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REGULATORY BOARD REVIEW BARBERS AND COSMETOLOGISTS

AUDIT OVERVIEW

Regulation of the Barbering and Cosmetology Professions, As Well As Salons, Is Needed to Protect the Public: However, Several Options Exist for the Regulatory Structure That May Improve Its Operations.

The Board of Barbers and Cosmetologists Complies With Some General Chapter 30 Provisions, But Improvement is Needed.

The Board of Barbers and Cosmetologist's Website Is in Need of Improvement in Both User-Friendliness and Transparency.



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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 State Board of Barbers and Cosmetologists (Board) pursuant to West Virginia Code §4-10-10(b)(3). Objectives of this audit were to assess the Board's compliance with the general provisions of Chapter 30 and other applicable laws, and evaluate the Board's website for user-friendliness and transparency. The issues of this report are highlighted below.

Frequently Used Acronyms in This Report:

PERD – Performance Evaluation and Research Division.

CSR – Code of State Rules

Report Highlights:

Issue 1: Regulation of the Barbering and Cosmetology Professions, As Well As Salons, Is Needed to Protect the Public; However, Several Options Exist for the Regulatory Structure That May Improve Its Operation.

- The Board is financially unstable with a precariously low end-of-year cash balance.
- When the Board receives complaints, it does not take action against individuals for skill-based issues.
- The Board no longer administers exams of licensees.
- Continuing education is not necessary, nor is it enforced.
- Regulatory options to consider:
 - Elimination of licensure with salon inspection responsibilities transferred to the Bureau for Public Health and registration through the Secretary of State.
 - The Board remaining intact, but transition to a two-tiered licensing structure with title protection for individuals demonstrating competency in their chosen profession.
 - The Board remaining intact, but transitioning to an expanded apprenticeship program to potentially expand the licensure base by removing financial barriers to entry.

Issue 2: The West Virginia Board of Barbers and Cosmetologists Complies With Some of the General Provisions of Chapter 30 of the W. Va. Code.

- The Board is financially self-sufficient, but has a precariously low end-of-year cash balance.
- The Board is accessible to the public.
- The Board does not have adequate segregation of duties despite having four full-time staff members in the headquarters. However, the Board has established procedures to reduce the risk of fraud.

- Most members of the Board have not attended the West Virginia Annual Seminar for State Licensing Boards at least once during each term.

Issue 3: The West Virginia Board of Barbers and Cosmetologist’s Website Needs Only Modest Improvements to Enhance User-Friendliness and Transparency.

- The Board’s website needs modest improvements to enhance user-friendliness and transparency. Additional features should be considered to further improve user-friendliness such as a site map, RSS feeds, and an online survey/poll to gauge user feedback.
- The Board’s website could benefit from additional transparency features such as FOIA information, audio/video features, and performance measures.

Recommendations

1. *Should the Legislature not wish to eliminate the Board, the Legislature should consider requesting the Governor remove all current Board members and appoint new members to ensure all the deficiencies noted in the report are addressed.*
2. *The Board should work towards full compliance with all applicable provisions of West Virginia Code.*
3. *The Board should consider raising fees, in conjunction with reducing expenditures to build the end-of-year cash balance to a minimum of one year of annual expenditures.*
4. *The Board should comply with West Virginia Code §30-1-5(c) and submit reports to the party filing the complaint and the respondent within six months after the complaint is initially filed.*
5. *The Board should investigate individuals for engaging in acts while acting in a professional capacity that may endanger the health, safety, or welfare of the public.*
6. *The Board should organize the complaint files so that the information is readily accessible to the public.*
7. *The Board should amend W. Va. CSR §3-11-7 to make continuing education audits mandatory on a regular basis and specify the methodology for selecting licensees for the audits.*
8. *The Board’s chairperson and executive director need to adhere to W. Va. Code §30-1-2a(2) and attend annually the Seminar for State Licensing Boards.*

9. *The Board members should adhere to W. Va. Code §30-2-2a(3) and attend a seminar at least once during each term of office.*
10. *The Board should consider utilizing the State Treasurer's lockbox to further reduce risk.*
11. *The Board should establish a policy to ensure the annual reports are prepared consistently from year to year.*
12. *The Board President should reimburse the Board for the expenses charged to the room during the Tampa conference in 2016.*
13. *The Board should be more conservative in expenditures for attending national conferences by limiting the number of attendees.*
14. *The Board should review the education and training requirements for both cosmetologists and nail technicians to determine if the requirements should be reduced.*
15. *The Board should update W. Va. CSR §3-1-11.1 to reflect the current practice of allowing out of state applicants to apply for licensure if already licensed, has no adverse action, and has completed an educational program for the license for which they are applying.*
16. *The Board should adopt all legislative rules required by W. Va. Code §30-27-6 or seek changes to the statute as necessary for any requirements that may be obsolete.*
17. *The West Virginia Board of Barbers and Cosmetologists should make the suggested improvements to its website to increase user-friendliness and transparency.*

PERD's Response to the Agency's Written Response

On December 13, 2019, PERD received a written response from the Executive Director of the Board of Barbers and Cosmetologists, which can be found in Appendix F. The Executive Director agreed with most recommendations, but made arguments regarding the recommendation to exercise oversight of individuals with regard to skill-based issues. The Executive Director also provided an argument for maintaining the Board as opposed to dissolving it. The arguments are as follows:

Agency Response: The Executive Director states the Board “*agrees with PERD's opinion that the Board can, and should, exercise oversight of licensees regarding skill-based issues. WVBBC does currently investigate complaints against individual licensees concerning skill-based issues if the complaint indicates the individual licensee endangered the public in some way. Complaints that indicate a consumer was dissatisfied with the services they received from an individual licensee (e.g. bad haircut, wrong color) are not typically investigated and are usually dismissed, but are reviewed by WVBBC Board Members to determine if a violation of W. Va. Code § 30-27 or WVBBC's Legislative Rules occurred and if an investigation should be completed.*”

PERD Response: While the Board contends it does investigate complaints against individuals for skill-based issues if the complaint indicates licensees endangered the public in some way, this was not borne out in the sample. PERD reviewed 52 complaints and could not identify an instance when the Board investigated complaints against individuals for skill-based issues. PERD also acknowledges it did not review each of the 272 complaints from the scope of the audit, and could not review any from 2017 as the files are missing. Thus, there maybe instances where the Board has pursued an investigation. However, the Executive Director did not include any examples within the scope of the audit (or any point thereafter) to support this argument. Thus, PERD’s opinion remains unchanged.

Agency Response: The Executive Director acknowledges “*deficiencies that were identified in PERD’s performance review and we are actively working on resolving them. If given the opportunity, I fully anticipate a complete resolution for all the deficiencies noted in the review within six months from the date of this letter, with the exception of the changes and adoptions that need to be made to W. Va. Code § 30-27 and WVBBC’s Legislative Rules. This process may exceed our six-month goal but will remain as one of our top priorities. WVBBC accepts and understands PERD’s recommendations but respectfully disagrees with the following: “2. The Legislative Auditor recommends the Legislature consider transferring the inspection of hair and nail salons for sanitation purposes to the Bureau for Public Health.”*

PERD Response: PERD acknowledges the agency is taking steps to address the deficiencies noted throughout the report. This is evidenced by action such as noting the Board will review all complaints, as well as the photographs included with the agency response. Regarding the Board’s disagreement over the recommendation, Issue 1 of the report provides various options for the Legislature to consider with regard to regulation of the barbering and cosmetology professions. Moreover, any decisions regarding the Board are policy decisions by the Legislature. Thus, PERD has removed the recommendation and takes no position on which recommendation to implement. However, transition of the inspections to the Bureau for Public Health remains an option the Legislature may consider.

ISSUE 1

Regulation of the Barbering and Cosmetology Professions, As Well As Salons, Is Needed to Protect the Public; However, Several Options Exist for the Regulatory Structure That May Improve Its Operation.

Issue Summary

In general, once the Performance Evaluation and Research Division (PERD) has determined the need for a board, PERD does not routinely revisit that decision unless, during an audit, information indicates a significant change in conditions that could warrant increased or decreased degrees of regulation. In 2002 and 2008, PERD reported the continued need for the Board of Barbers and Cosmetologists (Board) for the protection of public health and safety. *However*, the findings of this current review give cause to consider alternative regulatory structures. This conclusion is based on the following reasons:

- The Board is financially unstable with a precariously low end-of-year cash balance.
- When the Board receives complaints, it does not take action against individuals for skill-based issues.
- The Board no longer administers exams of licensees.
- Continuing education is not necessary, nor is it enforced.
- Registration is possible instead of licensure.

The findings of this review give cause to consider alternative regulatory structures.

The management issues faced by the Board are a potential source of contradiction and ineffectiveness. Given these issues, there are three alternatives that can be considered which would impact some, or all, of the issues facing the Board: 1) dissolve the Board, 2) continue the Board with a tiered licensing structure and title protection, and 3) continue the Board and expand the apprenticeship program. **The Legislative Auditor does not make a recommendation as to which option should be implemented.**

Regulation of the Profession and Salons Is Needed.

In determining if there is a need for the Board, a primary consideration is whether the unregulated practice of the profession clearly harms or endangers the health, safety or welfare of the public. Aestheticians, barbers, cosmetologists, hairstylists, and nail technicians are responsible for providing haircutting, hairstyling, and a range of other beauty services. In the course of performing this work, three risks arise:

1. transmission of communicable diseases and infection,
2. physical harm resulting from exposure to chemicals in products, and,
3. physical harm resulting from improper use of equipment.

Given the risks above, negligence or incompetence in the professions could endanger the health and safety of West Virginians. **Thus, the Legislative Auditor reaffirms that regulating aestheticians, barbers, cosmetologists, hairstylists, and nail technicians is needed. In addition, given the risk of transmission of disease, it is also clear that regular inspections of salons are necessary to protect public health.**

The Legislature Could Consider Dissolution of the Board, With Responsibilities Transferred to Other Governmental Entities.

The Occupational Safety and Health Administration notes nail salon workers (and, consequently, customers) are exposed to a wide variety of chemicals from acetone to toluene. These chemicals may cause a wide array of effects, ranging from headaches to damage to kidneys and the liver. Moreover, both nail and hair salon employees may be exposed to formaldehyde on a regular basis due to chemicals in nail polish and hair smoothers. In addition, individuals are potentially exposed to a wide variety of bloodborne pathogens, including HIV and Hepatitis, if non-single use instruments (nail files, clippers, scissors, razors, etc.) are not fully cleaned and disinfected. Consequently, regulation of facilities is necessary in order to ensure sanitary working environments, particularly among manicurists and aestheticians, and the safety of the clientele. Moreover, as part of regulation, inspections are essential to ensure proper sanitation not only for the health and safety of the customer but for the licensee as well.

According to the Executive Director, the Board's goal is to inspect each salon twice annually. PERD reviewed a sample of inspections for FY 2016 through FY 2018 and found the Board does not meet its stated goal. As shown in Table 1, PERD's review of the sampled inspections found FY 2016 to be the only year where all salons received at least one inspection.

The Legislative Auditor reaffirms that regulating aestheticians, barbers, cosmetologists, hairstylists, and nail technicians is needed.

Given the risk of transmission of disease, it is also clear that regular inspections of salons are necessary to protect public health.

Number of Inspections	2016	2017	2018
Two Inspections	83%	71%	54%
One Inspection	100%	95%	89%

Source: PERD analysis of sampled inspections.

Although the Board is the sole entity responsible for inspections of salons, the Bureau for Public Health's (BPH) responsibilities over public health align with this function. In fact, prior to 2009, the BPH and the Board of Barbers and Cosmetologists had dual regulatory jurisdiction over barbers and cosmetologists because the Board operated under the BPH and inspections of salons and other regulatory functions were delegated by the BPH to the Board. Since it was inefficient to have two state agencies provide oversight, the authority of the BPH over barbers and cosmetologists was removed. However, given the issues with the Board as detailed throughout this report, and that the BPH already regulates the sanitary conditions of a variety of entities (institutions, schools, food manufacturers and establishments, camps, swimming pools, etc.), it is likely the BPH could absorb the Board's inspection staff and perform salon inspections. Thus, the Legislature could consider dissolving the Board and transferring sanitation related responsibilities to the BPH.

