the practitioners. **The Board provided PERD the list of 16 approved centers for participants to choose from.**

- b. Monitor Compliance** -- The MPHP shall monitor the compliance, status, and course of recovery of participating practitioners. The Board reported that “*I have monthly calls with (the Director) during which we discuss the case details of every Board licensee who is an active participant in the WVMPHP, including discussions of requirements and processes of the program.*” The Board’s executive director, “*meets with the WVMPHP’s Executive Director on the first Tuesday of every month to discuss ongoing cases.*” The Board also reported that it is notified of new voluntary participants via letters that maintain the confidentiality of the participant and the Board is notified if a participant is noncompliant within 24 hours.
- c. Set reasonable fees-** The MPHP shall set reasonable fees for eligible participants and shall seek to obtain grants and donations for services provided. The Board does not evaluate the fees set.

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*The MPHP shall monitor the compliance, status, and course of recovery of participating practitioners.*

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### **The Board Should Gain a Better Understanding of the Overall Cost of the MPHP to Determine if Licensure Fees for the Program Are Adequate**

Under the MPHP contract, the vendor may charge participating licensees reasonable fees in addition to what the Board pays in licensure fee pass-throughs. As part of contractual oversight, the Board should determine the reasonableness of the additional fees. If such fees are unreasonable, then the costs of the program would be excessive, and they could inhibit licensees from participating or continuing in the program. **It is the legislative auditor’s opinion that the Board should gain a better understanding of the costs to provide the MPHP services to determine if either the fee structure to licensees can be reduced or if it is adequate.**

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*It is the legislative auditor’s opinion that the Board should gain a better understanding of the costs to provide the MPHP services to determine if either the fee structure to licensees can be reduced or if it is adequate.*

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According to the MPHP’s website, the program provides services for Medical Doctors (M.D.s), Doctor of Podiatry Medicine (D.P.M.s), Doctor of Osteopathic Medicine (D.O.s), P.A.s, as well as medical students and residents of those disciplines. Medical residents fall under the Board’s jurisdiction as they either maintain full licensure or an educational permit. However, as the Board reported, “*Since its inception, the WVMPHP has provided services to medical students, and the WVMPHP notes that the majority of such programs provide services to medical students. Since medical students are not licensees of the Board, the Board plays no role in their participation in the WVMPHP.*”

The Board provided PERD with documentation from the MPHP regarding an acknowledgement of fees that is presented initially to each

participant. Each participant is to review the fee schedule and if agreeable, sign and date for his or her participation. According to the document, the consultation and intake interview is \$500 for all participants, toxicology testing is billed to the MPHP, and the billing will then be passed on to the participant with rates that vary according to the test performed from \$25-\$292. Monthly monitoring rates paid to the MPHP vary from \$50 for Medical Students and \$125 for continuing recovery care agreements for P.A.s to \$250 for continuing recovery care agreements for M.D.s, D.O.s and D.P.M.s. Monthly monitoring rates are cut in half if the licensee is not working. This document also states that the MPHP collects donations, licensure fee revenues from the Board, and applies for grants, but these sources of funding are not “*sufficient to cover costs.*”

The document also reports that if the financial requirements are not met by the participant, the MPHP may respond with one or more of the following:

- discuss fee policy with the participant and a payment plan is worked out,
- report administrative non-compliance to the appropriate licensing board,
- participant will not receive program completion status until financial obligations are met, or
- participant acknowledges the forfeiture of anonymity should the MPHP be forced to turn the collection process over to an outside debt collection agency.

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*It is not clear if the consultation fees, monthly monitoring fees, and the Board’s annual licensure fee pass-throughs, which averages \$34,217, are adequate or excessive. While the Board has reported that in 2021, the Board’s fees accounted for 6% of the programs income, it has not had detailed budget discussions with the program regarding annual costs.*

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According to the contract agreement, “*The WVMPHP shall set reasonable fees for eligible participants and shall seek to obtain grants and donations for services provided.*” It is not clear if the consultation fees, monthly monitoring fees, and the Board’s annual licensure fee pass-throughs, which averages \$34,217, are adequate or excessive. While the Board has reported that in 2021, the Board’s fees accounted for 6% of the programs income, it has not had detailed budget discussions with the program regarding annual costs. Therefore, the Board should consider reviewing the MPHP’s costs for administering the programs to document if the fee structure is reasonable.

