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REGULATORY BOARD REVIEW

BOARD OF EXAMINERS IN COUNSELING

AUDIT OVERVIEW

The Board of Examiners in Counseling Complies With Most of the General Provisions of Chapter 30 of the W.Va. Code; However, Improvement Is Needed.

The Board's Inadequate Cybersecurity and Internal Control Put the State at Risk By Exposing Case Counseling Notes.

The Board of Examiners in Counseling Needs to Consider What Measures It Needs to Take to Ensure It Provides Handicapped Accessibility to Its Office and Services Under the Americans With Disabilities Act.

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



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Kayla Young


WEST VIRGINIA LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314
State Capitol Complex
Charleston, West Virginia 25305
(304) 347-4890

Aaron Allred
Legislative Auditor

John Sylvia
Director

Jill Mooney
Research Manager

Kayla Wilson
Research Analyst

Lukas Griffith
Referencer

Note: On Monday, April 1, 2019, the Legislative Manager/Legislative Auditor's wife, Elizabeth Summit, began employment as the Chief Privacy Officer for the State of West Virginia. All of the actions discussed and work performed in this report occurred after this date. The Chief Privacy Officer was involved in one issue in this report and the audit team had communications with her regarding that aspect of the report. As Chief Privacy Officer, the Legislative Auditor's wife is not in a policy making position within the Executive Branch. Additionally, the Legislative Manager/Legislative Auditor recused himself from any involvement with this issue. The Legislative Manager/Legislative Auditor did not discuss this issue of the report with the audit team and did not review this issue in the report. Therefore, the Performance Evaluation and Research Division does not believe there are any threats to independence with regard to this report as defined in A3.06.a and A3.06.b of the Generally Accepted Government Auditing Standards. Furthermore, the Legislative Auditor has instructed the Director of Performance Evaluation and Research Division to document and discuss any issues he believes are a threat to the division's independence with the President of the Senate and the Speaker of the House due to Ms. Summit's position.

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

June 6, 2021

The Honorable Mark Maynard
West Virginia State Senate
Building 1, Room 217W
1900 Kanawha Boulevard, East
Charleston, WV 25305-0470

The Honorable Brandon Steele
West Virginia House of Delegates
Building 1, Room 213E
1900 Kanawha Boulevard, East
Charleston, WV 25305-0470

Dear Chairs:

Pursuant to the West Virginia Performance Review Act, we are transmitting a Regulatory Board Review of the *Board of Examiners in Counseling*. The issues covered herein are "*The Board of Examiners in Counseling Complies With Most of the General Provisions of Chapter 30 of the W. Va. Code; However, Improvement Is Needed.*;" "*The Board's Inadequate Cybersecurity and Internal Control Put the State at Risk By Exposing Case Counseling Notes.*;" "*The Board of Examiners in Counseling Needs to Consider What Measures It Needs to Take to Ensure It Provides Handicapped Accessibility to Its Office and Services Under the Americans With Disabilities Act.*;" and "*The Board's Website Needs More Improvement to Enhance User-Friendliness and Transparency.*"

We transmitted a draft copy of the report to the *Board of Examiners in Counseling* on January 29, 2021. We held an exit conference on February 9, 2021. We received the agency response on February 17, 2021. If you have any questions, please let me know.

Sincerely,

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

John Sylvia

Joint Committee on Government and Finance

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EXECUTIVE SUMMARY

The Performance Evaluation and Research Division (PERD) within the Office of the Legislative Auditor conducted a Regulatory Board Review of the West Virginia Board of Examiners in Counseling (Board) pursuant to the Performance Review Act, Chapter 4, Article 10. Objectives of this audit were to assess the Board's compliance with the general provisions of Chapter 30 and other applicable laws, evaluate the Board's website for user-friendliness and transparency, and assess the general accessibility of the Board's office in regards to the Americans with Disabilities Act (ADA) checklist. The issues of this report are highlighted below.

Frequently Used Acronyms in This Report:

ACA – American Counseling Association

ADA – Americans with Disabilities Act

AG – Attorney General

CE – Continuing Education

CSR – Code of State Rules

FY – Fiscal Year

HIPAA – Health Insurance Portability and Accountability Act of 1996

LPC – Licensed Professional Counselor

MFT – Marriage and Family Therapist

OT – Office of Technology

PERD – Performance Evaluation and Research Division

Report Highlights:

Issue 1: The Board of Examiners in Counseling Complies With Most of the General Provisions of Chapter 30 of the W. Va. Code; However, Improvement Is Needed.

- The Board is financially self-sufficient, accessible to the public, has established continuing education requirements, and maintains due process rights for licensees.
- The Board's rules are not compliant with W. Va. Code and caselaw because they permit the Board to deny licensure to someone with a felony.
- The Board exceeds its statutory authority by having non-board members participate on its complaint committee.

- Two Board members are serving as an officer and an at large member on an association of the profession whose interests could conflict with those of the Board.

Issue 2: The Board’s Inadequate Cybersecurity and Internal Control Put the State at Risk By Exposing Case Counseling Notes.

- The Board put the State at risk for legal liability when it placed case counseling notes on its website that included a medical diagnosis and prescribed medication.
- The Board did not comply with executive branch procedure that requires the exposure be reported to the Office of Technology.
- The Board does not have an encrypted website which means that its data is not protected from interception or alteration.
- The Board sends unencrypted emails with the complaint files and passwords to Board members and complaint committee members. Emails that are not unencrypted risk the content being intercepted.

Issue 3: The Board of Examiners in Counseling Needs to Consider What Measures It Needs to Take to Ensure It Provides Handicapped Accessibility to Its Office and Services Under the Americans With Disabilities Act.

- There are possible physical barriers to accessing the Board’s office.
- The Board did not meet the ADA requirements in its elevator, bathroom appliances, door handles, entrance, and signage.