Should the Legislature transfer the responsibility of sanitary conditions to the BPH, the remaining licensure function would need to be addressed as well. As noted above, a risk associated with the profession is physical harm resulting from improper use of equipment and products. One method to provide protection against this risk is by establishing minimum criteria for those in the profession. For licensees of the Board this includes a minimum level of training and an examination. According to the *Occupational Outlook Handbook* provided by the U.S. Department of Labor, all states require barbers, cosmetologists, and most other personal appearance workers to be licensed, and, similar to West Virginia, to qualify for a license, applicants are required to graduate from a state-licensed barber or cosmetology school and then pass a state exam for licensure. However, in West Virginia, the Board does not administer the exam. Rather, the exam is administered by a third party based on West Virginia's basic competency standards. Consequently, the Board's primary function is ensuring applicants demonstrate basic competency through verification of educational transcripts and a passing score on the required examination.

However, verification of credentials (transcript, exam results, etc.) could be performed by the Secretary of State, which already licenses

The Legislature could consider dissolving the Board and transferring sanitation related responsibilities to the BPH.

several professions: notary publics, security guards, private investigators, marriage celebrants, athlete agents, and scrap metal dealers. Given the process already in place for licensure, it is likely the Secretary of State could assume the duties associated with registration of the barbering and cosmetology professions. It is also possible the Secretary of State could utilize existing board staff for the additional workload. Consequently, one option the Legislature could consider is dissolving the Board, eliminating licensure, and requiring registration with the Secretary of State for the professions under the purview of the Board of Barbers and Cosmetologists. In addition, a second option that the Legislature could consider is, for those individuals whose profession requires regular exposure to and application of chemicals, a minimum level of continuing education related to sanitation, chemical application, or other safety related areas be required.

In addition, the Legislative Auditor concludes requiring continuing education for many professions regulated by the Board is not necessary. This is due to the fact that the Board has not enforced the requirement in West Virginia until February 2019, with no discernable adverse impact. Moreover, three bordering states do not require continuing education, while Maryland, which requires it, but publicly states that it does not enforce the mandate. Elimination of the continuing education requirement for barbers would likely lessen the burden on the Secretary of State.

Elimination of the Board Would Likely Have Minimal Impact on Public Complaints.

Another consideration when determining the need for a board is addressing complaints by the public if licensure is eliminated. PERD sampled the complaints the Board received, including board-initiated complaints, in order to gauge the impact on the public if licensure is eliminated (see Issue 2 for a more detailed discussion). Our review of the sample found that complaints filed by the public vary over the years, with FY 2016 experiencing a significantly higher number of complaints against individuals as opposed to FY 2018, which saw no complaints against individuals for skill related issues. As shown in Table 2, most complaints filed are against individuals for unlicensed practice, rather than for skill-based issues. Moreover, complaints against individuals for skill-based reasons are dismissed by the Board, with action primarily taken against businesses. Thus, elimination of licensure would likely not impact the public significantly. Furthermore, the public could file complaints through the Bureau for Public Health against salons for sanitary issues.

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Fiscal Year	Skill-Based Complaints	License-Based Complaints	Total Complaints Against Licensees	Total Complaints Against Salons
2016	3	6	9	4
2017	1	1	2	0
2018	0	9	9	12

Source: PERD analysis of the Board's complaint files.

PERD's analysis of the complaints received by the Board found it does not pursue action against individual licensees for skill-based complaints (see Issue 2 for a more detailed analysis). Rather, the Board only pursues action for issues related to licensure (such as expired license, unlicensed practice, etc.). In fact, the Board notes that skill-based issues are "outside our jurisdiction as our Board does not regulate good or bad services. The Board of Barbers and Cosmetologists is responsible for the health and welfare of all West Virginia citizens...by striving for sanitary conditions and procedures." When pressed on this issue, the current Executive Director stated the "Board does not initiate or investigate complaints against individuals for skill-based issues or quality of service because the Board considers those complaints to be subjective and do not tend to indicate a violation of W. Va. Code 30-27-20(g) or the Board's Legislative Rules." However, as the purpose of a regulatory board is regulation of a profession or occupation (versus a business), by avoiding disciplinary action against individual licensees, the Board willfully ignores a core responsibility mandated by code (see Issue 2 for further discussion). In fact, avoiding disciplinary action against licensees may discourage members of the public from reporting issues regarding unprofessional conduct. **While the Legislative Auditor acknowledges the Board cannot regulate subjective incidents (e.g. bad cut, wrong color), it is the Legislative Auditor's opinion the Board can, and should, exercise oversight of individuals regarding skill-based issues.**

In addition, PERD's analysis noted a significant number of complaints are dismissed without identifiable Board action (see Issue 2 for a more detailed analysis). When asked about the absence of identifiable board action in the complaint files, the Executive Director stated the Board voted to "grant authorization to...[the] Executive Director to receive, investigate and take action against all future complaints." The Executive Director "was also advised by the Board's Vice Chair within the last year to continue to dismiss complaints because the Board had

The "Board does not initiate or investigate complaints against individuals for skill-based issues or quality of service because the Board considers those complaints to be subjective and do not tend to indicate a violation of W. Va. Code 30-27-20(g) or the Board's Legislative Rules."

The Board voted to "grant authorization to...[the] Executive Director to receive, investigate and take action against all future complaints."

previously authorized past directors to take action against complaints.” However, the Board has no authority in W. Va. Code or rules to delegate its authority. In fact, per W. Va. Code of State Rules, board staff may only recommend dismissal, with final authority for determination of dismissal or further action resting with the Board. In response to PERD’s questioning, the Executive Director met with the Board’s Assistant Attorney General on October 18, 2019 and board members on October 20, 2019. Per the Executive Director: *“moving forward, the Board is going to take action against all complaints, and it will be documented in the Board’s meeting minutes.”* **The Legislative Auditor acknowledges the Board’s effort to address the finding prior to the conclusion of the audit.**

The Legislature Could Consider a Tiered Licensing Structure, With the Board Remaining Intact.

As noted above, the sample of complaints reviewed by PERD contained a relatively low number of skill-based issues. Moreover, when a skill-based complaint is received, the Board routinely dismisses them as it believes it is too subjective and not related to health and safety. Consequently, another alternative to consider is a tiered licensing structure with a focus on health and safety. The structure could consist of two tiers of licensure: 1) a health and safety license required for by licensees practicing and 2) a professional license to indicate competency. In the first instance, only passage of an examination of state laws and health related issues (e.g. microbiology, infection control specific to barbering, disorders of the skin, etc.) would be needed in order to practice barbering or a cosmetology related profession. This would not preclude others from performing barbering or cosmetology services, but the use of titles such as *“licensed professional barber”* or *“licensed professional cosmetologist”* would be reserved for those seeking a professional license under the second tier. A list or searchable database of professionally licensed individuals could be available online to allow the public to distinguish levels of competency. A second license tier may also increase the Board’s revenue, thus preventing a likely fee increase, while maintaining a minimum level of competency regarding health and safety issues would protect the public.

In the second tier, individuals could sit for a practical exam and receive a professional license upon passage. This would be identical to the process currently used for licensure. As noted, a distinction would be made between those whom have passed a proficiency exam and, thus, could advertise as a *“licensed professional,”* versus those who have not. **It should be noted that this could also be achieved via registration**

In response to PERD’s questioning, per the Executive Director: “moving forward, the Board is going to take action against all complaints, and it will be documented in the Board’s meeting minutes.”

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with the Secretary of State. In that instance, individuals who are able to document education and competency could advertise as a licensed professional, whereas those limited to health and safety could not.

The Legislature Could Expand Pathways to Licensure and Alter the Board Member Composition.

One issue to be considered by individuals interested in becoming barbers or a member of the cosmetology professions is the potential burden to achieve licensure. In West Virginia, the burden could be a significant barrier for individuals given the minimum number of hours required for licensure. As shown in Table 3, three of the five professions require a minimum of 1,000 hours of education (see Issue 2 for a detailed discussion of educational requirements).

Three of the five professions require a minimum of 1,000 hours of education.

State	Barber	Cosmetologist	Hair Stylist	Nail Technician	Aesthetist
Kentucky	1,500	1,500	N/A	450	750
Maryland	1,200	1,500	1,200	250	600
Ohio	1,800	1,500	1,200	200	600
Pennsylvania	1,250	1,250	N/A	200	300
Virginia	1,100	1,500	N/A	150	600
West Virginia	1,200	1,800	1,000	400	600
Average	1,370	1,450	1,200	250	570

Source: PERD analysis of requirements in W. Va. CSR Tables 3-1A through 3-1F and administrative rules of the surrounding states.

Given the relatively high number of hours, this translates into a significant expense for educational programs. As shown in Table 4, the cost of the barbering and cosmetology educational programs varies significantly for proprietary and public entities, with private schools costing approximately twice as much to attend as public.

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Type of Entity	Average Cost
Proprietary School	\$17,178
Public School	\$8,388

Source: PERD analysis of costs as shown on school websites.

Furthermore, not all students will graduate. According to the Department of Education's college scorecard, several cosmetology schools have a relatively low graduation rate, with the lowest being 46 percent. Thus, some individuals could possess the requisite skills, but be unable to complete a program for personal or financial reasons, leaving no available pathway to licensure, except as a barber through a lengthy apprenticeship program.

While the Board offers an apprenticeship program, the program requires significantly more hours (2,400 clock hours) than the normal licensure process (1,200 clock hours). When asked about the hour requirements, the Executive Director stated the reason was unknown, but that it is likely in keeping with national trends. In addition, there are a limited number of apprenticeship providers, with the Board's website listing 4 approved apprenticeship providers. In total, West Virginia's program has had 95 participants since its inception in 2014, mostly sponsored by family. Moreover, the program is only limited to the barber profession (or cosmetologists wishing to become barbers), and is not available for individuals wishing to train as an aesthetician, cosmetologist, hairstylist, or nail technician.

Several cosmetology schools have a relatively low graduation rate, with the lowest being 46 percent. Thus, some individuals could possess the requisite skills, but be unable to complete a program for personal or financial reasons, leaving no available pathway to licensure, except as a barber through a lengthy apprenticeship program.

Table 5
West Virginia and Surrounding States Apprenticeship Program Requirements

State	Apprentice Allowed	Professions	Clock Hour Requirement	Regular Licensure Clock Hours	Exam Required
Kentucky*	Yes	Barber	6 months	1,500	Yes
Maryland	Yes	Barber	2,250	1,200	Yes
Ohio	No	N/A	N/A	1,800	N/A
Pennsylvania	Yes	Barber	1,250	1,250	Yes
Virginia	Yes	All	Varies	Varies	Yes
West Virginia	Yes	Barber	2,400	1,200	Yes

*Kentucky's apprenticeship program requires completion of the 1,500 clock hour curriculum prior to beginning.
Source: PERD analysis of West Virginia rules and surrounding state websites.

As shown in Table 5, except for Ohio, all bordering states offer an apprenticeship option as a pathway to licensure. However, similar to West Virginia, the clock hour requirement is also significantly higher, with the exception of Pennsylvania. Moreover, expansion of the apprenticeship program could result in additional licensees, which could, in turn, provide some financial relief to the Board. **However, the Legislative Auditor concludes, given that the curriculum for licensure through apprenticeship mirrors that of regular licensure, except higher hours, the Board could reduce the number of hours required to sit**

for the examination without adverse impact on the public. As part of the expansion of the apprenticeship program, the Legislature could consider expanding or altering the board member composition to include a barber apprentice and a master barber with either active apprentices or experience in apprentice supervision. By altering the composition of the membership, the Legislature could also drive change in the management of the Board which could address problems noted throughout Issue 2.