## Conclusion

Since 2007, the West Virginia Board of Medicine and the West Virginia Board of Osteopathic Medicine have been authorized to designate programs in which physicians, podiatrists, and physician assistants may be monitored while they pursue treatment and recovery from alcohol abuse, chemical dependency, or major mental illness. It should be stated that the MPHP is an arm of the Board in protecting the public. Therefore,

the Board must have adequate oversight over the program with respect to the contract requirements. PERD finds that the Board of Osteopathic Medicine provides adequate contract oversight of the MPHP. Currently, the Board provides over \$30,000 annually to the program from licensure and renewal fees, but it does not have knowledge of the costs to administer the MPHP services. It is the legislative auditor's opinion that the Board gain a better understanding of the MPHP's overall cost to determine if they are reasonable and the additional fees charged to licensees by the MPHP do not inhibit licensees from participating in the program.

## **Recommendation**

- 7. The Board should review the overall cost of the West Virginia Medical Professional Health Program to determine if the current contractual fee structure is adequate and if the additional fees charged licensees by the MPHP are reasonable and do not inhibit impaired licensees from participating in the program.*

## ISSUE 4

### The West Virginia Board of Osteopathic Medicine's Website Needs More Improvement to Enhance User-Friendliness and Transparency

The Office of the Legislative Auditor conducted a literature review on assessments of governmental websites and developed an assessment tool to evaluate West Virginia's state agency websites (see Appendix C). The assessment tool lists several website elements. Some elements should be included in every website, while other elements such as social media links, graphics and audio/video features may not be necessary or practical for state agencies. This has been a standard part of PERD's review of regulatory boards since 2012. Table 10 indicates that the Board integrates 42 percent of the checklist items in its website. This measure shows that the Board's website needs improvement in both user-friendliness and transparency.

<b>Substantial Improvement Needed</b>	<b>More Improvement Needed</b>	<b>Modest Improvement Needed</b>	<b>Little or No Improvement Needed</b>
0-25%	26-50%	51-75%	76-100%
	<b>42%</b>		

*Source: The Legislative Auditor's review of the West Virginia Board of Osteopathic Medicine's website as of September 21, 2022.*

### The Board's Website Needs More Improvement in both User-Friendliness and Transparency

To actively engage with the agency online, citizens must first be able to access and comprehend the information on government websites. 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.

The legislative auditor reviewed the Board's website for both user-friendliness and transparency and found that the website could benefit from more enhancements in these areas (see Table 11). The Board may want to consider adding some elements that could be beneficial to the public.

**Table 11**  
**Website Evaluation Score by Category**

Category	Possible Points	Agency Points	Percentage
User-Friendly	18	6	33%
Transparent	32	15	47%
<b>Total</b>	<b>50</b>	<b>21</b>	<b>42%</b>

*Source: Legislative Auditor's review of the Board's website as of September 21, 2022.*

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

The Board's website is easy to navigate as there is a link to every page on the top of the website, the website has mobile functionality, and users can submit feedback using a contact form; however, the website lacks a search tool, a help link (for FAQs and agency contact information), foreign language accessibility, an online survey/poll, social media links, and RSS feeds. According to the Flesch-Kincaid Reading Test, the average readability of the text is on a 8<sup>th</sup> grade level, which is slightly higher than the recommended 7<sup>th</sup> grade level for readability.

### User-Friendly Considerations

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

- **Search Tool** - The website should contain a search box, preferably on every page.
- **Help Link** - A link that allows users to access a FAQ section and agency contact information on a single page.
- **Foreign Language Accessibility** - A link to translate all webpages into languages other than English.
- **Site Functionality** - The website should include buttons to adjust the font size and resizing of text should not distort site graphics or text.
- **FAQ Section** - A page that lists the agency's most frequent asked questions and responses.
- **Online Survey/Poll** - A short survey that pops up and requests users to evaluate the website.
- **Social Media Links** – Such links allow users to post an agency's content to social media pages such as Facebook and Twitter.