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

- The Board’s website needs more improvement to enhance user-friendliness and transparency. Additional features should be considered to further improve user-friendliness, such as a search tool, help link, site functionality tool, and a frequently asked questions section.
- The Board’s website could benefit from additional transparency features such as its privacy policy, budget data, agency publications, and website update status.

PERD’s Response to the Agency’s Written Response

PERD received the Board’s response to the draft copy of the regulatory board review on February 17, 2021. The Board’s response can be seen in Appendix G. In recommendation one, PERD

stated that the Board should comply with the law by always sending a status report to complainants when a complaint is still open at six months. The Board responded that it is implementing a commercial regulatory database platform to track complaints and the investigative process. The electronic platform the Board is adopting is not a replacement for staff being aware of complaints still being open at six months or that staff will still need to send the status letters.

PERD recommended the Board not require complaint notarization. The Board said it would remove the requirement. However, as the Board also said this in an earlier regulatory board review but continued to inconsistently require the notarization. PERD reiterates that this practice is unnecessary and places a restriction on citizens. The Board agrees with recommendation three and says it will seek to amend its legislative rules to be compliant with Code and caselaw in time for the 2022 legislative session.

In the fourth recommendation, PERD said the Board should amend its procedural rule by disallowing committees from being able to determine the sufficiency of an applicant's education for licensure. The Board responded by saying it will clarify the duties of the committee deciding whether an applicant's education is satisfactory for licensure. The Board also states that the committee does not make the final decision for licensure. This is true when the committee decides an applicant's education is sufficient because it brings the applicant to the Board for a vote on whether to approve licensure. However, if the committee decides that education is not sufficient, then the Board is not involved because the committee notifies the applicant that it found the applicant's education insufficient. This is deciding the applicant cannot be licensed. In our exit conference, the Board argued that if the committee had to obtain board approval for applicants it found had insufficient education, the time to license would increase because a board meeting could occur months after the committee meeting. PERD rejects this argument on two fronts. One is that it is the same length of time as it would be for those applicants the committee is recommending for licensure. Secondly, an incomplete application packet is not the same as deciding that coursework is not sufficient. In instances where the committee thinks coursework is insufficient, it must be the Board that decides an applicant is unqualified and not a committee. PERD sees little distinction between the concerns raised about the Board's investigative committee and how the Board states it intends to proceed going forward. If the Board intends for the six licensed professional counselors it selected to function as investigators, then the Board needs to treat them as contract employees following state law. As such the employees may not issue subpoenas, subpoenas duces tecum or perform other duties assigned to the Board. If the Board is not going to treat these licensed professional counselors as contract employees, then it is continuing to allow non-board members to complete the Board's investigation or decide the truth or validity of complaints.

Recommendation five states that the Legislature consider disallowing officers or board members of professional organizations to serve simultaneously as board members on regulatory boards. The Board does not agree with the concerns that a conflict of interest could present itself. The Board states that a dual-serving board member could recuse him or her selves to resolve the conflict of interest. While it is true that board members could recuse themselves, the duties and responsibilities of licensing boards and professional associations are not the same and PERD maintains that the Legislature consider whether a licensing board member can also serve as an officer or board member of its own professional organization.

PERD recommends the Board consider the Lockbox System to minimize the handling of revenue by its staff. With respect to this recommendation (six), the Board indicated it would inquire about gaining access to the West Virginia State Treasurer's Office Lockbox System. The Board did not respond to recommendation seven which spoke to the legal requirement to deposit revenues within

one business day of receipt. Should the Board implement the Treasurer's Lockbox System, it would be expected that the legal requirement would be met. However, if the Board does not implement the lockbox system, then it needs to take measures to ensure it deposits revenues in compliance with the law.

In recommendation eight, PERD stated that the Board maintain the register required in W. Va. Code §30-1-12(a). The Board did not acknowledge that its register did not have all of the required fields. However, the Board claims that it keeps all required fields and that its move to a commercial regulatory database platform will allow it to easily produce a complete register.

PERD recommended (nine) the Board work with the Office of Technology and the State Privacy Office to establish appropriate internal control regarding cybersecurity and ensuring the security of information it receives in its regulatory duties. The Board responded that it now has a "wv.gov" email address. The Board further said that it can now send encrypted emails because it now has the "wv.gov" address. However, it could send encrypted emails with its former email address and having the new email address does not automatically result in an encrypted email. PERD again emphasized that the Board should follow best practice cybersecurity internal controls. In the tenth recommendation PERD suggested the Board consider encrypting its website. The Board did not expressly respond to this recommendation.

Recommendation 11 states that the Board register for a ".gov" website. The Board responded saying it is working with OT to obtain a .gov website. However, given the lack of an express response to the recommendation that an encrypted website be obtained, PERD cautions that obtaining a ".gov" will not automatically make the website secure. A domain name or top-level domain is just an address that bears no relation to the technology using it. A domain might only be used for email, or web, both or neither -- it could be used for FTP (File Transfer Protocol) where only files are transferred via the internet. The encryption of a website's data or email data is in the protocol used for the data transfer. A website will start with https:// (with the s) instead of http:// (without the s). Similarly, email or FTP has both regular and encrypted transfer protocols. The Board will need to work with OT so that regardless of the entire domain, it is the underlying technology that makes a secure website, not the domain name.

Recommendation 12 states that the Board improve its cyber-security as well as follow the protocols of the Office of Technology and the State Privacy Office associated with unauthorized access of information. The Board responded that it is implementing a commercial regulatory database platform that will help avoid risking data breaches.

PERD recommended (thirteen) the Board should consider what measures it needs to take to improve handicap accessibility to its office and services under the Americans with Disabilities Act. While the Board responded that it would help any walk-ins get into the building elevator and building doorways, this may not be sufficient for physical access to the Board's office. The Board may need to consider relocating its office and how it will provide services to individuals who cannot physically access the Board's office.

In recommendation 14, the Board states that it is revamping its website to make it more user friendly in conjunction with implementing the commercial regulatory database platform. PERD reiterates that a transparent and user-friendly website is important active citizen engagement.