Conclusion

The practice of the barbering and cosmetology professions is technical and presents the potential for physical harm. Similarly, regulation of salons is necessary to limit an individual's potential exposure to chemicals and communicable diseases. Given these risks, the Legislative Auditor concludes state regulation of the barbering and cosmetology professions is needed and helps ensure that individuals meet certain educational requirements to mitigate the risk of harm, while routine inspections of sanitary conditions in salons provides a level of protection to the public. However, consideration should be given to the various options presented above in determining the need and scope of licensure. These options include dissolution of the Board with responsibilities transferred to other entities, a tiered licensing structure, and expansion of the apprenticeship program to expand the number of licensees. The dissolution of the Board offers the opportunity to eliminate expenditures such as conference travel, daily deposit trips to the Capitol complex, board member per diem, and board member travel. While expansion of the apprenticeship program offers the opportunity for growth of the licensure base by providing less costly options for licensure, thereby increasing the number of individuals seeking a career in a barbering or cosmetology profession. Similarly, a tiered licensing structure provides protection to the public by requiring passage of an exam focusing on health and safety, while also likely expanding the number of possible licensees, potentially resulting in additional revenue. **However, the Legislative Auditor makes no recommendation as to which option to implement.**

The Legislative Auditor concludes state regulation of the barbering and cosmetology professions is needed and helps ensure that individuals meet certain educational requirements to mitigate the risk of harm, while routine inspections of sanitary conditions in salons provides a level of protection to the public.

Regulatory Options to Consider

- Elimination of licensure with salon inspection responsibilities transferred to the Bureau for Public Health and registration through the Secretary of State.
- The Board remaining intact, but transition to a two-tiered licensing structure with title protection for individuals demonstrating competency in their chosen profession.

- The Board remaining intact, but transitioning to an expanded apprenticeship program to potentially expand the licensure base by removing financial barriers to entry.

ISSUE 2

The Board of Barbers and Cosmetologists Complies With Some General Chapter 30 Provisions, But Improvement is Needed.

Issue Summary

The Board of Barbers and Cosmetologists (Board) is accessible to the public, has established continuing education requirements, and maintains due process rights for licensees. However, although the Board is financially self-sufficient, it has a low end-of-year cash balance, has had 20 instances in which a status report was not sent to the complainant within six months of the complaint being filed, is missing the majority of 2017 complaints, and cannot locate documents from 2016 and 2018 complaints (such as complaint forms, notice to respondent). Although the Board has four staff members in the headquarters, it does not have adequate internal controls. However, the Board reduced the risk of fraud by assigning staff members certain responsibilities. The Board receives fees via its website and the West Virginia State Treasurer's eGov system, but some licensees still pay via paper documents that must be handled and processed by the Board. The Performance Evaluation and Research Division (PERD) also found the chairperson has not attended the annual seminar for state licensing boards as required by law (§30-1-2a(c)(2)), nor have other board members attended once per term as required. Moreover, PERD found only one board member does not have an expired term. Finally, after a review of expenditures, it is the Legislative Auditor's opinion that the Board should consider reducing the number of questionable expenditures for out-of-state travel to national meetings. If travel to national meetings continues, the Board should limit the number of attendees, ensure any costs that are reimbursable are reimbursed, and that expenses are consistent with the policies of the Travel Management Office of the Department of Administration and the Purchasing Card Policies and Procedures manual.

The Board is missing the majority of 2017 complaints, and cannot locate documents from 2016 and 2018 complaints.

The Board should consider reducing the number of questionable expenditures for out-of-state travel to national meetings.

The Board Complies With Some of the General Provisions of Chapter 30 and Other Applicable Provisions of West Virginia Code.

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

- The Board has adopted an official seal (§30-1-4).
- The Board meets at least once annually (§30-1-5(a)).
- The Board is financially self-sufficient in carrying out its responsibilities (§30-1-6(c)).
- The Board has promulgated rules specifying the investigation and resolution procedure of all complaints (§30-1-8(k)).
- The Board has established continuing education requirements (§30-1-7a).
- The Board has complied with public access requirements as specified by (§30-1-12(c)).
- A roster has been prepared and maintained of all licensees that includes names and office addresses (§30-1-13).
- The Director is taking the annual purchasing and P-Card training (§5A-3-60(a)).

However, the Board is not in compliance with the following provisions:

- The Board members should take the oath as prescribed by Section 5 of Article 4 of the State Constitution before exercising the authority or duties of the office.
- The Board's chairperson and executive director are to annually attend the West Virginia Annual Seminar for State Licensing Boards (§30-1-2a(c)(2)).
- Each Board member should attend at least one orientation session during each term of office (§30-1-2a (c)(3)).
- The Board should have 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, examination required, whether the license was granted or denied, any suspensions, etc. (§30-1-12(a)).
- The Board should submit an annual report to the Governor and Legislature describing transactions for the preceding two years (§30-1-12(b)).
- The Board's meetings should be open to the public and published in a timely manner (§6-9(a)-3).
- The Board does not comply with Child Support enforcement by requiring license applicants to certify on the application that they have an obligation, the obligation is not 6 months in arrearages, or applicants are not the subject of a child-support subpoena or warrant (§48-15-303(a)).

- The Board should provide public access on a website to all completed disciplinary actions in which discipline was ordered (§30-1-5(d)).¹

The Board Is Financially Self-Sufficient, But the End-of-Year Cash Balance Is Precariously Low.

Although the Board is financially self-sufficient as required by law, (*W. Va. Code §30-4-9(c)*), its end-of-year cash balance is precariously low (see Table 6). It is the Legislative Auditor’s opinion that cash reserves in the amount of one to two times a board’s annual expenditures are an acceptable level. From fiscal year 2012 through 2018, the Board maintained an ending cash balance of 20 percent of annual expenditures (an average of \$442,671 below an amount equal to one year’s worth of expenditures). Moreover, in a 2011 emergency rule filing, the Board itself noted it is “a historically financially strapped board that only had \$5,066 cash with the Treasurer’s Office in October 2008.” **The Legislative Auditor recommends the Board consider raising fees in conjunction with reducing expenditures to build the end-of-year cash balance to a minimum of one year of annual expenditures.**

From fiscal year 2012 through 2018, the Board maintained an ending cash balance of 23 percent of annual expenditures.

The Board itself noted it is “a historically financially strapped board that only had \$5,066 cash with the Treasurer’s Office in October 2008.”

Table 6
Board of Barbers and Cosmetologists Budget Information
FY 2016 - 2018

Fiscal Year	Beginning Cash Balance	Revenue	Disbursements	Ending Cash Balance	End-of-Year Cash as a Percent of Annual Expenditures
2012	\$186,494	\$561,711	\$635,286	\$112,919	18%
2013	\$132,038	\$569,161	\$614,896	\$86,303	14%
2014	\$86,303	\$593,390	\$582,032	\$97,662	17%
2015	\$97,662	\$584,844	\$563,590	\$121,206	22%
2016	\$121,206	\$589,398	\$596,556	\$114,047	19%
2017	\$114,047	\$579,811	\$566,101	\$127,758	23%
2018	\$127,758	\$578,860	\$556,889	\$149,728	27%
Average	\$121,004	\$582,690	\$573,182	\$130,511	20%

Source: West Virginia OASIS.

As shown in Table 6, the Board’s end-of-year cash balance, although on an upward trend, has significant variations from year-to-year. In addition, Table 3 shows that while disbursements are declining

¹ *The Board does make annual reports and meeting minutes available on the website. The documents contain summary information regarding disciplinary action, but do not contain details such as licensee or the discipline (e.g. amount of fine, consent agreements, etc.).*

on an annual basis, revenue is relatively flat. Thus, PERD concludes the primary reason for the Board's precarious financial situation is revenue. Moreover, given that inspections represent a significant portion of expense for the agency and that mileage reimbursement rates increase annually, revenues have not kept pace with the costs for the agency. Given the current end-of-year cash balance, a single event such as a court case or lengthy complaint could drastically reduce the balance. It should be noted the current financial situation is an improvement since PERD's last review of the Board which found the average end-of-year cash balance for fiscal years 2005 through 2007 was 17 percent of annual expenditures. **Consequently, the Legislative Auditor recommends the Board consider raising fees, in conjunction with reducing expenditures as discussed later in the report, to build the end-of-year cash balance to a minimum of one year of annual expenditures.**

The Board's annual revenues come from fees for application, licensure, and renewals. Annual disbursements include staff salaries and benefits, utilities, and travel costs. According to the Board's FY 2018 Annual Report, there are over 12,000 licensees, not including salons.

West Virginia and surrounding states' licensure and renewal fees can be seen in Tables 7 through 13. As shown in Table 7, West Virginia has the third lowest initial licensure fee for barbers, and when adjusted for annual fees, the second lowest renewal fee. For cosmetologists, nail technicians, and aestheticians, West Virginia's initial licensure fee is also the third lowest. However, the renewal fee for all three licenses, \$35.00, is the third highest when adjusted for annual fees. Of the three states licensing hair stylists, West Virginia ranks in the middle for initial licensure fees, but ranks highest for renewal fees, when adjusted for annual fees. For both barbershops and salons, West Virginia's initial licensure fee is the lowest, while renewal fees for both are the third lowest. In addition, West Virginia has raised the licensure and/or renewal fees for barbers, cosmetologists, nail technicians, aestheticians or hair stylists once (in 2008, with the fees permanent in 2009) since 1997, although other fees have changed or increased, such as booth rental registrations.

PERD concludes the primary reason for the Board's precarious financial situation is revenue.

It should be noted the current financial situation is an improvement since PERD's last review of the Board which found the average end-of-year cash balance for fiscal years 2005 through 2007 was 17 percent of annual expenditures.

Table 7			
Board of Barbers and Cosmetologist Licensure Fees for Barbers for West Virginia and Surrounding States			
State	Initial Licensure Fee	Renewal Fee	Renewal Cycle
Kentucky	\$50	\$50	Annual
Maryland	\$50	\$50	Biennial
Ohio	\$30	\$110	Biennial
Pennsylvania	\$10	\$109	Biennial
Virginia	\$75	\$75	Biennial
West Virginia	\$35	\$35	Annual

Source: State licensure boards' websites and W.Va. Code of State Rules §3-6-2.

Table 8			
Board of Barbers and Cosmetologist Licensure Fees for Cosmetologists for West Virginia and Surrounding States			
State	Initial Licensure Fee	Renewal Fee	Renewal Cycle
Kentucky	\$50	\$50	Annual
Maryland	\$25	\$25	Biennial
Ohio	\$45	\$45	Biennial
Pennsylvania	\$10	\$67	Biennial
Virginia	\$75	\$75	Biennial
West Virginia	\$35	\$35	Annual

Source: State licensure boards' websites and W.Va. Code of State Rules §3-6-2.

Table 9			
Board of Barbers and Cosmetologist Licensure Fees for Hair Stylists for West Virginia and Surrounding States			
State	Initial Licensure Fee	Renewal Fee	Renewal Cycle
Kentucky	N/A	N/A	Annual
Maryland	\$25	\$25	Biennial
Ohio	\$45	\$45	Biennial
Pennsylvania	N/A	N/A	N/A
Virginia	N/A	N/A	N/A
West Virginia	\$35	\$35	Annual

Source: State licensure boards' websites and W.Va. Code of State Rules §3-6-2.

Table 10
Board of Barbers and Cosmetologist Licensure Fees
for Nail Technicians for West Virginia
and Surrounding States

State	Initial Licensure Fee	Renewal Fee	Renewal Cycle
Kentucky	\$50	\$50	Annual
Maryland	\$25	\$25	Biennial
Ohio	\$45	\$45	Biennial
Pennsylvania	\$10	\$67	Biennial
Virginia	\$75	\$75	Biennial
West Virginia	\$35	\$35	Annual

Source: State licensure boards' websites and W.Va. Code of State Rules §3-6-2.