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*The Board's website is easy to navigate as there is a link to every page on the top of the website, the website has mobile functionality, and users can submit feedback using a contact form; however, the website lacks a search tool, a help link (for FAQs and agency contact information), foreign language accessibility, an online survey/poll, social media links, and RSS feeds.*

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- **RSS Feeds** - RSS feeds allow subscribers to receive regularly updated work (i.e. blog posts, news stories, audio/video, etc.) in a standardized format.

## **The Website Has Transparency Features but Improvements Can Be Made**

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 47 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 such as its physical address, agency headquarters' location, telephone number, public records such as rules and recent disciplinary actions, and the names and biographies of its administrative officials. The Board's website also has a calendar of events, mission statement, downloadable agency publications, graphic capabilities, and features the website update status.

### **Transparency Considerations**

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

- **Email** - General website contact information.
- **Privacy Policy** - A clear explanation of the agency's online privacy policy.
- **Complaint Form** - A specific page that contains a form to file a complaint, preferably an online form.
- **Budget** - Budget data are available at the checkbook level, ideally in a searchable database.
- **FOIA Information** - Information on how to submit a FOIA request, ideally with an online submission form.
- **Agency History** - The agency's website should include a page explaining how the agency was created, what it has done, and how, if applicable, has its mission changed over time.
- **Audio/Video Features** - This allows users to access and download relevant audio and video content.
- **Job Postings/Links to Personnel Division Website** - The agency should have a section on its homepage for open job postings and a link to the application page, "Personnel Division".
- **Performance Measures** - A page linked to the homepage explaining agency's performance measures and outcomes.

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*The Board's website contains important transparency features such as its physical address, agency headquarters' location, telephone number, public records such as rules and recent disciplinary actions, and the names and biographies of its administrative officials.*

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## Conclusion

The legislative auditor finds that more 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. The Board's contact information is also provided. However, providing website users with additional elements and capabilities, as suggested in the report, would improve user-friendliness and transparency.

## Recommendation

8. *The Board should consider more improvements to its website to provide more transparency and user friendliness for online public users.*



# Appendix A Transmittal Letter

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

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



**John Sylvia**  
**Director**

12/6/2022

Jonathon Osborne, Executive Director  
West Virginia Board Osteopathic Medicine  
405 Capitol Street  
Suite 402  
Charleston, WV 25301

Dear Mr. Osborne,

This is to transmit a draft copy of the Regulatory Board Review on the Board of Osteopathic Medicine. This report is tentatively scheduled to be presented during the January 8-10, 2023, interim meetings of the Joint Committee on Government Operations, and the Joint Committee on Government Organization. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to answer any questions committee members may have during or after the meeting.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us by Friday, December 9<sup>th</sup>, 2022. In addition, we need your written response by noon on Friday, December 16<sup>th</sup>, 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, January 5<sup>th</sup>, 2023 to make arrangements.

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

Sincerely,

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

John Sylvia

*Joint Committee on Government and Finance*



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## 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 Osteopathic Medicine (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 §30-14, is to protect the public through its licensing process, and to be the regulatory and disciplinary body for Doctors of Osteopathic Medicine and osteopathic Physician Assistants throughout the state.

### Objectives

The objectives of this review are 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 is intended to assess the Board's compliance with the general provisions of Chapter 30, Article 1 of the *West Virginia Code*, the Board's enabling statute §30-14, and other applicable rules and laws such as the Open Governmental Proceedings (WVC §6-9A) and purchasing requirements. A further objective is to determine if the Board's substance abuse diversion program provides adequate protection to the public against improper practice by impaired providers. Finally, it is the objective of the legislative auditor to assess the Board's website for user-friendliness and transparency.