Recommendations

1. *The Board should send status reports to the party filing the complaint and the respondent within six months after the complaint is initially filed pursuant to W. Va. Code §30-1-5(c).*
2. *The Board should strike CSR 27-5-5.1e as it creates an unnecessary burden on those filing complaints with the Board and further recommends that the Board forward the licensee's or applicant's response to the complainant in order to ensure consistent handling of complaints received by the Board.*
3. *The Board should amend CSR 27-5-4.1, CSR 27-11-4.1, CSR 27-5.5.17, and CSR 27-11-5.17 so that these rules are in compliance with W. Va. Code and caselaw.*
4. *The Board should amend CSR 27-1-6.1.d. to disallow committees from being able to determine the sufficiency of an applicant for licensure's education.*
5. *The Legislature should consider whether it wishes to create legislation that clarifies its intent regarding a person who serves as an officer or board member of an organization that represents the interests of a profession can also serve as a member of a regulatory board of the same profession.*
6. *The Board should consider utilizing the State Treasurer's lockbox and incorporating a license renewal feature to its website to further reduce the risk of fraud.*
7. *The Board should deposit money received within one business day as required by W. Va. Code §12-2-2(a).*
8. *The Board should maintain a complete register of applicants as required by law.*
9. *The Board should work with the Office of Technology and the State Privacy Office to establish appropriate internal control regarding cybersecurity and ensuring the security of information it receives in its regulatory duties.*
10. *The Board should consider encrypting its website.*
11. *The Board should consider registering for a ".gov" domain.*
12. *The Board should improve its cyber-security as well as follow the protocols of the Office of Technology and the State Privacy Office associated with unauthorized access of information.*

13. *The Board should consider what measures it needs to take to improve handicap accessibility to its office and services under the Americans with Disabilities Act.*
14. *The Board should improve the user-friendliness and transparency of its website by incorporating more of the website elements identified.*

ISSUE 1

The Board of Examiners in Counseling Complies With Most of the General Provisions of Chapter 30 of the W. Va. Code; However, Improvement Is Needed.

Issue Summary

The Board of Examiners in Counseling (Board) is financially self-sufficient, has continuing education (CE) requirements, and attends the Annual Seminar for State Licensing Board as required by law. The Board does not retain a complete register of all applicants with appropriate information specified in code, including the date of the application, whether the license was granted or denied, and any suspensions and/or revocations. Furthermore, in two instances the Board did not send the required six-month status report to the party filing a complaint. The Board also has rules that do not comply with W. Va. Code. Lastly, the Board does not have sufficient segregation of duties for handling its monies and should consider using the State Treasury's lockbox system.

The Board Complies With Most of the General Provisions of Chapter 30.

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

- The chairperson, the executive director or the chief financial officer of the board annually attends the orientation session conducted by the State Auditor (30-1-2a (c)(2)).
- The board members attend at least one orientation session during each term of office (30-1-2a(c)(3)).
- The Board has 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 continuing education requirements (§30-1-7a).
- The Board has rules specifying the investigation and resolution procedure of all complaints (§30-1-8(k)).
- The Board submitted annual reports to the Governor and Legislature describing transactions (§30-1-12(b)).
- The Board complies with public access requirements as specified by (§30-1-12(c)).
- The Board maintains a roster of all licensees that includes names, and office addresses (§30-1-13).

The Board does not retain a complete register of all applicants with appropriate information specified in code, including the date of the application, whether the license was granted or denied, and any suspensions and/or revocations.

The Board is not in compliance with the following provisions:

- The Board had one member that did not attend at least one orientation session during each term of office (30-1-2a(c)(3)).
- The Board did not send a status report to the party filing the complaint by certified mail with a signed return receipt within six months of the complaint in two instances (§30-1-5(c)).
- The Board did not maintain a register of all applicants with appropriate information specified in code, including the date of the application, age, whether the license was granted or denied, any suspensions or revocations. (§30-1-12(a)).

From fiscal years 2016 through 2019, the Board maintained an ending cash balance of 133 percent of annual expenditures (an average of \$54,688 above annual expenditures).

The Board Is Financially Self Sufficient.

Table 1 shows that the Board is financially self-sufficient as required by W. Va. Code §30-1-6(c). It is the Legislative Auditor's opinion that cash reserves in the amount of one to two times a board's annual expenditures are an acceptable level. From fiscal years (FY) 2016 through 2019, the Board maintained an ending cash balance of 133 percent of annual expenditures (an average of \$54,688 above annual expenditures). As shown in Table 1, the Board's end-of-year cash balance varies from year to year. PERD concludes that this is in part due to significant fluctuations in revenue from year to year as well as increasing expenditures.

Table 1
Board of Examiners in Counseling
Budget Information
FY 2016 through FY 2019

Fiscal Year	Beginning Cash Balance	Revenues	Expenditures	Ending Cash Balance	End-of-Year Cash as a Percentage of Annual Expenditures
2016	\$215,628	\$93,810	\$151,954	\$157,484	104%
2017	\$157,484	\$253,124	\$140,108	\$270,500	193%
2018	\$270,500	\$116,483	\$175,073	\$211,911	121%
2019	\$211,911	\$219,113	\$192,515	\$238,509	124%
Average	\$213,881	\$170,633	\$164,913	\$219,601	133%

Source: Our Advanced Solution with Integrated Systems (OASIS)(WV-FIN-GL-151) for FY 2016 through FY 2019 Cash Balance. PERD calculations of percentages.

The Board's revenue consists of fees from licensed professional counselors (LPCs) and marriage and family therapists (MFTs) for initial applications, examinations, licensure, renewals, continuing education

programs, annual supervision and reinstatements. Generally, board revenues show fluctuations because until FY 2020, license renewals were biannual with a disproportionate number of licensees renewing every other year. A levelling out of revenues should be expected as the number of licensees has remained steady over the last few years and all licensees will now be renewing at the same time.