Table 11
Board of Barbers and Cosmetologist Licensure Fees
for Aestheticians for West Virginia
and Surrounding States

State	Initial Licensure Fee	Renewal Fee	Renewal Cycle
Kentucky	\$50	\$50	Annual
Maryland	\$25	\$25	Biennial
Ohio	\$45	\$45	Biennial
Pennsylvania	\$10	\$67	Biennial
Virginia	N/A	N/A	N/A
West Virginia	\$35	\$35	Annual

Source: State licensure boards' websites and W.Va. Code of State Rules §3-6-2.

Table 12
Board of Barbers and Cosmetologist Licensure Fees
for Barbershops for West Virginia
and Surrounding States

State	Initial Licensure Fee	Renewal Fee	Renewal Cycle
Kentucky	\$100	\$50	Annual
Maryland	\$200	\$50	Biennial
Ohio	\$110	\$75	Biennial
Pennsylvania	\$110	\$187	Biennial
Virginia	\$130	\$130	Biennial
West Virginia	\$40	\$40	Annual

Source: State licensure boards' websites and W.Va. Code of State Rules §3-6-2.

State	Initial Licensure Fee	Renewal Fee	Renewal Cycle
Kentucky	\$100	\$100	Annual
Maryland	\$200	\$50	Biennial
Ohio	\$75	\$60	Biennial
Pennsylvania	\$100	\$114	Biennial
Virginia	\$130	\$130	Biennial
West Virginia	\$40	\$40	Annual

Source: State licensure boards' websites and W.Va. Code of State Rules §3-6-2.

During the scope of the audit, the Board either received or initiated 272 complaints.

The Board Complaint Files Are Incomplete.

The Legislative Auditor reviewed disciplinary data and complaints investigated by the Board for FY 2016 – 2018. Per *W. Va. Code of State Rules (CSR) 3-9-2*, complaints against licensees can be filed with the Board by any person. The Board provides a complaint form on its website, though complaints may be filed in any written form. During the scope of the audit, the Board either received or initiated 272 complaints. PERD attempted to sample 71 complaints (18 from FY 2016, 22 from FY 2017, and 31 from FY 2018) to test for compliance with applicable laws and regulations. However, the Board was unable to locate 19 of the 22 FY 2017 complaints from the sample², resulting in a sample size of 52. As shown in Table 14, of the sampled complaints, 19 resulted in disciplinary action taken by the Board.

The Board was unable to locate 19 of the 22 FY 2017 complaints from the sample, resulting in a sample size of 52.

Fiscal Year	Number of Complaints Sampled	Number of Disciplinary Actions	Number of Complaints Dismissed	Percent of Complaints Resulting in Disciplinary Action	Average Resolution Time in Days
2016	18	9	9	50%	143
2017	3	1	2	33%	515
2018	31	10	19	32%	191

Source: PERD analysis of Board of Barbers and Cosmetologists Complaints.

² *The staff of the Board of Barbers and Cosmetologists could not locate the majority of 2017 complaints.*

According to *W. Va. Code §30-1-5(c)*, each Chapter 30 board is required to close a complaint within 18 months of the initial filing. As shown in Table 11, the Board generally complies with the law. However, PERD's analysis of the sample found three instances of the Board taking over 18 months to resolve complaints, one of which was dismissed and two of which are ongoing. Moreover, the Board did not receive permission for an extension for these complaints³. However, it should be noted the overall length of time to resolve complaints increased significantly during the scope of the audit, going from an average of 143 days to 191 days. Moreover, this is a significant increase from PERD's 2008 report, which noted complaints were resolved in a timely manner (an average of 23 days).

The Board is required to send status reports to the complainant six months after the complaint was initially filed if the case has not been resolved prior to six months. However, the Board did not adhere to the statutory requirement on any occasion. During the scope of the audit, the sample of board complaints had 20 cases in which status reports were to be sent to the complainant and respondent within six months after the complaint was initially filed. PERD did identify two instances of status reports being sent; however, the status reports were sent significantly outside the six-month timeframe. In fact, the Board averaged 305 days to send a status report in the two instances of sent status reports, and one status report was sent 13 days before the complaint was dismissed. **The Legislative Auditor recommends the Board comply with *West Virginia Code §30-1-5(c)* and submit reports to the party filing the complaint and the respondent within six months after the complaint is initially filed.**

PERD's review of sampled complaints also found a significant number of files were missing other required documentation:

- Fifteen (15) files did not contain a notice to the respondent a complaint had been filed.
- Four (4) files did not contain a copy of the complaint.
- Twenty-nine (29) files did not contain any record of board action (e.g. dismissal, consent agreement, etc.).
-

When asked about the absence of identifiable board action in the complaint files, the Executive Director stated the Board voted to “grant authorization to...[the] Executive Director to receive, investigate and take action against all future complaints.” The Executive Director

PERD's analysis of the sample found three instances of the Board taking over 18 months to resolve complaints.

The overall length of time to resolve complaints increased going from an average of 143 days to 163 days. This is a significant increase from PERD's 2008 report, which noted complaints were resolved in a timely manner (an average of 23 days).

PERD's review of sampled complaints also found a significant number of files were missing other required documentation.

³ It should be noted one complaint is a board-initiated complaint, and, consequently, no party exists with which to request permission for an extension.

“was also advised by the Board’s Vice Chair within the last year to continue to dismiss complaints because the Board had previously authorized past directors to take action against complaints.” However, no authority exists in either W. Va. Code or the W. Va. Code of State Rules to delegate such authority. In fact, per W. Va. Code of State Rules:

“the representative for the Board may recommend a complaint be dismissed if probable cause for further action is not identified. Complaints recommended for dismissal due to lack of probable cause shall be referred to the Board for review of the complaint and investigative information. The Board may approve dismissal or direct the Board representative to proceed with further investigation of the complaint.”

The Executive Director was also advised by the Board’s Vice Chair to continue to dismiss complaints.

In response to PERD’s questioning, the Executive Director met with the Board’s Assistant Attorney General on October 18, 2019 and board members on October 20, 2019. Per the Executive Director: “moving forward, the Board is going to take action against all complaints, and it will be documented in the Board’s meeting minutes.” **The Legislative Auditor acknowledges the Board’s effort to address the finding prior to the conclusion of the audit.**

In addition, PERD’s review of sampled complaint files found most of the complaints wherein disciplinary action occurs are those resulting from Board action for salons facing 4th offenses rather than those resulting from public complaints. Of the 52 complaints reviewed by PERD, 38 were initiated by the public and of those complaints, 21 complaints were against individuals: 4 for skill-based issues and 17 for licensure-based issues. All four complaints for skill-based issues were dismissed. In the dismissals, the Board noted:

PERD’s review of sampled complaint files found most of the complaints wherein disciplinary action occurs are those resulting from Board action for salons facing 4th offenses rather than those resulting from public complaints.

“this is outside our jurisdiction as our Board does not regulate good or bad services. The Board of Barbers and Cosmetologists is responsible for the health and welfare of all West Virginia citizens...by striving for sanitary conditions and procedures.”

When further asked about the dismissals and absence of action against individuals, the Executive Director stated the:

“Board does not initiate or investigate complaints against individuals for skill-based issues or quality of service because the Board considers those complaints to be subjective and do not tend to indicate a violation of W. Va. Code 30-27-20(g) or the Board’s Legislative Rules.”

According to *W. Va. Code §30-1-1a*, “the fundamental purpose of licensure and registration is to protect the public, and any license, registration, certificate, or other authorization to practice issued pursuant to this chapter is a revocable privilege.” While *W. Va. Code §30-1A-1* notes “regulation should be imposed on an **occupation or profession** only when necessary for the protection of public health and safety.” As the purpose of a regulatory board is regulation of a profession or occupation (versus a business), avoiding disciplinary action against individual licensees of the various professions under its purview, the Board willfully ignores a core responsibility mandated by code. In fact, avoiding disciplinary action against licensees may discourage members of the public from reporting issues regarding unprofessional conduct. **While the Legislative Auditor acknowledges the Board cannot investigate and issue disciplinary action on subjective incidents (e.g. bad cut, bad color), it is the Legislative Auditor’s opinion that the Board should exercise oversight of individual licensees.**

Avoiding disciplinary action against individual licensees of the various professions under its purview, the Board willfully ignores a core responsibility mandated by code.

Both *W. Va. §30-27-20(g)(3)* and *W. Va. §30-27-20(g)(7)* authorize action against individuals. Specifically, “the board may, after notice and opportunity for hearing, deny or refuse to renew, suspend or revoke the license or permit of, impose probationary conditions upon or take disciplinary action against, any licensee or permittee for...being guilty of unprofessional conduct which placed the public at risk, as defined by legislative rule of the board [or] engaging in an act while acting in a professional capacity which has endangered or is likely to endanger the health, welfare or safety of the public.” Based upon a review of the sampled Board complaints, the Legislative Auditor believes certain actions by licensees could endanger the public and may warrant disciplinary actions. Three examples are below:

- **C2016-49:** An employee of a nail salon cut a customer with a tool. However, citations were issued against the shop based on no tuberculocidal disinfectants or sealable containers for blood borne pathogens.
- **C2016-36:** An individual was cut during a pedicure, ultimately resulting in a staphylococcus infection. However, the Board entered into a consent agreement regarding the sanitary conditions of the salon.
- **C2016-58:** An individual received a haircut resulting in visible scalp with circles of scalp showing through in various places.
-

The Legislative Auditor believes certain actions by licensees could endanger the public and may warrant disciplinary actions.

The Legislative Auditor acknowledges that the above examples occurred in different salons at different times and do not appear to be repeat offenses. However, it is the Legislative Auditor’s opinion the

Board should investigate and take disciplinary action against individuals should it be determined the incidents were the result of incompetency and the actions are likely to endanger the health, welfare, or safety of the public. **Consequently, the Legislative Auditor recommends the Board investigate individuals for engaging in acts while acting in a professional capacity that may endanger the health, safety, or welfare of the public.**

Lastly, PERD conducted several site visits to the board office in order to scan complaint files. During the visits, as shown in Photos 1 through 5 below, the audit team noted the board records are stored haphazardly and appear disorganized. Moreover, a significant number of files are not stored within cabinets, but within cardboard boxes, and a significant number of files are missing (the majority of FY 2017 and two from FY 2016). **The Legislative Auditor recommends the Board organize the files so that the information is readily accessible to the public.**

During the visits the audit team noted the board records are stored haphazardly and appear disorganized. A significant number of files are not stored within cabinets, but within cardboard boxes, and a significant number of files are missing (the majority of FY 2017 and two from FY 2016).

**Photo 1
File Storage Area 1**



Photo 2
FY 2016 Complaint File Storage



Source: PERD audit team

Photo 3
File Storage Area 2



Source: PERD audit team

Photo 4
File Storage Area 2



Source: PERD audit team

Photo 5
Old Files Stored on Floor



Source: PERD audit team

The Board Has Established Continuing Education Requirements, However the Board Has Not Regularly Audited Compliance.

The Board has established continuing education (CE) requirements for its licensees. *West Virginia CSR §3-11-3.1* states that individual licensees shall accrue a minimum of 4 hours of continuing education for each annual cycle. The continuing education must also come from an approved provider. Table 15 provides the CE requirements in West Virginia and the surrounding states. As indicated, three states have CE requirements, while only two actively enforce the requirements.

Three states have CE requirements, while only two actively enforce the requirements.

Table 15 Continuing Education Requirements for Barbers, Cosmetologists, Hair Stylists, and Nail Technicians In West Virginia and the Surrounding States		
State	CE Hours*	Renewal Period
Kentucky	-	Annual
Maryland	6*	Biennial
Ohio	8	Biennial
Pennsylvania	-	Biennial
Virginia	-	Biennial
West Virginia	4	Annual

Source: Each state's licensing board website and regulations.

** Although Maryland requires six hours of continuing education, the State does not currently enforce this provision.*

Licensees have a one-year period to acquire four CE hours related to beauty culture practice, education, or theory development through an approved provider. Licensees are required to submit proof of continuing education with applications for license renewal. Although *W. Va. CSR §3-11-7* allows the Board to audit a licensee's compliance with CE requirements, only since February 2019 have audits been conducted. However, as a result of the audits, 32 licensees have been penalized for failing to meet the requirements. **Consequently, the Legislative Auditor recommends the Board conduct audits on a regular basis as this ensures licensees follow the requirements of the Board.**

Although W. Va. CSR §3-11-7 allows the Board to audit a licensee's compliance with CE requirements, only since February 2019 have audits been conducted.