### Scope

The scope of the audit covers most aspects of the Board's operations for fiscal years 2020-2022. The evaluation included a review of the Board's internal controls, policy and procedures, meeting minutes, complaint files from fiscal years 2020-2022, complaint-resolution process, disciplinary procedures and actions, revenues and expenditures for the period of FY 2020-2022, continuing education requirements and verification, the Board's compliance with the general statutory provisions (WVC §30-1) for regulatory boards and other applicable laws, and key features of the Board's website.

### 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 office in Charleston and met with its staff. Testimonial evidence gathered for this review through interviews with the Board's staff to gain a better understanding of the Board's internal controls, policies, and procedures.

To determine if the Board complies with the general provisions of W.Va. Code §30-14, its enabling statute and rules, and other applicable laws, PERD collected and analyzed the Board's complaint files, meeting minutes, annual reports, budget information, procedures for investigating and resolving complaints, and continuing education verification procedures. PERD also obtained information from the State Treasurer's Office, the Secretary of State's Office, and the State Auditor's Office. 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

§30-14 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.

The legislative auditor compared the Board's actual revenues to expected revenues for fiscal years 2020 through 2022 in order to assess the risk of fraud, and to obtain reasonable assurance that revenue figures were sufficient and appropriate. To determine this, PERD calculated the minimum expected revenue for the Board by multiplying annual fees by half the number of active D.O.s, P.A.s, and corporations, educational permits and professional limited liability companies (PLLC) and annual renewals, so the total amount was included. The expected revenues totaled less than the actual revenues and, after further analysis, it was determined that the likelihood of fraud occurring on the revenue side during the scope of this audit was low. To evaluate the risk of fraud on the expenditure side, PERD calculated the percentage of the total expected and required expenditures, which made up 88 percent of its expenses on average annually. As this percentage was near to 90 percent, it was concluded that further review of the Board's expenditures for FY 2020-2022 was unnecessary. Therefore, our evaluation of expected and actual revenues allowed us to conclude that the risk of fraud on the revenue side was at a reasonable level and would not affect the audit objectives, and actual revenues were sufficient and appropriate.

The legislative auditor also tested the Board's expenditures for fiscal years 2020 through 2022 to assess the risk of fraud on the expenditure side. The test involved determining if required and expected expenditures were at least 90 percent of total expenditures. Required and expected expenditures include salaries for staff, employee benefits such as insurance and retirement, postal services, utilities, telecommunications expenses, rent, and office supplies. The legislative auditor determined that during the scope of the review, required and expected expenses were between 88 and 89 percent of total expenditures. As this percentage was near to 90 percent, it was concluded that further review of the Board's expenditures for FY 2020-2022 was unnecessary. Therefore, our evaluation of expected and actual revenues allowed us to conclude that the risk of fraud on the revenue side was at a reasonable level and would not affect the audit objectives, and actual revenues were sufficient and appropriate.

To evaluate the Board's oversight of the contract related to the West Virginia Medical Professionals Health Program (MPHP), the legislative auditor reviewed the contract and the deliverables required by the contract. The audit team interviewed the Board to determine what documentation the Board maintained regarding the contract deliverables and what process staff use to verify vendor compliance with the deliverables. The audit team requested supporting documentation for statements made by the Board regarding oversight of the contract and the Board's monitoring of vendor compliance. PERD used the statements and documentation to determine if the Board exercised adequate oversight of the contract. PERD also examined the fee structure of MPHP and the Board's financial contributions to the program in order to determine if the Board's licensure fees for the program are adequate relative to the overall cost of the MPHP.

In order to evaluate state agency websites, the legislative auditor conducted a literature review of government website studies, reviewed top-ranked government websites, and reviewed the work of groups that rate government websites in order to establish a master list of essential website elements. The Brookings Institute's "2008 State and Federal E-Government in the United States" and the Rutgers University's 2008 "U.S. States E-Governance Survey (2008): An Assessment of State Websites" helped identify the top ranked states regarding e-government. The legislative auditor identified three states (Indiana, Maine, and Massachusetts) that were ranked in the top 10 in both studies and reviewed all 3 states' main portals for trends and common elements in transparency and open government. The legislative auditor also reviewed a 2010 report from the West Virginia Center on Budget and Policy that was useful in identifying a group of core elements from the master list that should be considered for state websites to increase their transparency