Annual disbursements include staff salaries and benefits, utilities, travel costs and the legal costs paid to the Attorney General's (AG) office. Lengthy complaints resulting in more disbursements to the AG's office as well as increased payroll and travel costs have contributed to the fluctuating expenditures. The Board had more out-of-state travel in 2017 than it did in 2019 resulting in an increase in its expenditures. Furthermore, there were instances in 2017 and 2019 in which the Board had an increase in AG fees that made a significant impact on its increase in expenditures. Due to these costs, the Board has had varying expenditure totals during the scope of the audit review period.

West Virginia licensure and renewal fees are significantly higher than that of surrounding states. This may be attributable to West Virginia's surrounding states having significantly more licensees to support the cost of administering a board.

The Board's Licensure Fees Are Higher Than All Surrounding States.

West Virginia and surrounding states' licensure and renewal fees can be seen in Table 2. The initial licensure fee for West Virginia LPCs and MFTs is \$250 and the annual renewal fee is \$220. These fees are significantly higher than that of surrounding states. This may be attributable to West Virginia's surrounding states having significantly more licensees to support the cost of administering a board. Additionally, other than Ohio, the surrounding states administratively combine many regulatory boards which may contribute to cost economies.

Table 2
Board of Examiners in Counseling
Licensure Fees
West Virginia and Surrounding States

State	LPC Initial Licensure Fee	MFT Initial Licensure Fee	LPC Renewal Fee	MFT Renewal Fee	Renewal Cycle
Kentucky	\$150	N/A	\$150	N/A	Annual
Maryland	\$200	\$200	\$275	\$275	Biennial
Ohio	\$100	\$100	\$100	\$100	Biennial
Pennsylvania	\$45	\$45	\$95	\$95	Biennial
Virginia	\$175	\$175	\$130	\$130	Annual
West Virginia	\$250	\$250	\$220	\$145	Annual

Source: Respective state licensure board websites and statutes.

The Board Resolves Complaints in a Timely Manner, But Status Reports Need to Be Sent in All Cases Within Six Months of the Complaint Being Filed.

PERD reviewed complaints investigated by the Board for FY 2017 through FY 2019. Per West Virginia Code of State Rules (CSR) §17-4-5.1, complaints against licensees can be filed with the Board by any individual, in writing or through an online form. Table 3 provides an overview of the complaints received and average time to resolve the complaints. According to W. Va. Code §30-1-5(c), each Chapter 30 board must resolve a complaint within 18 months of the initial filing. Furthermore, the Board is required to send status reports to the party filing the complaint and the respondent within six months after the complaint was initially filed if the case has not been resolved within six months. During the scope of the audit the Board received 28 complaints, and 27 of these were closed within 18 months of receipt. As of September 2020, 1 complaint remained open but was still within 18 months of its receipt date. However, in two cases the Board did not send status reports to the complainants or the respondents. **The Board should send status reports to the party filing the complaint and the respondent within six months after the complaint is initially filed pursuant with W. Va. Code §30-1-5(c).**

During the scope of the audit the Board received 28 complaints, and 27 of these were closed within 18 months of receipt.

In two cases the Board did not send status reports to the complainants or the respondents within six months after the complaint was initially filed.

Table 3
Board of Examiners in Counseling
Complaint Decision Statistics
FY 2017 through FY 2019

Fiscal Year	Number of Complaints Received	Number of Cases with Disciplinary Actions	Average Resolution Time in Days
2017	4	0	213
2018	14	5	273
2019	10	6	293

Source: The Board of Examiners in Counseling. Average resolution times are calculated based on complaints that were resolved. Therefore, the averages are not based on the total number of complaints.

The Board's rules state that complaints filed with the Board must be notarized.

The Board Inconsistently Applies Requirements for Complaint Notarization and Providing Complainants with Licensee Complaint Responses.

PERD conducted a review of the Board's rules to determine if the rules protect the public. CSR 27-5-5.1 states that complaints filed with the Board must be notarized. However, when conducting a review

of the complaint files, PERD noted that the Board accepted and rejected complaints that had not been notarized. Additionally, CSR 27-5-5.9 states that the Board may forward the licensee or applicant's response to the complaint along with any supporting documentation to the complainant. However, the Board sent responses of licensees in some complaint cases but not others. The Legislative Auditor stated in a 2005 report that requiring notarization before complaints are accepted by the Board imposes an additional barrier to public access. Notarization of complaints is not required in state code. The Legislative Auditor concludes that notarization is an unnecessary step that may restrict individuals from filing a complaint because notarization is not intended to confirm the content of the complaint, only the signature of the individual making the complaint. **Therefore, given that notarization is unnecessary, and the Board is not practicing it consistently, it is recommended that the Board discontinue the notarization requirement.** It should be noted that a 2007 PERD report indicates that the Board stated it would discontinue the notarization process; however, it is apparent that this was not done. **Furthermore, it is recommended that the Board forward the licensee's or applicant's response to the complainant in order to ensure consistent handling of complaints.**

Notarization of complaints is not required in state code. The Legislative Auditor concludes that notarization is an unnecessary step that may restrict individuals from filing a complaint because notarization is not intended to confirm the content of the complaint, only the signature of the individual making the complaint.

The Board's Rules Are Not Compliant With W. Va. Code and Caselaw.

As PERD conducted its review of the Board's rules, it found that the Board has not updated its rules in compliance with a 2019 amendment to W. Va. Code §30-1-24 which states:

"Boards subjected to the requirements of this section may not disqualify an applicant from initial licensure to engage in a profession or occupation because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the profession or occupation requiring licensure."

The rules were to have been updated for the 2020 Regular Session. However, the Board did not comply and its rules for LPC's (CSR 27-5-4.1) and MFT (CSR 27-11-4.1) still permit it to deny licensure applications if the applicant has been convicted of a felony. Consequently, the Board will need to submit revised rules for the 2022 session.

The Board has not updated its rules in compliance with a 2019 amendment to W. Va. Code §30-1-24.

However, the Board rules still permit it to deny licensure applications if the applicant has been convicted of a felony.