The Board's Office Is Generally Accessible to the Public.

PERD conducted a site visit to the Board's office located at 1201 Dunbar Avenue, in Dunbar. This visit was to determine if the office and building meet select requirements of the American with Disabilities Act (ADA).

PERD's review found handicap parking, the entrance, main doors, and hallways appear to meet ADA standards. Three restrooms are located in the office, however, two are not wheelchair accessible as the doors are 27.5 and 28 inches wide. One restroom could be wheelchair accessible, however, it is currently used for storage and requires tight grasping, pinching or twisting of the wrist. The Board's office is generally accessible despite some minor issues.

PERD's review did not assess the entire building, nor is the review intended to certify the building as ADA compliant. The audit team used professional judgment and the ADA checklist as a guide to determine that the building appears to provide reasonable accessibility for disabled individuals.

Four past members, who either resigned or were removed during the scope of the audit, failed to attend any session while appointed. Furthermore, of the three board members with multiple terms, none have attended a session during each term.

Board Members Do Not Receive the Required Orientation Sessions.

According to *W. Va. Code §30-1-2a(2)*, the chairperson, the executive director or the chief financial officer of the Board shall annually attend the State Auditor's Seminar on Regulatory Boards. While the Executive Director attended in 2015, 2016, and 2018, the Board's Chairperson has been absent from the annual orientation since the last attendance at the 2009 seminar, and neither attended in 2017. Also, according to *W. Va. Code §30-1-2a(3)*, each board member shall attend at least one seminar during each term of office. Although three of the five members attended a required orientation session during the current term of office, four past members, who either resigned or were removed during the scope of the audit, failed to attend any session while appointed. Furthermore, of the three board members with multiple terms, none have attended a session during each term. **The Legislative Auditor recommends the Board's chairperson and executive director adhere to *W. Va. Code §30-1-2a(2)* and attend annually the Seminar for State Licensing Boards. The Legislative Auditor recommends the Board members adhere to *W. Va. Code §30-2-2a(3)* and attend a seminar at least once during each term of office.** According to a legal opinion from the Legislative Services Division of the Legislative Auditor's Office, "*it*

is clear the intent of the statute is to require training for state licensing board members during their time of service.”

The Board Should Ensure the Composition of Members Aligns with the Requirements in Code.

Board members are required to have a background in a variety of fields. Per *W. Va. Code §30-27-4*, membership must consist of:

- one licensed cosmetologist,
- one licensed barber or barber permanent wavist,
- one licensed aesthetician who is not a cosmetologist,
- one licensed nail technician who is not a cosmetologist,
- one representative from a privately-owned beauty academy licensed by the West Virginia Council for Community and Technical College Education, and
- four citizen members.

However, the current Board membership includes:

- one barber,
- one barber crossover,
- two cosmetologists, and
- one former representative of a privately-owned beauty academy.

The reason the current composition does not match the requirements in *W. Va. Code §30-27-4* is primarily due to a provision in Senate Bill 524 from the 2016 Regular Legislative Session, that reconstituted the Board. The provision allowed any members serving as of July 1, 2016 to continue to serve until their terms expire and until the appointment of successors. However, four of the five board members' terms expired, and the Board has not requested reappointments nor new appointments. In addition, the board President and Vice President's appointments expired on June 30, 2018, without reappointment or replacement. Furthermore, the Board has not requested the appointment of the citizen members since the law became effective, a period of over three years. As of the writing of this report, only one board member has an unexpired term. However, that member, a representative of a privately-owned beauty academy, no longer teaches as of May 2018. **Although Senate Bill 524 permits members to continue to serve until they are removed, or a replacement is identified, the Legislative Auditor is**

Four of the five board members' terms expired, and the Board has not requested reappointments nor new appointments.

The board President and Vice President's appointments expired on June 30, 2018, without reappointment or replacement. Furthermore, the Board has not requested the appointment of the citizen members. Only one board member has an unexpired term. However, that member, a representative of a privately-owned beauty academy, no longer teaches as of May 2018.

concerned the Board is avoiding the responsibility of requesting new and appropriate appointments. This is evidenced by the fact that the Board has not requested reappointments or replacements for the President and Vice-President whose terms expired over one year ago, the absence of requests for citizen members, and the separation of the board member from the beauty school with no replacement appointment requested. Moreover, the recent appointment of a barber to the Board and the request that two members be removed indicates there is cognizance of the requirements in Code. **Given the disregard for West Virginia Code, along with the other significant issues identified in this report, the Legislative Auditor recommends the entire Board membership be replaced with new members aligning with the required composition.**

It is of more concern the board president is a full-time state employee. This requires significant effort on the part of the employee to ensure compliance with a number of laws and rules, including the prohibition against dual compensation and compliance with rules regarding the use of leave from the full-time position to represent the board. Consequently, given the inextricable relationship of full-time state employments and the duties of board membership, the Legislative Auditor reviewed the board president's travel to conferences and compared the dates to leave use as recorded in the Kronos system. The review identified one instance where the president did not use annual leave while on a return trip from a conference and identified two instances where the president used sick leave to attend a conference. The use of sick leave is problematic because 1) attending the conference on behalf of the Board is not an allowable use of sick leave, and 2) an employee may not receive compensation from multiple publicly funded state offices unless the employee uses earned paid vacation, personal, or compensatory time or takes unpaid leave. Consequently, the use of sick leave violates the State of West Virginia Sick Leave Policy and may violate the West Virginia Ethics Law on dual compensation depending on the specific hours for which the Board President claimed per diem payments.

The Legislative Auditor recommends the entire Board membership be replaced with new members aligning with the required composition.

The review identified one instance where the president did not use annual leave while on a return trip from a conference and identified two instances where the president used sick leave to attend a conference.

Despite a Sufficient Number of Employees, the Board's Financial Management of Revenues Lacks Internal Controls; However, the Risk of Inappropriate Use of Resources Is Relatively Low.

The Board has eight full-time staff members, including an executive director, deputy director, office assistant, receptionist, and four field investigators. However, despite having a significant number of employees, the agency does not segregate duties for

proper internal control. Segregation of duties is important because it safeguards against improper use of loss of the Board's resources.

Despite having four office staff employees that can accept all forms of payment from licensees, only two employees are responsible for recording revenues received: the Deputy Director and the Administrative Assistant. In addition, the Deputy Director is also responsible for reconciling revenues while the Administrative Assistant is responsible for safeguarding and depositing revenues received. Moreover, a board employee must travel from the board office in Dunbar to Charleston in order to make the deposit on a near daily basis. As the board's office is approximately 10 miles from the capitol complex, this costs approximately \$11.60 per trip, in addition to the cost of the employee's time.

In order to have adequate segregation of duties, there should be controls in place that prevent one person from performing two or more control activities associated with purchasing and receiving revenue, such as authorizing transactions, receiving merchandise, receiving and depositing revenue, recording transactions, and maintaining custody of assets.

As an example of appropriate segregation of duties for handling cash, 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.

Moreover, the Board does not utilize the State Treasurer's Lock-Box system, which can minimize the handling of revenue. The State Treasurer's Office provides a lockbox operation whereby remittances can be picked up from a post office box, opened and sorted, imaged, deposited, and the information forwarded to the Board by the Treasurer's Office for a fee. Use of the lockbox operation helps to mitigate the risk of fraud and is beneficial to boards with little or no staff to handle such procedures. **Therefore, the Legislative Auditor recommends the Board consider utilizing the State Treasurer's lockbox to further reduce risk.**

Given the lack of internal controls, in order to assess the risk of fraud and gain a reasonable assurance that fraud has not occurred, PERD examined the Board's revenue and expenditures. For revenue, PERD

Despite having four office staff employees that can accept all forms of payment from licensees, only two employees are responsible for recording revenues received.

A board employee must travel from the board office in Dunbar to Charleston in order to make the deposit on a near daily basis. As the board's office is approximately 10 miles from the capitol complex, this costs approximately \$11.60 per trip, in addition to the cost of the employee's time.

calculated the minimum expected revenue for the Board by multiplying annual fees by the number of licensees for FY 2016 – 2018 and found that actual revenue exceeded expected revenue in fiscal years 2017 and 2018, while expected revenues exceeded actual revenues in 2016. The reason for high expected revenues for 2016 is a spike in salon licenses in the annual report, going from approximately 2,600 in FY 2015 to 5,230 in FY 2016, and then dropping to 2,600 in FY 2017. The anomaly in 2016 is likely due to human error. The current Executive Director stated the Board receives a large amount of data that must be filtered in order to determine licensee counts and the staff have no policy or procedure for filtering the information. As the actual number of paid licensees in 2016 totaled 2,684, it is likely an error in compilation resulted in a skewed number. If the 2,684 paid licensee count is substituted, the actual revenues exceed the expected revenues. **The Legislative Auditor recommends the Board establish a policy to ensure the annual reports are prepared consistently from year to year. This is especially important given the recent turnover in the Executive Director position⁴.** Table 16 provides a comparison of actual and expected revenues for the Board.

The Legislative Auditor recommends the Board establish a policy to ensure the annual reports are prepared consistently from year to year.

Table 16
Board of Barbers and Cosmetologists
Expected and Actual Revenues
FY 2016-2018

Fiscal Year	Number of Active Licensees	Annual Renewal Fee	Expected Revenues	Actual Revenues
2016	17,885	Varies	\$621,385	\$589,389
2017	16,560	Varies	\$556,915	\$579,811
2018	16,987	Varies	\$572,265	\$578,860

Source: PERD calculations based on each FY Board Annual Report which documents the Board's active licensees.

PERD evaluated the Board's expenditures for FY 2016 – 2018 and determined that, on average, 82 percent of the Board's expenses consisted of expected and required expenditures to vendors. The Legislative Auditor's opinion is that when the Board's required and expected expenditures are 90 percent or more of the Board's total annual expenditures, the likelihood of fraud having occurred on the expenditure side is relatively low. However, if expected/required expenditures are significantly below 90 percent, then the likelihood of fraud and abuse occurring is greater. Table 17 shows the annual percentage of expected and required expenditures.

⁴ The Board has had four different Executive Directors in five years and the Board did not produce an annual report for FY 2014 or submit an annual report for FY 2016 to the Legislature.

Fiscal Year	Percent of Expected & Required Expenditures
2016	84
2017	82
2018	79
<i>Source: PERD calculations based on State Auditor's Office data.</i>	

Since the percentage of expected/required expenditures were significantly below 90 percent, PERD conducted a detailed review of the Board's expenditures from FY 2016-2018 to assess the likelihood that fraud occurred. Upon examining these expenditures, the Legislative Auditor determined that the Board's expenditures to attend national conferences, payments to a lobbyist, telecommunications, and postage contributed to required/expected expenditures being below 90 percent.

While the Legislative Auditor concludes that the travel expenses were generally legitimate, albeit excessive, some expenditures were not consistent with applicable rules and/or not supported by appropriate documentation. Examples include:

- Expenses totaling \$200 that are not consistent with purchasing or travel guidelines;
- The Board was unable to provide an agenda to support travel dates for one conference; and,
- The Vice-President traveled to a conference two days in advance without justification (the Board paid for the hotel and per-diem for the two days).

Tables 18-20 document the Board's travel for the annual National Interstate Council of Boards of Cosmetology (NIC) meeting, the National Association of Barber Boards Association (NABBA) meeting, and the Council on Licensure, Enforcement, and Regulation (CLEAR).

The Legislative Auditor determined that the Board's expenditures to attend national conferences, payments to a lobbyist, telecommunications, and postage contributed to required/expected expenditures being below 90 percent.

The Vice-President traveled to a conference two days in advance without justification (the Board paid for the hotel and per-diem for the two days).