and e-governance. It is understood that not every item listed in the master list is to be found in a department or agency website because some of the technology may not be practical or useful for some state agencies. Therefore, the legislative auditor compared the Board's website to the established criteria for user-friendliness and transparency so that the Board of Osteopathic Medicine 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 requests and reviews on a quarterly basis any external or internal audit of OASIS. In addition, through its numerous audits, the Office of the Legislative Auditor continuously tests the OASIS financial information. Also, at the start of each audit, PERD asks audited agencies if they have encountered any issues of accuracy with OASIS data. Based on these actions, along with the audit tests conducted on audited agencies, it is our professional judgement that the information in OASIS is reasonably accurate for auditing purposes under the 2018 Government Auditing Standards (Yellowbook). However, in no manner should this statement be construed as a statement that 100 percent of the information in OASIS is accurate.

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



## Appendix C

### Website Criteria Checklist and Points System

<b>Website Criteria Checklist and Points System</b>			
<b>User-Friendly</b>	<b>Description</b>	<b>Total Points Possible</b>	<b>Total Agency Points</b>
<b>Criteria</b>	The ease of navigation from page to page along with the usefulness of the website.	<b>18</b>	<b>6</b>
		<b>Individual Points Possible</b>	<b>Individual Agency Points</b>
Search Tool	The website should contain a search box (1), preferably on every page (1).	2 points	0
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	0
Foreign language accessibility	A link to translate all webpages into languages other than English.	1 point	0
Content Readability	The website should be written on a 6 <sup>th</sup> -7 <sup>th</sup> grade reading level. The Flesch-Kincaid Test is widely used by Federal and State agencies to measure readability.	No points, see narrative	
Site Functionality	The website should use sans serif fonts (1), the website should include buttons to adjust the font size (1), and resizing of text should not distort site graphics or text (1).	3 points	1
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
Mobile Functionality	The agency's website is available in a mobile version (1) and/or the agency has created mobile applications (apps) (1).	2 points	1

<b>Website Criteria Checklist and Points System</b>			
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
FAQ Section	A page that lists the agency's most frequent asked questions and responses.	1 point	0
Feedback Options	A page where users can voluntarily submit feedback about the website or particular section of the website.	1 point	1
Online survey/poll	A short survey that pops up and requests users to evaluate the website.	1 point	0
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
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
<b>Transparency</b>	<b>Description</b>	<b>Total Points Possible</b>	<b>Total Agency Points</b>
<b>Criteria</b>	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.	<b>32</b>	<b>15</b>
		<b>Individual Points Possible</b>	<b>Individual Agency Points</b>
Email	General website contact.	1 point	0
Physical Address	General address of stage agency.	1 point	1
Telephone Number	Correct telephone number of state agency.	1 point	1
Location of Agency Headquarters	The agency's contact page should include an embedded map that shows the agency's location.	1 point	1
Administrative officials	Names (1) and contact information (1) of administrative officials.	2 points	1



<b>Website Criteria Checklist and Points System</b>			
Administrator(s) biography	A biography explaining the administrator(s) professional qualifications and experience.	1 point	1
Privacy policy	A clear explanation of the agency/state's online privacy policy.	1 point	0
Complaint form	A specific page that contains a form to file a complaint (1), preferably an online form (1).	2 points	0
Budget	Budget data is available (1) at the checkbook level (1), ideally in a searchable database (1).	3 points	0
FOIA information	Information on how to submit a FOIA request (1), ideally with an online submission form (1).	2 points	0
Calendar of events	Information on events, meetings, etc. (1) ideally imbedded using a calendar program (1).	2 points	2
Mission statement	The agency's mission statement should be located on the homepage.	1 point	1
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
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"> <li>• Statutes</li> <li>• Rules and/or regulations</li> <li>• Contracts</li> <li>• Permits/licenses</li> <li>• Audits</li> <li>• Violations/disciplinary actions</li> <li>• Meeting Minutes</li> <li>• Grants</li> </ul>	2 points	2
e-Publications	Agency publications should be online (1) and downloadable (1).	2 points	2
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