Additionally, the Board's rules state if it finds that if the Board dismisses a complaint, the Board shall remove all information relating to that investigation from his or her file. However, the West Virginia Supreme Court of Appeals established that there is a public right of access to complaints of professional misconduct once a licensing board has concluded its investigations, including complaints that have been

dismissed. The Supreme Court has struck down statutes that restrict or prevent this public access to dismissed complaints. *Daily Gazette Co. v. W. Va. Bd. of Med.*, 177 W. Va. 316, 352 S.E.2d 66 (1986) and *Thompson v. W. Va. Bd. of Osteopathy*, 191 W. Va. 15, 442 S.E.2d 712 (1994). Since CSR 27-5-4.1, CSR 27-11-4.1, CSR 27-5.5.17, and CSR 27-11-5.17 contradict West Virginia law, **the Board should amend these rules to comply with law.**

The Board's Rules Allow For the Possibility That a Committee of the Board Could Determine Whether an Applicant Is Licensed.

The Board created a credentialing committee within its procedural rule. This two-person committee, composed of the two counselor educators on the Board, reviews all matters on education requirements. The Board's rule, CSR 27-1-6.1.d, allows the credentialing committee to make the final determination for the sufficiency of the applicant's education for licensure. In practice, the Board's minutes indicate that the committee brings recommendations to the full Board and it is the Board that votes on those recommendations. The Board should amend its rules to remove this authority, since such a power to make the final determination for licensure should be made by the Board and not a committee of the Board. **Therefore, the Board should amend CSR 27-1-6.1.d. to disallow a committee from determining the sufficiency of an applicant's education for licensure.**

The Board's rules state if it finds that if the Board dismisses a complaint, the Board shall remove all information relating to that investigation from his or her file. However, the West Virginia Supreme Court of Appeals established that there is a public right of access to complaints of professional misconduct once a licensing board has concluded its investigations, including complaints that have been dismissed.

A Board Committee Exercises Authority Conferred to the Board.

The Board created an investigative committee within its procedural rule CSR 27-7-15 and an ad hoc committee in procedural rule CSR 27-7-16 to accomplish objectives established by the Board. In practice, the investigative committee investigates complaints and makes recommendations to the Board. These recommendations include suggested sanctions and evidence. The procedural rules for both licensed professional counselors and marriage and family therapists state that the investigating committee may issue subpoenas and subpoenas duces tecum to complete the Board's investigation or determine the truth or validity of complaints. The duties of the committee require judgment and discretion, not merely the performance of a delegated task. According to a legal opinion from the Legislative Auditor's Legislative Services Division, the actions of the committee are judicial or quasi-judicial and they are not the kind of tasks that the Board can delegate to deputies or employees. W. Va. Code §30-31-12 provides that only the Board can issue subpoenas and make final decisions, not a board committee.

The Board created committees within its procedural rule. The duties of the committee require judgement and discretion, not merely the performance of a delegated task.

If the committee was composed only of board members, these tasks could legitimately be assigned to members because they are lawfully appointed officers of the State. However, not all current members of the committees are board members, and according to Legislative Services a Board has no legal power to add non-board members to participate in its disciplinary functions. By creating the committee, the Board has, in essence, established another administrative agency without anything within its enumerated powers allowing it to do so. Furthermore, the Board has unlawfully established the committee through a procedural rule. Although W.Va. Code requires the Board to adopt procedural rules for the investigation and resolution of complaints, the establishment of the committee through procedural rule goes beyond what is allowed within the Administrative Procedures Act.

Two Board Members Are Serving on an Association of the Profession Which Could Conflict With the Interests of the Board.

Two Board members are simultaneously serving as an officer and a board member-at-large for the West Virginia Licensed Professional Counselors Association. The Ethics Commission issued Advisory Opinion 2011-17 stating that enabling legislation for some regulatory boards require members of a related association to serve on their boards. However, the Ethics Commission also pointed out that at least one board prohibits officers of an association from serving on its board. As a result of these statutory differences on board memberships, the Ethics Commission is unable to ascertain an express Legislative intent. The basic duty of licensing boards is to protect the public. Professional associations have the responsibility to promote their professions. It is possible that the interests of the public and association may conflict. **Therefore, the Legislative Auditor recommends that the Legislature consider removing these potential conflicts of interest and disallow officers or board members of professional organizations to serve as board members on regulatory boards.**

If the committee was composed only of board members, these tasks could legitimately be assigned to members because they are lawfully appointed officers of the State. However, not all current members of the committees are board members, and according to Legislative Services a Board has no legal power to add non-board members to participate in its disciplinary functions.

The Board Has Established Continuing Education Requirements.

The Board has established continuing education requirements for its licensees. CSR §27-03 indicates that licensed counselors are required to obtain a minimum of 35 board-approved continuing education hours per two years. West Virginia's number of required hours are in line with those of surrounding states. Table 4 provides the continuing education requirements in West Virginia and the surrounding states.

Table 4
Board of Examiners in Counseling
LPC and MFT
Continuing Education Requirements
West Virginia and Surrounding States

State	CE Hours	Renewal Period
Kentucky	10	Annual
Maryland	40	Biennial
Ohio	30	Biennial
Pennsylvania	30	Biennial
Virginia	20	Annual
West Virginia	35	Biennial
<i>Sources: State licensure boards' websites, and W.Va. CSR §27-03</i>		

The Board requires that at least 3 of the 35 continuing education hours be in counselor related ethics and 2 hours be in mental health conditions specific to veterans and family members of veterans. All licensees and supervisees must submit a continuing education audit form to the Board each renewal cycle. Furthermore, every third biennium of the reporting period for continuing education, the Board conducts a random audit to ensure compliance with continuing education requirements. Licensees selected for a random audit are notified in writing, regular mail, and/or email. Licensees are then to submit all appropriate documentation within 15 working days upon receipt of notice.

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.