Table 18			
Board of Barbers and Cosmetologists			
Spending for Conference Travel for FY 2016			
Destination	Number of Attendees	Reason	Cost
Missoula, MT	3	NIC Conference	\$5,735
Phoenix, AZ	2	NABBA Conference	\$4,040
Nashville, TN	3	NIC Conference	\$3,724
South Padre Island, TX	1	NABBA Conference	\$1,459
Total			\$14,958

Source: PERD calculations based on documentation contained in OASIS.

Table 19			
Board of Barbers and Cosmetologists			
Spending for Conference Travel for FY 2017			
Destination	Number of Attendees	Reason	Cost
Columbus, OH	1	NABBA Conference	\$1,527
Minneapolis, MN	1	NIC Conference	\$1,242
San Antonio, TX ¹	0	FARB	\$1,414
Tampa, FL	1	NABBA Conference	\$2,101
Tampa, FL ²	2	NIC Conference	\$3,189
Total			\$9,473

Source: PERD calculations based on documentation contained in OASIS

¹The individual scheduled to attend the FARB conference in San Antonio, TX was unable to attend.

²Two individuals were to attend the conference: the Executive Director and the President. However, the Executive Director separated from the agency and did not attend, representing \$793 of the expense for registration and airfare.

Table 20			
Board of Barbers and Cosmetologists			
Spending for Conference Travel for FY 2018			
Destination	Number of Attendees	Reason	Cost
Charleston, WV	6	NIC Conference	\$8,149 ¹
Charlotte, NC	5	CLEAR	\$6,349
Charlotte, NC	3	NIC Conference	\$3,645
Mt. Pleasant, SC	2	NABBA Conference	\$1,613
Savannah, GA	1	NABBA Conference	\$1,448
Seattle, WA ²	3	NIC Conference	\$10,660
Total			\$31,864

Source: PERD calculations based on documentation contained in OASIS.

¹Includes \$3,580 from FY2017 in registration fees.

² A fourth person was originally scheduled to attend the conference but did not ultimately travel. This represents \$723.60 of the total cost. In addition, the costs include expenses in FY 2019 (such as the hotel stays, registration, and per-diem)

It is the Legislative Auditor’s opinion that out-of-state travel for national association meetings can assist board members with knowledge that may assist in better operations of the agency. However, the cost for several board members and the executive director to attend these conferences each year imposes a significant expense for the Board. Consideration should be given to reducing the number of national conferences and/or reducing the number of individuals attending. For example:

- The FY 2016 NIC meeting in Missoula had two board members and the executive director attend.
- The FY 2018 NIC meeting in Charlotte had two board members and the executive director attend. And,
- The FY 2019 NIC meeting in Seattle had two board members, the executive director, and the deputy executive director attend.

Given the high per person costs, limiting the number of attendees would save the board significant funds. For example, during the FY 2016 NIC meeting in Missoula, expenses for the four days spent in attendance per person were \$1,912 (including airfare, hotel, and per diem), the FY 2018 expenses for the Charlotte conference for three days per person were \$1,215, while the expenses for the six days at the FY 2019 NIC meeting in Seattle were \$3,312 per person for flights alone. **Therefore, the Legislative Auditor recommends the Board be more conservative in expenditures for attending national conferences by limiting the number of attendees as the gained knowledge from those who attended can be shared with the rest of the members.**

In addition to the general costs of attendance, **the Legislative Auditor identified inappropriate expenses charged to the agency’s Purchasing Card.** During a 2016 conference in Tampa, Florida, the board President charged \$199.25 in expenses for room service, hotel restaurant, lobby bar, gift shop, and bottled water to the room, in addition to the meal per-diem claimed for the trip. According to the West Virginia Travel Rule, *“meal expense reimbursement is based on the temporary duty location and...[a]lcohol and entertainment expenses are specifically excluded.”* In addition, *“[p]ersonal expenses, including food charges, shall not be charged to hotel folios when a Purchasing Card is used.”* Similarly, the State Auditor’s Purchasing Card Policies and Procedures manual states *“p-card authorized travel expenses shall not include food expenses or any personal expenses on hotel folios such as room service or movie expenses.”* **The Legislative Auditor recommends the board President reimburse the Board for the expenses charged to the room**

The Legislative Auditor recommends the Board be more conservative in expenditures for attending national conferences by limiting the number of attendees.

During a 2016 conference in Tampa, Florida, the board President charged \$199.25 in expenses for room service, hotel restaurant, lobby bar, gift shop, and bottled water to the room, in addition to the meal per-diem claimed for the trip. Meal expense reimbursement is based on the temporary duty location and [p]ersonal expenses, including food charges, shall not be charged to hotel folios when a Purchasing Card is used.”

during the Tampa conference in 2016.

Moreover, the Board could further reduce expenditures by having the board President seek reimbursement for travel to the various conferences for her role as the Secretary/Treasurer of the NIC. In this capacity, she is eligible for reimbursement for travel to and from the conference, meals for the travel days and the executive board meeting day, as well as hotel charges for the initial travel day and the executive board meeting day. In a review of travel expenditures, the Legislative Auditor identified approximately \$1,054 in travel potentially eligible for reimbursement that was not sought by the board President. In addition to the board President, the Vice President receives a stipend from NABBA for conferences he attends. These funds could also be used to offset the cost of the travel. Moreover, the Board should request refunds for conferences that people could not attend. For example, no one attended the 2016 conference in San Antonio, Texas, nor did the Board receive refunds, representing an avoidable expense of \$1,414. Similarly, one individual did not attend the Tampa conference in 2016, while another individual did not travel to Seattle in 2018, representing approximately \$723.60 in avoidable expenses. **The Legislative Auditor recommends the board President seek reimbursement from the National Interstate Council for Boards of Cosmetology for the appropriate expenses for conferences and, in turn, reimburse the Board.**

In a review of travel expenditures, the Legislative Auditor identified approximately \$1,054 in travel potentially eligible for reimbursement that was not sought by the board President.

The Board should request refunds for conferences that people could not attend.

Existing Rules Are Consistent with Code and Generally Protect the Public; However, the Board Has Not Promulgated Several Rules Mandated By West Virginia Code.

The Performance Evaluation and Research Division reviewed the rules promulgated by the Board and found that, in general, the rules comply with *W. Va. Code* and protect the public. However, Table 21 shows that cosmetologist and nail technician education requirements are significantly above the surrounding states.

The Legislative Auditor recommends the board President seek reimbursement from the National Interstate Council for Boards of Cosmetology for the appropriate expenses for conferences and, in turn, reimburse the Board.

Table 21
Minimum Education and Training Hours for Licensees
WV Board of Barbers and Cosmetologists and Surrounding States

State	Barber	Cosmetologist	Hair Stylist	Nail Technician	Aesthetist
Kentucky	1,500	1,500	N/A	450	750
Maryland	1,200	1,500	1,200	250	600
Ohio	1,800	1,500	1,200	200	600
Pennsylvania	1,250	1,250	N/A	200	300
Virginia	1,100	1,500	N/A	150	600
West Virginia	1,200	1,800	1,000	400	600
Average	1,370	1,450	1,200	250	570

Source: PERD Analysis of requirements in W. Va. CSR Tables 3-1A through 3-1F and administrative rules of the surrounding states.

PERD reviewed the required curriculums in Ohio and Pennsylvania for both cosmetologists and nail technicians in order to determine why the hours are significantly less than those in West Virginia. Overall, our review found that while both states required education in similar topical areas, albeit with variations, the hours required are simply fewer. Moreover, PERD reviewed curriculums offered at select individual schools in West Virginia to determine if educational requirements unrelated to the profession or health/safety are imposed on students. Our review found that, of the schools selected, most of the courses did not impose additional educational requirements. It should be noted that PERD's review of West Virginia's educational requirements found that all licensees are required to have some exposure to areas not directly related to the profession or health/safety. Those requirements include professional development, effective communication, human relations, and business management. However, PERD notes that schools typically include these topics in introductory courses that also teach state law, sanitation, and an overview of the profession. **Consequently, the Legislative Auditor recommends the Board review the education and training requirements for both cosmetologists and nail technicians to determine which requirements should be reduced.**

PERD also identified that the Board's reciprocity provision unnecessarily burdens out-of-state individuals wishing to become licensed in West Virginia.

In addition to education and training requirements, PERD also identified that the Board's reciprocity provision unnecessarily burdens out-of-state individuals wishing to become licensed in West Virginia. This is due to *W. Va. CSR §3-1-11*, which allows for a maximum credit towards licensure as a barber or cosmetologist for work and education from outside the state of 50% of the hour requirements (i.e. 600 hours for barbers and 900 hours for cosmetologists). However, the Executive Director noted

the practice is not consistent with the rule. Effective May 11, 2019, the Board will issue a license to an out-of-state applicant if the individual 1) is licensed currently, 2) has no adverse actions, and 3) has completed an educational program (regardless of the minimum number of hours). **Consequently, the Legislative Auditor recommends the Board update the legislative rule to reflect the current practice.**

PERD also noted during the review the Board has not adopted several legislative rules mandated by *W. Va. Code §30-27-6*:

- requirements for third parties to prepare and/or administer examinations and reexaminations;
- the passing grade on examinations;
- standards for approval of courses and curriculum;
- procedures for denying, suspending, revoking, reinstating, or limiting the practice of licensees, permittees, certificate holders, and registrants;
- designating the regions for investigators/inspectors;
- criteria for training of investigators/inspectors;
- requirements for investigations and inspections;
- requirements for inactive or revoked licenses, permits, certificates, and registrations; and,
- unprofessional conduct.

The Legislative Auditor recommends the Board adopt all legislative rules required by *W. Va. Code §30-27-6* or seek changes to the statute as necessary for any requirements that may be obsolete.

Conclusion

Although the Board complies with some of the general provisions of Chapter 30, the Board does not comply with several significant provisions, such as financial self-sufficiency and due process. In addition, despite a sufficient number of staff, the Board does not have adequate segregation of duties, however, steps have been taken to reduce the risk of fraud. Moreover, the Board members themselves are not adhering to the general provisions of Chapter 30 and Board specific statutes. For example, the Board members have not attended the required orientation session at least once per term, and four of five Board members have expired terms, with the one remaining member with an unexpired term failing to meet the minimum qualification for the position. In addition, Board members have questionable travel expenditures. The Board has also not promulgated several mandated rules related to investigations, exam requirements, and unprofessional conduct.

*PERD also noted during the review the Board has not adopted several legislative rules mandated by *W. Va. Code §30-27-6*.*

*The Legislative Auditor recommends the Board adopt all legislative rules required by *W. Va. Code §30-27-6* or seek changes to the statute as necessary for any requirements that may be obsolete.*

Recommendations

1. *Should the Legislature not wish to eliminate the Board, the Legislature should consider requesting the Governor remove all current Board members and appoint new members to ensure all the deficiencies noted in the report are addressed.*
2. *The Legislature should consider transferring the inspection of hair and nail salons for sanitation purposes to the Bureau for Public Health.*
3. *The Board should work towards full compliance with all applicable provisions of West Virginia Code.*
4. *The Board should consider raising fees, in conjunction with reducing expenditures to build the end-of-year cash balance to a minimum of one year of annual expenditures.*
5. *The Board should comply with West Virginia Code §30-1-5(c) and submit reports to the party filing the complaint and the respondent within six months after the complaint is initially filed.*
6. *The Board should investigate individuals for engaging in acts while acting in a professional capacity that may endanger the health, safety, or welfare of the public.*
7. *The Board should organize the complaint files so that the information is readily accessible to the public.*
8. *The Board should amend W. Va. CSR §3-11-7 to make continuing education audits mandatory on a regular basis and specify the methodology for selecting licensees for the audits.*
9. *The Board's chairperson and executive director need to adhere to W. Va. Code §30-1-2a(2) and attend annually the Seminar for State Licensing Boards.*
10. *The Board members should adhere to W. Va. Code §30-2-2a(3) and attend a seminar at least once during each term of office.*
11. *The Board should consider utilizing the State Treasurer's lockbox to further reduce risk.*
12. *The Board should establish a policy to ensure the annual reports are prepared consistently from year to year.*

13. *The Board President should reimburse the Board for the expenses charged to the room during the Tampa conference in 2016.*
14. *The Board should be more conservative in expenditures for attending national conferences by limiting the number of attendees.*
15. *The Board should review the education and training requirements for both cosmetologists and nail technicians to determine if the requirements should be reduced.*
16. *The Board should update W. Va. CSR §3-1-11.1 to reflect the current practice of allowing out of state applicants to apply for licensure if already licensed, has no adverse action, and has completed an educational program for the license for which they are applying.*
17. *The Board should adopt all legislative rules required by W. Va. Code §30-27-6 or seek changes to the statute as necessary for any requirements that may be obsolete.*

ISSUE 3

The Board of Barbers and Cosmetologist’s Website Is in Need of Improvement in Both User-Friendliness and Transparency.