### Website Criteria Checklist and Points System

Graphic capabilities	Allows users to access relevant graphics such as maps, diagrams, etc.	1 point	1
Audio/video features	Allows users to access and download relevant audio and video content.	1 point	0
Performance measures/outcomes	A page linked to the homepage explaining the agencies performance measures and outcomes.	1 point	0
Website updates	The website should have a website update status on screen (1) and ideally for every page (1).	2 points	1
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

# Appendix D

## Agency Response



STATE OF WEST VIRGINIA  
**BOARD OF OSTEOPATHIC MEDICINE**  
405 Capitol Street, Suite 402  
Charleston, WV 25301

Phone: 304-558-6095  
Fax: 304-558-6096

December 16, 2022

**VIA EMAIL**

John Sylvania, Director  
West Virginia Legislature – Performance Evaluation and Research Division  
[john.sylvia@wvlegislature.com](mailto:john.sylvia@wvlegislature.com)

**RE: West Virginia Board of Osteopathic Medicine's  
Response to 2022 PERD Report**

Dear Mr. Sylvania:

Please accept this letter as the West Virginia Board of Osteopathic Medicine's response to the Performance Evaluation and Research Division's draft report of the regulatory board review conducted this year. The Board takes its duty of protecting the public through the licensure and regulation of doctors of osteopathic medicine and physician assistants seriously. The Board appreciates PERD's efforts to identify areas where the Board is fulfilling its responsibilities and making recommendations when there is potentially room for improvement.

The Board agrees with the findings and recommendations set forth in the report and will thoroughly consider how it can implement those recommendations. The Board would also like to take this opportunity to respond to a few of the report's items.

When addressing complaints against its licensees, the Board is committed to observing all due process requirements. One of those requirements is that complaints should be resolved within approximately 18 months after filing. *See* W. Va. Code § 30-1-5(c). The report does note that two (2) of the Board's complaints filed during fiscal years 2020-22 were still pending beyond the 18-month deadline. The respondents in those complaints had related criminal proceedings pending in federal court. Sometimes, when a respondent has a related criminal proceeding, the Board and the respondent will enter into an agreement to waive the 18-month deadline until the criminal charges are resolved. This arrangement is allowed by W. Va. Code § 30-1-5(c), and this is what occurred in the two (2) matters mentioned in the report. It should be noted that these respondents have not practiced medicine during the pendency of their complaints or their criminal matters.

The report finds that the Board is financially self-sufficient and has appropriate cash reserves but recommends that the Board review its annual expenditures to avoid a decrease in cash reserves. The Board is committed to fiscal responsibility and will review its expenditures to ensure the Board's future financial solvency and stability.

The report recommends that the Board should arrange its roster of its licensees practicing in West Virginia alphabetically by name and list the cities or counties in which their offices are situated, as required by W. Va. Code § 30-1-13. The Board possesses the information required by W. Va. Code § 30-1-13 and is working with its database vendor to create a way to automatically generate a report containing this information.

Director Sylvia  
December 16, 2022  
Page 2

The report recommends that the Board should consider utilizing the State Treasurer's lockbox system to reduce the risk of fraud. As evidenced by the report, the Board takes the issue of cash handling and potential fraud seriously. However, the Board recognizes that the potential for fraud could be minimized even further by utilizing the State Treasurer's lockbox system, and the Board will consider utilizing this system in the future.

The report states that the Board should consider more improvements to its website. The Board recently took steps to improve its website and appreciates mention of some of those features in the report. The Board also appreciates the recommended improvements set forth in the report and intends to implement several of those recommendations.

Again, thank you for allowing the Board the opportunity to review and respond to the report. I will be present at the January 2023 interim meeting to address any questions from the Legislature regarding the report. If you need anything before then, please feel free to contact me.

Sincerely,



Jonathan T. Osborne  
Executive Director  
West Virginia Board of Osteopathic Medicine

cc: Brandon Burton, *Via Email*



WEST VIRGINIA OFFICE OF THE LEGISLATIVE AUDITOR

**PERFORMANCE EVALUATION & RESEARCH DIVISION**

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

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