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

The Board has two full-time employees, the Executive Director and Administrative Assistant, who handle physical revenue. 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 State Treasurer specifies in its *Cash Receipts Handbook for West Virginia Spending Units*, "Unless otherwise authorized by the State Treasurer's Office, an individual should not have the sole responsibility for more than one of the following cash handling components:"

- collection,
- depositing,
- disbursement, and
- reconciling.

While the Board has an insufficient number of employees to maintain adequate segregation of duties, the Board has established certain cash-handling procedures to reduce the risk of fraud. Furthermore, 52 percent of the Board's revenue was received as online payments in FY 2017, 34 percent was received online in FY 2018, and 49 percent was received online in FY 2019. Revenues received include application fees, license renewals, examinations, continuing education approvals and other fees such as copies of licensure law, reinstatement fees or duplicate license certificate fees. The Administrative Assistant and Executive Director open the mail together and the checks from renewals, applications and other fees are deposited within one week of receiving the monies. The Administrative Assistant logs the information into OASIS once the monies have been deposited. By not depositing funds in one business day, the Board is not only making itself vulnerable to loss or theft, but its process is also in conflict with W.Va. Code §12-2-2(a),

*All officials and employees of the state authorized by statute to accept moneys on behalf of the state of West Virginia shall keep a daily itemized record of moneys received for deposit in the State Treasury and shall deposit **within one business day** with the State Treasurer all moneys received or collected by them for or on the behalf of the state for any purpose whatsoever. [emphasis added]*

The Board should consider utilizing the State Treasurer's Office lockbox system to minimize the handling of revenue and facilitate the timely deposit of revenue. In the lockbox operation, licensees send their fees to a post office address where the State Treasurer's Office receives them, opens, sorts, images, deposits, and forwards the information to the Board. 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.**

As a means to assess the risk of fraud, PERD calculated the percentage of expected and required expenditures for FY 2017 through FY 2019 (see Table 5). The Legislative Auditor determines that the risk of fraud is relatively low on the expenditure side when a board's required and expected expenditures are 90 percent or more of total annual

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

The Board should consider utilizing the State Treasurer's Office lockbox system to minimize the handling of revenue and facilitate the timely deposit of revenue.

expenditures. PERD's evaluation of the Board's expenditures shows that on average 92 percent of expenses are expected and required. Therefore, PERD assesses the risk of fraud to be relatively low.

Table 5 Board of Examiners in Counseling Percentage of Expected and Required Expenditures FY 2017 through FY 2019	
Fiscal Year	Percent
2017	91
2018	92
2019	93
<i>Source: PERD calculations based on OASIS data (WV-FIN-GL-062).</i>	

To assess the risk of fraud on the revenue side, PERD calculates the minimum expected revenue for a board by multiplying annual fees by the number of reported licensees. Table 6 provides a comparison of actual and expected revenues for the Board for FY 2017 through FY 2019. The actual revenues were more than expected for all years examined. As the overall balance over a three-year period exceeds the expected revenue, the Legislative Auditor deems the likelihood of fraud having occurred on the revenue side as relatively low.

Table 6 provides a comparison of actual and expected revenues for the Board for FY 2017 through FY 2019. The actual revenues were more than expected for all years examined.

Table 6 Board of Examiners in Counseling Expected Revenue and Actual Revenue FY 2017 Through FY 2019			
Fiscal Year	Expected Revenue	Actual Revenue	Difference
2017	\$174,103	\$253,124	\$79,021
2018	\$81,513	\$116,483	\$34,971
2019	\$194,138	\$219,113	\$24,976
Average	\$149,918	\$196,240	\$46,322
<i>Source: PERD calculations based on board information and OASIS data (WV-FIN-GL-151)</i>			

The Board Does Not Maintain a Register of Applicants in Accordance With Law.

The Board does not maintain a complete register of applicants required by W. Va. Code §30-1-12(a) which states:

The secretary of every board shall keep a record of its proceedings and a register of all applicants for license or registration, showing

for each the date of his or her application, his or her name, age, educational and other qualifications, place of residence, whether an examination was required, whether the applicant was rejected or a certificate of license or registration granted, the date of this action, the license or registration number, all renewals of the license or registration, if required, and any suspension or revocation thereof. . . .

The register of applicants provided by the Board to PERD lists only the applicant's name, place of residence, education level, and years the licensee renewed. This is not in compliance with Code due to the lack of:

- applicant's age,
- date of his or her application,
- whether the applicant was rejected or accepted,
- license or registration number,
- the date of registration or license granted, and
- a list of any suspensions or revocations.

The Board should maintain a complete register of applicants as required by law.

The Board conducted one meeting through an online video conferencing website during the COVID-19 pandemic. The notice the Board filed with the Secretary of State's Office did not state the access credentials for the public to attend, therefore, the notices did not meet the requirements of the Open Governmental Proceedings Act W. Va. Code 6-9A-et al.

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

The Board conducted one meeting through an online video conferencing website during the COVID-19 pandemic. While it is not an issue to have an online meeting, the notice the Board filed with the Secretary of State's Office did not state the access credentials for the public to attend, therefore, the notices did not meet the requirements of the Open Governmental Proceedings Act W. Va. Code 6-9A-et al. According to a legal opinion from the Legislative Services Division within the Office of the Legislative Auditor the Board's actions in the meeting could have been challenged and while the time frame has passed for someone to do so it is likely a court would have found the actions void.

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

“It is the opinion of Ethics Commission staff that allowing citizens to attend a meeting in person is not required if the governing body determines, based upon guidance issued by the federal government, the state of West Virginia, the Centers for Disease Control and Prevention or other government agencies authorized to make these types

of decisions, that it constitutes a public health risk to allow citizens to attend in person. The governing body may instead provide citizens with a call-in number for a telephonic meeting or provide access via web link to a livestream of the meeting. For example, governing bodies may meet via Skype or Webex or may stream a meeting on Facebook or other platforms.”