Issue Summary

The Legislative Auditor’s Office conducted a literature review on assessments of governmental websites and developed an assessment tool to evaluate West Virginia’s state agency websites (see Appendix B). 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. Table 22 indicates that the Board integrates 52 percent of the checklist items in its website. This measure shows that the Board website is in need of more improvement in both user-friendliness and transparency.

The Board integrates 52 percent of the checklist items in its website. This measure shows that the Board website is in need of more improvement in both user-friendliness and transparency.

Table 22 West Virginia Board of Barbers and Cosmetologists Website Evaluation Score			
Substantial Improvement Needed	More Improvement Needed	Modest Improvement Needed	Little or No Improvement Needed
0-25%	26-50%	51-75%	76-100%
		Board 52%	
<i>Source: The Legislative Auditor’s review of the West Virginia Board of Barbers and Cosmetologists’ website.</i>			

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

In order for citizens to engage with a state agency online, they should be able to gain access to the website and to comprehend the information posted there. A user-friendly website employs up-to-date software applications, is readable, well-organized and intuitive, provides a thorough description of the organization’s role, displays contact information prominently and allow citizens to understand the organizational structure of the Board. Governmental websites should also include budget information and income sources to maintain transparency and the trust of citizens. The Legislative Auditor reviewed the Board’s website for both user-friendliness and transparency. As illustrated in Table

23, the website scores low in both user-friendliness and transparency. **The Board should consider making website improvements to provide a better online experience for the public.**

Table 23
Board Website Evaluation Score

Category	Possible Points	Agency Points	Percentage
User-Friendly	18	7	39%
Transparent	32	19	59%
Total	50	26	52%

Source: Legislative Auditor's review of the Board's website as of June 14, 2019.

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

The Board's website does not contain a significant amount of narrative. Rather, the web site is mainly short descriptions of clickable documents. However, the readability of the minimal narrative present and various document is at the college reading level, which is a higher reading level than recommended for consumption by the general public. A report published by the Brookings Institute determined that government websites should be written at an 8th grade reading level to facilitate readability. Readable, plain language helps the public find information quickly, understand the information easily and use the information effectively. The Board's website has a Frequently Asked Questions page, functions on a mobile phone, and every page also has a navigation bar. These features allow website users to navigate the page, search for information they may need, and find answers to their questions.

The readability of the minimal narrative present and various document is at the college reading level, which is a higher reading level than recommended for consumption by the general public.

User-Friendly Considerations

The following are attributes that could lead to a more user-friendly Board website:

- **Search Tool** – A search box on every page would assist visitors in quickly locating the desired information.
- **Site Map** – A site map acts as an index of the entire website and a link to the sitemap should be on the bottom of each page.
- **Foreign language accessibility** – Contain a link to translate all pages into languages other than English.
- **Social Media Links** – The website should contain buttons that allow users to post to an agency's social media pages.

While the Board has links to Facebook and Twitter, the Board does not use its twitter account.

The Board's website does not have elements such as feedback options, a survey that allows users to evaluate the website, or the ability to follow the page using RSS feeds. The Board's website also does not allow users to translate pages into languages other than English or resize the font. The absence of these elements lowers the Board's overall user-friendliness score, but some are not necessarily essential for the Board to convey the its role and do not unduly impede the public from finding information.

The Board's Website Needs to Be More Transparent.

A website that is transparent will have elements such as email contact information, the location of the agency, the agency's phone number, as well as public records, budgetary data and performance measures. A transparent website will also allow for citizen engagement so that their government can make policies based on the information shared. The Website Criteria Checklist and Points System (see Appendix C) demonstrates that the Board's website has 19 of 32 core elements that are necessary for a general understanding of the Board.

The Website Criteria Checklist and Points System demonstrates that the Board's website has 19 of 32 core elements that are necessary for a general understanding of the Board.

The Board's home page has the Executive Director's email and physical address as well as its telephone number, but a toll-free phone number is not found on any of the pages nor is a map showing the agency's location. Furthermore, no contact information is available for any of the Board members. Such information allows citizens to locate the information necessary to communicate with the Board. The Board website has a link for the agency annual reports and includes meeting minutes, statutes, rules/regulations, FOIA information, and a link to the West Virginia State Auditor's transparency. In addition, the Board should complete the disciplinary action section of their website to be compliant with *W. Va. Code §30-1-5(d)*, which mandates public access on a website to all completed disciplinary actions in which discipline was ordered.

Transparency Considerations

Several other elements could be added to improve the website's transparency score. The following are a few attributes that could be beneficial to the Board in increasing its transparency:

- **Location of Agency Headquarters** – An embedded map that shows the agency's location.

- **Administrator’s Biography** – A biography explaining the administrator(s) professional qualifications and experience.
- **Budget Data** – Budget data available at the checkbook level, ideally in a searchable database.
- **Agency Organizational Chart** – A narrative describing the agency organization, preferably in a pictorial representation such as a hierarchy/organizational chart.
- **Performance Measures/Outcomes** – A page linked to the homepage explaining the agencies performance measures and outcomes.

Conclusion

Overall, the Board’s website scores low in both user-friendliness and transparency. While users can find most needed information such as finding annual report, meeting dates, meeting minutes, information on obtaining a license, and contact information, adding other elements would improve the website and make it more accessible for the public.

Recommendation

18. *The West Virginia Board of Barbers and Cosmetologists should make the suggested improvements to its website to increase user-friendliness and transparency.*

Appendix A Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

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



John Sylvia
Director

December 3, 2019

Danielle Cordle, Executive Director
West Virginia Board of Barbers and Cosmetologists
1201 Dunbar Avenue,
Dunbar, WV 25604

Dear Director Cordle:

This is to transmit a draft copy of the regulatory board review of the Board of Barbers and Cosmetologists. This report is tentatively scheduled to be presented during the January 6-7 interim meetings of the Joint Committee on Government Operations, and the Joint Committee on Government Organization. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions committee members may have during or after the meeting.

We need to schedule an exit conference to discuss any concerns you may have with the report. We would like to have the meeting on December 10, 2019. Please notify us to schedule an exact time. In addition, we need your written response by noon on December 13, 2019 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 2, 2019 to make arrangements.

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

Sincerely,

A handwritten signature in blue ink that reads "John Sylvia".

John Sylvia

Enclosure

Joint Committee on Government and Finance

Appendix B

Objectives, Scope and Methodology

The Performance Evaluation and Research Division (PERD) within the Office of the Legislative Auditor conducted this Regulatory Board Review of the Board of Barbers and Cosmetologists 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 §30-27, is to protect the public through its licensing process, and to be the regulatory and disciplinary body for aestheticians, barbers, cosmetologists, hair stylists, and nail technicians 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 §30-27, and other applicable rules and laws such as the Open Governmental Proceedings (WVC §6-9A) and purchasing requirements. Finally, it is the objective of the Legislative Auditor to assess the Board's website for user-friendliness and transparency.

Scope

The evaluation included a review of the Board's internal controls, policy and procedures, meeting minutes, complaint files from fiscal years 2016 through 2018, complaint-resolution process, disciplinary procedures and actions, revenues and expenditures for the period of fiscal years 2016 through 2018, continuing education requirements and verification, the Board's compliance with the general statutory provisions (WVC §30-1-et al.) 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 Dunbar and met with its staff. Testimonial evidence gathered for this review through interviews with the Board's staff was confirmed by written statements and in some cases by corroborating evidence.

PERD collected and analyzed a sample of the Board's complaint files, meeting minutes, annual reports, budget information, procedures for investigating and resolving complaints, and continuing education. PERD also obtained information from Kentucky's, Maryland's, Ohio's, Pennsylvania's, and Virginia's regulatory boards regarding their continuing education requirements and license fee structures. 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 §30-27 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 in order to assess the risk of fraud, and to obtain reasonable assurance that revenue figures were sufficient and appropriate.

Expected revenues were approximated by applying license fees to the number of licensees for the period of fiscal years 2016 to 2018. With the exception of one year, expected revenues were higher than actual revenues. The one discrepancy identified by the Legislative Auditor is the result of incorrect information contained in the annual report. 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 2016 through 2018 to assess the risk of fraud on the expenditure side. The test involved determining if verifiable expenditures were at least 90 percent of total expenditures. Verifiable expenditures include: salaries and benefits, per diem payments, travel reimbursement, board-member compensation, insurance, office rent, payments to other agencies, and utilities. The Legislative Auditor determined that during the scope of the review, verifiable expenses were between 79 and 84 percent of total expenditures. Given that the Board did not meet the 90 percent threshold, PERD conducted a detailed analysis of expenditures and determined that the Board's expenditures to attend national conferences, payments to a lobbyist, telecommunications, and postage contributed to the required/expected expenditures being below 90 percent.

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 in regards to 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 Barbers and Cosmetologists can determine if it is progressing in step with the e-government movement and if improvements to its website should be made.

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

Website Criteria Checklist and Points System			
User-Friendly	Description	Total Points Possible	Total Agency Points
Criteria	The ease of navigation from page to page along with the usefulness of the website.	18	7
		Individual Points Possible	Individual Agency Points
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	2
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 th -7 th grade reading level. The Flesch-Kincaid Test is widely used by Federal and State agencies to measure readability.	No points, see narrative	
Site Functionality	The website should use sans serif fonts (1), the website should include buttons to adjust the font size (1), and resizing of text should not distort site graphics or text (1).	3 points	0
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	0
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

Website Criteria Checklist and Points System

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	1
Feedback Options	A page where users can voluntarily submit feedback about the website or particular section of the website.	1 point	0
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	1
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
Transparency	Description	Total Points Possible	Total Agency Points
Criteria	A website which promotes accountability and provides information for citizens about what the agency is doing. It encourages public participation while also utilizing tools and methods to collaborate across all levels of government.	32	19
		Individual Points Possible	Individual Agency Points
Email	General website contact.	1 point	1
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	0
Administrative officials	Names (1) and contact information (1) of administrative officials.	2 points	2
Administrator(s) biography	A biography explaining the administrator(s) professional qualifications and experience.	1 point	0

Website Criteria Checklist and Points System			
Privacy policy	A clear explanation of the agency/state's online privacy policy.	1 point	1
Complaint form	A specific page that contains a form to file a complaint (1), preferably an online form (1).	2 points	2
Budget	Budget data is available (1) at the checkbook level (1), ideally in a searchable database (1).	3 points	3
FOIA information	Information on how to submit a FOIA request (1), ideally with an online submission form (1).	2 points	1
Calendar of events	Information on events, meetings, etc. (1) ideally imbedded using a calendar program (1).	2 points	1
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	<p>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:</p> <ul style="list-style-type: none"> • Statutes • Rules and/or regulations • Contracts • Permits/licenses • Audits • Violations/disciplinary actions • Meeting Minutes • Grants 	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	0

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	0
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



Jim Justice
Governor

**State of West Virginia
Board of Barbers and Cosmetologists**
1201 Dunbar Avenue
Dunbar, WV 25064

PERFORMANCE EVALUATION

DEC 13 2019

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Charleston, WV 25305

Re: *Performance Review of the West Virginia Board of Barbers and Cosmetologists (WVBBC)*

December 13, 2019

Dear Audit Team:

This letter provides the West Virginia Board of Barbers and Cosmetologists ("WVBBC") responses to the Performance Evaluation and Research Division ("PERD") regarding the above-mentioned performance review:

PERD Finding:

"When the Board receives complaints, it does not take action against individuals for skill-based issues"; and

"While the Legislative Auditor acknowledges the Board cannot regulate subjective incidents (e.g. bad cut, wrong color), it is the Legislative Auditor's opinion the Board can, and should, exercise oversight of individuals regarding skill-based issues."

WVBBC Response to PERD Finding:

WVBBC agrees with PERD's opinion that WVBBC can, and should, exercise oversight of individual licensees regarding skill-based issues. WVBBC does currently investigate complaints against individual licensees concerning skill-based issues if the complaint indicates the individual licensee endangered the public in some way (e.g. complainant received an injury while receiving services). Complaints that indicate a consumer was dissatisfied with the services they received from an individual licensee (e.g. bad haircut, wrong color) are not typically investigated and are usually dismissed, but are reviewed by WVBBC Board Members to determine if a violation of W. Va. Code § 30-27 or WVBBC's Legislative Rules occurred and if an investigation should be completed.

PERD Finding:

"According to the Executive Director, the Board's goal is to inspect each salon twice annually."

WVBBC Response to PERD Finding:

This comment was not entirely accurate. Upon further review, it was determined that this goal is mentioned in WVBBC's Budget Narrative and the goal states *"inspect 90% of all salons twice per fiscal year"*. This goal was developed by previous WVBBC Executive Directors and is not mentioned in West Virginia Code or Rules. The reason WVBBC may not have met this goal for FY 2016 through FY 2018

was due to WVBBC having four (4) different Executive Directors within the last five (5) years as well as experiencing significant turnover with WVBBC central office staff. We are currently working on figuring out an appropriate frequency for salon inspections and intend to have this goal specified in legislative rule.

WVBBC Response to PERD Review and Recommendations

On behalf of WVBBC, I fully acknowledge the deficiencies that were identified in PERD's performance review and we are actively working on resolving them. If given the opportunity, I fully anticipate a complete resolution for all the deficiencies noted in the review within six months from the date of this letter, with the exception of the changes and adoptions that need to be made to W. Va. Code § 30-27 and WVBBC's Legislative Rules. This process may exceed our six-month goal but will remain as one of our top priorities.

WVBBC accepts and understands PERD's recommendations but respectfully disagrees with the following:

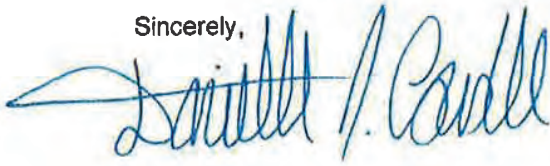
"2. The Legislative Auditor recommends the Legislature consider transferring the inspection of hair and nail salons for sanitation purposes to the Bureau for Public Health"

Should the Legislature not wish to eliminate WVBBC, we will remain dedicated to resolving all the issues noted in the review as well as resolving the deficiencies related to the frequency of salon inspections, so it may be unnecessary to have another state agency administer inspections of salons. Since receiving the draft PERD performance review of WVBBC and throughout the duration of the audit, myself along with the assistance of WVBBC personnel have implemented the following measures to resolve some of the issues noted in PERD's performance review:

- Added a certification on initial license applications that requires applicants to certify that they do not currently owe any child support obligation that is 6 months in arrearages and are not subject of a child-support subpoena or warrant;
- Organized files;
- Began scanning consent agreements to be uploaded to WVBBC's disciplinary action section of website;
- Changed the location of WVBBC deposits to an approved West Virginia State Treasurer's Office depository which will eliminate expenses incurred through daily deposit trips to the Capitol complex;
- All open complaints are currently being reviewed by WVBBC Board Members for further action and are being documented in WVBBC's meeting minutes;
- Made improvements to WVBBC's website and currently working on adding additional improvements to make the website more user-friendly and transparent; and
- Scheduled staff meeting with WVBBC personnel to discuss resolving issues that were identified in review.

I am confident WVBBC can succeed in complying with all applicable provisions of West Virginia Code and I believe many of the issues that were identified by PERD occurred as a result of the recent turnover in WVBBC personnel positions within the last five years and general oversight. We believe we are currently on track and since WVBBC has obtained more stable leadership within the last two years, I fully expect a satisfactory resolution to all noted findings.

Sincerely,



Danielle J. Cordle
Executive Director
West Virginia Board of Barbers and Cosmetologists

Cc:

Sarah Hamrick, WVBBC President/Chair
Susan Poveromo, WVBBC Board Member
Melissa Delaney, WVBBC Board Member
Donnie Snyder, WVBBC Board Member

Enclosures:

After Photo 1 – File Storage Area 1
After Photo 2 – File Storage Area 2
After Photo 3 – File Storage Area 2
After Photo 4 – Old Files Stored on Floor
Photo 5 – New FY 2016 Complaint File Storage
Photo 6 – New Storage for Files

After Photo 1
File Storage Area 1



After Photo 2
File Storage Area 2



After Photo 3
File Storage Area 2



After Photo 4
Old Files Stored on Floor

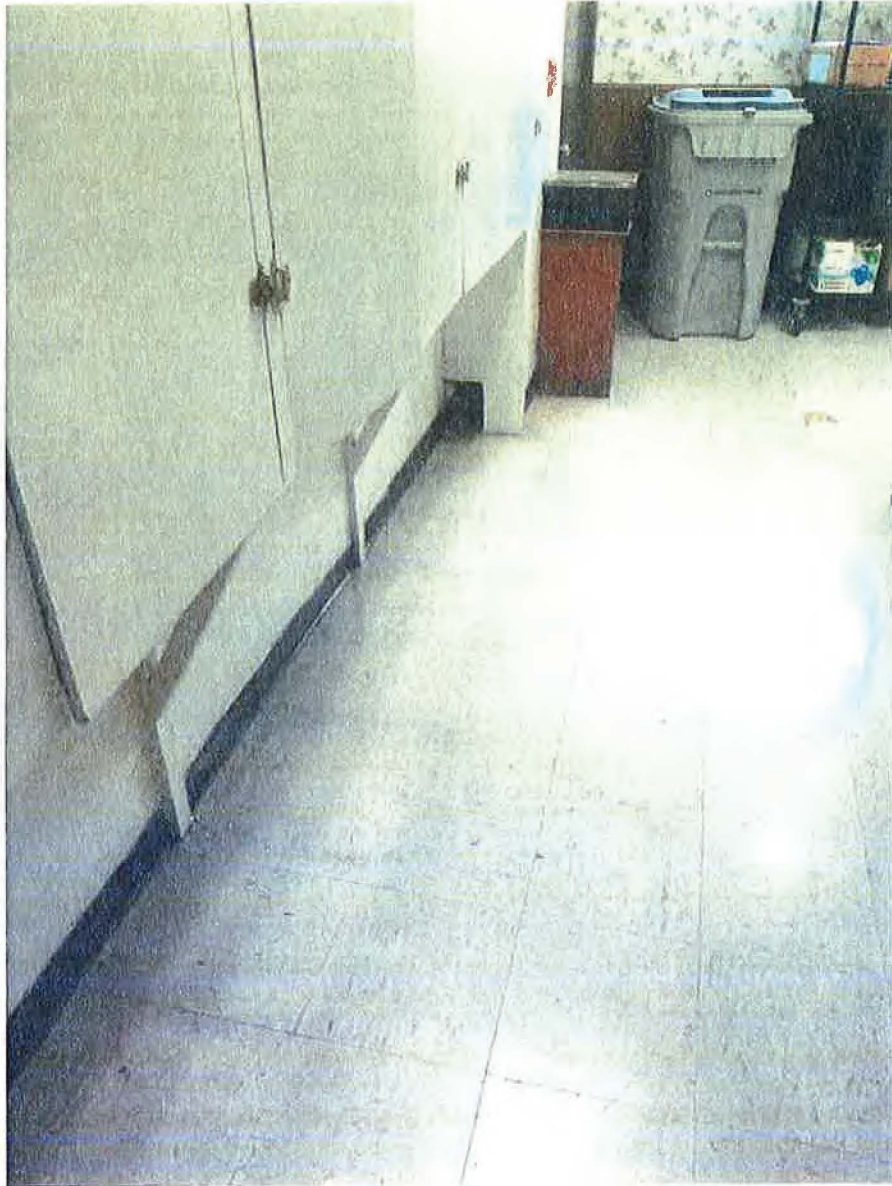


Photo 5
New FY 2016 Complaint File Storage

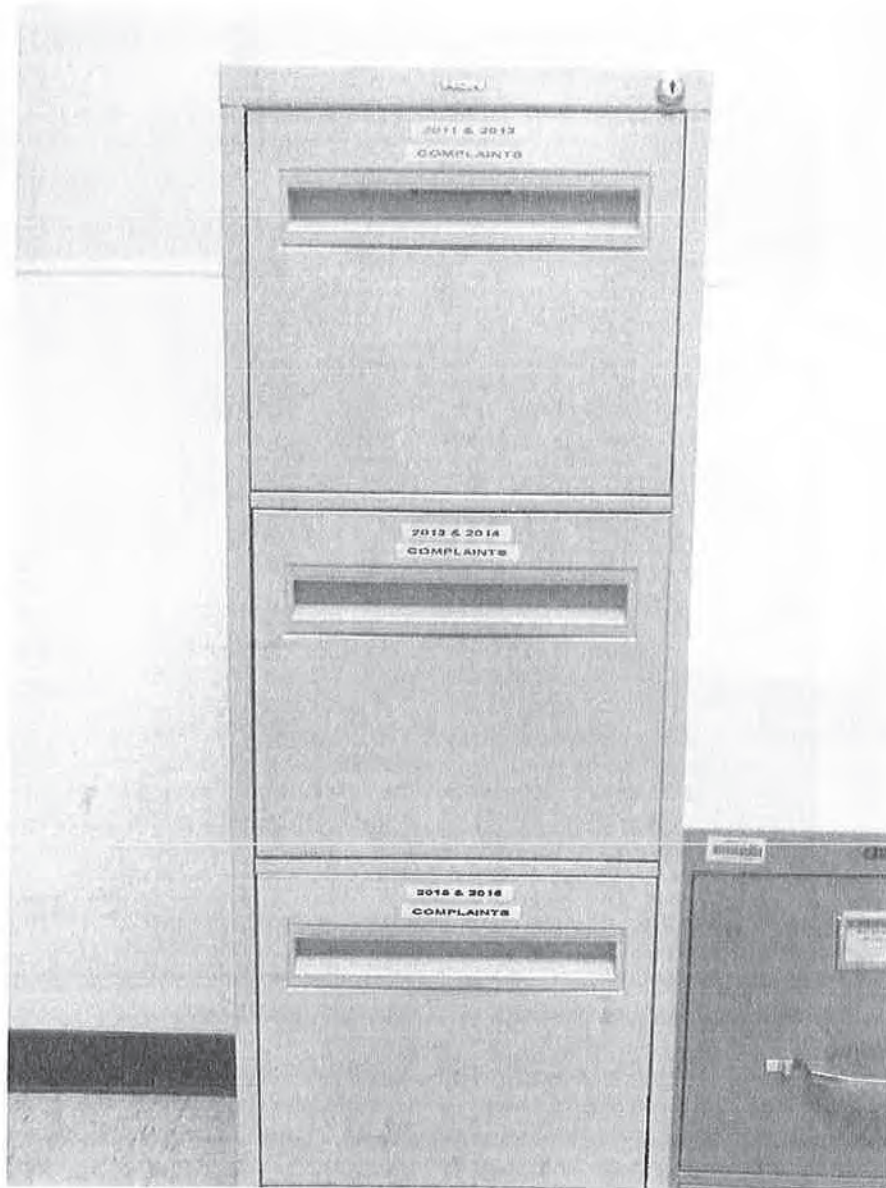


Photo 6
New Storage for Files





WEST VIRGINIA LEGISLATIVE AUDITOR

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