The Board responded to a PERD management letter (see Appendix C) that it took corrective action to its open meetings notices by including a statement that the access credentials are available upon contacting the Board. When the Board conducts meetings virtually, it should continue to provide the access credentials to the public so that citizens may join. This will aid the Board in complying with W. Va. Code §6-9A-et al.

Conclusion

The Board complies with most of the general provisions of Chapter 30. However, the Board should adhere to W. Va. Code §30-1-5(c) and send official status reports to the party filing the complaint and the respondent within six months after the complaint is initially filed. Furthermore, the Board should consider amending rules so that they are consistent with W.Va. Code. The Board should consider using the State Treasurer’s Office lockbox to process fees to reduce the risk of fraud. Furthermore, the Board’s register of applicants is incomplete. Overall, while the Board has some good practices, it needs to comply with Chapter 30 requirements in all instances to ensure consistency and adherence to state laws.

The Board responded to a PERD management letter that it took corrective action to its open meetings notices by including a statement that the access credentials are available upon contacting the Board.

Recommendations

1. *The Board should send status reports to the party filing the complaint and the respondent within six months after the complaint is initially filed pursuant to W. Va. Code §30-1-5(c).*
2. *The Board should strike CSR 27-5-5.1e as it creates an unnecessary burden on those filing complaints with the Board and further recommends that the Board forward the licensee’s or applicant’s response to the complainant in order to ensure consistent handling of complaints received by the Board.*
3. *The Board should amend CSR 27-5-4.1, CSR 27-11-4.1, CSR 27-5.5.17, and CSR 27-11-5.17 so that these rules are in compliance with W. Va. Code and caselaw.*

4. *The Board should amend CSR 27-1-6.1.d. to disallow committees from being able to determine the sufficiency of an applicant for licensure's education.*
5. *The Legislature should consider whether it wishes to create legislation that clarifies its intent regarding a person who serves as an officer or board member of an organization that represents the interests of a profession can also serve as a member of a regulatory board of the same profession.*
6. *The Board should consider utilizing the State Treasurer's lockbox and incorporating a license renewal feature to its website to further reduce the risk of fraud.*
7. *The Board should deposit money received within one business day as required by W. Va. Code §12-2-2(a).*
8. *The Board should maintain a complete register of applicants as required by law.*

ISSUE 2

The Board's Inadequate Cybersecurity and Internal Control Put the State at Risk By Exposing Case Counseling Notes.

Issue Summary

While reviewing the Board's complaint files, PERD learned that a licensee had notified the Board of finding complaint information on the internet. The Board responded by removing complaint information from its non-secure website. However, the Board did not notify the Office of Technology (OT) as required by West Virginia Executive Branch (WVEB) procedure number WVEB-P101.1 Response to Unauthorized Disclosures issued by the West Virginia Health Care Authority. Furthermore, an internet archiving organization had saved the information on its website so when PERD conducted an internet search, it found not only that complaint information but case counseling notes on another complaint. PERD notified the Board of this situation and instructed it to contact the OT and the State Privacy Office follow the executive branch procedure. However, the Board did not follow PERD's instructions and did not make these offices aware of the second complaint. It is the Legislative Auditor's recommendation that the Board improve its cyber-security as well as follow the protocols of the OT and the State Privacy Office associated with exposure of information.

While reviewing the Board's complaint files, PERD learned that a licensee had notified the Board of finding complaint information on the internet.

The Board Exposed Case Counseling Notes on Its Non-secured Website and Did Not Report the Exposure to the Office of Technology.

For a few months, the Board uploaded complaint files to its unsecured website, of which, most were unredacted and unresolved. While W. Va. Code §30-1-5(d) requires boards to provide public access to the record of the disposition of the complaints, it does not require public access to complaint files that have not been resolved. The Board placed the complaint files on its homepage where a password prompt for access would occur. Since the Board's website was, and continues to be, unsecured and unencrypted, it was possible for anyone to gain access to those webpages. One licensee did an internet search of her name, found associated complaint files, and notified the Board. The Board removed all complaint files from its website and ceased placing further complaint files on its website. However, the Board did not notify the OT as required by Response to Unauthorized Disclosures procedure number WVEB-P101.1. This procedure is the basis of the appropriate response to events that may expose personally identifiable information to unauthorized internal or external persons. The procedure includes actions for breaches of protected health information. If the Board had submitted the required incident report, it would have gone to the State

The Board did not notify the OT as required by Response to Unauthorized Disclosures procedure number WVEB-P101.1.

Privacy Office in addition to the OT. During the months its complaint files were on its website, an internet archiving organization had archived the webpages that the Board utilized to manage its complaint files. As such, when PERD conducted an internet search, it found that the complaint file was still on the internet. Additionally, PERD found counseling case notes describing a client's prescribed medication and diagnosis from another complaint file. PERD notified the Board via a management letter (Appendix D) on January 10, 2020 that it had found both complaint files on the internet and instructed the Board to report the incidents to OT for assistance in ensuring no further complaint files could be accessed on the internet, and to contact the internet archiving organization to remove all possible complaints. Furthermore, PERD instructed the Board to report the incident to the State Privacy Office for advice on the appropriate actions to be taken.

PERD contacted OT and the State Privacy Office to ensure the Board had acted on the provided information. Subsequently, these agencies informed PERD that the Board had not informed either office of the second occurrence. PERD informed the agencies of the second complaint and continues to recommend that the Board follow OT's and the State Privacy Office's recommendations moving forward.

PERD sought a legal opinion to determine whether the Board also had a duty to notify the individuals named in the complaints that information about them had been exposed. The opinion explained that under the Privacy Office's document entitled "West Virginia Executive Branch Procedure: Response to Unauthorized Disclosures," this type of notification is not required unless the breach "may cause identity theft or other fraud" (Section 4.5.11.b). Without evidence that some third party saw and misused the Private Health Information while the complaints were accessible through internet searches, there is no duty to inform. In addition, the Board does not have a duty to notify the named individuals under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) because it is not considered a covered entity or business associate subject to that act. (See Appendix E for definitions of covered entities and business associates.) For these reasons, in part, the Board elected not to notify these individuals. So, while HIPAA provides guidance on how the Board could respond to exposure of information it is not obligated by law to follow that guidance.

The Legislative Auditor wishes to emphasize that the Board's failure to protect the information in its disciplinary complaint files, and failure to take reasonable steps to respond to the breach when it occurred, are misconduct for which the Board's own licensees would be subject to disciplinary action. The Board has chosen to have its licensees comply with the American Counseling Association (ACA) Code of Ethics which states as it pertains to privacy and confidentiality:

PERD found counseling case notes describing a client's prescribed medication and diagnosis from another complaint file. PERD notified the Board that it had found both complaint files on the internet and instructed the Board to report the incidents to OT. Furthermore, PERD instructed the Board to report the incident to the State Privacy Office for advice on the appropriate actions to be taken.

PERD sought a legal opinion to determine whether the Board also had a duty to notify the individuals named in the complaints that information about them had been exposed. The opinion explained that under the Privacy Office's document entitled "West Virginia Executive Branch Procedure: Response to Unauthorized Disclosures," this type of notification is not required unless the breach "may cause identity theft or other fraud" (Section 4.5.11.b).

B.6.b. Confidentiality of Records and Documentation
Counselors ensure that records and documentation kept in any medium are secure and that only authorized persons have access to them.

However, the Board must hold itself accountable as it would licensees who are required to comply with the Code of Ethics. The ACA makes it clear that client records are to be protected as much as is possible and not to be disclosed by unauthorized parties. The absence of such standards can lead to negligent exposure of client information and put the State at risk of an increase in legal claims. Within the last 10 years, the State has received 27 legal claims related to negligent exposure of an individual's information. These claims can be costly to the State. While the risk of a breach cannot be completely eliminated, this situation can be safeguarded against by utilizing cybersecurity protocols and information system internal controls. **Therefore, the Legislative Auditor recommends that the Board work with the Office of Technology, and the State Privacy Office to establish appropriate internal controls regarding cybersecurity and ensuring the security of information it receives in its regulatory duties.**

The Legislative Auditor wishes to emphasize that the Board's failure to protect the information in its disciplinary complaint files, and failure to take reasonable steps to respond to the breach when it occurred, are misconduct for which the Board's own licensees would be subject to disciplinary action.

The Legislative Auditor Is Concerned with the Board's Lack of Cyber Security and Information System Internal Controls.

The Board does not have an encrypted website which means that its data are not protected from interception or alteration. The data shown on the Board's website could be subject to modification. The federal government policy M-15-13 requires that all federal websites and web services that are publicly accessible only be provided through a secure connection. **The Legislative Auditor recommends the Board consider encrypting its website.**

The Board does not have an encrypted website which means that its data are not protected from interception or alteration. The data shown on the Board's website could be subject to modification.

Government websites should be easily identifiable. However, the Board's website is ".org" and not ".gov" making it harder to identify as a government website. The United States General Services Administration's DotGov Program (DotGov) makes the ".gov" domain available to US-based government organizations. DotGov works to recommend security best practices so that users have confidence in a secure site. **The Legislative Auditor recommends the Board consider registering for a ".gov" domain.**

While the Board no longer puts complaint documents on its website, its process of relaying complaint information to board members and complaint committee member does not follow cybersecurity best practices. The Board sends an unencrypted email with the complaint

files to the complaint committee members. The Board also mails an encrypted, password-protected compact disc containing the complaint files to the complaint committee members. Then, the Board's staff email a password to board members and complaint committee members. Emails that are not encrypted risk content being intercepted. Furthermore, mailing this information through the United States Postal Services risks the potential of it being lost or obtained by an unintended party. The Board can improve its practices by having a different password for everyone accessing complaint files for the investigation process and not including key clues to the password such as using the complaint file name in the password. The Board can also improve securing its complaint files by following best cybersecurity and information system internal control practices to send complaint files to board members and complaint committee members. Some examples of these best practices include: using encrypted emails to send complaint files, encrypting the complaint documents themselves, ensuring individual board members or complaint committee members have their own unique password to complete an authentication process, avoid mailing complaint documents through the United States Postal Services, and establishing policies and procedures that require those handling complaints to follow best information system internal controls and cybersecurity practices for the complaint process.

The Board sends an unencrypted email with the complaint files to the complaint committee members... Emails that are not encrypted risk content being intercepted.

Conclusion

While the exposure of the case counseling notes contained in the complaint files was not the intention behind uploading the complaint files to the Board's website, the issue remains that the Board did not inform OT or the Privacy Office, that case counseling notes were exposed. Moreover, when the Legislative Auditor informed the Board that a second complaint had been exposed, the Board again did not inform OT or the State Privacy Office. Furthermore, the Board did not fully utilize the resources that it was made aware of to properly respond to the exposure of the case counseling notes. Since the Board decided to forego the advised protocols in handling the exposure of the case counseling notes, it has put the State at risk for liability claims as well as the case counseling notes of other complaint files.

While the Board does not place complaint files on its website, it is sharing complaints in an unsecure way, and still does not have a secure website. The effects of these actions could discourage the public from filing complaints and put individuals' personal information at risk. Furthermore, the Board is currently vulnerable to unauthorized access of case counseling notes it processes as a part of its regulatory duties at risk. **Therefore, the Legislative Auditor recommends that the Board improve its cyber-security as well as, follow the protocols of the Office of Technology and the State Privacy Office associated with unauthorized access of information.**

Recommendations

9. *The Board of Examiners in Counseling should work with the Office of Technology and the State Privacy Office to establish appropriate internal control regarding cybersecurity and ensuring the security of information it receives in its regulatory duties.*
10. *The Board should consider encrypting its website.*
11. *The Board should consider registering for a “.gov” domain.*
12. *The Board should improve its cyber-security as well as follow the protocols of the Office of Technology and the State Privacy Office associated with unauthorized access of information.*

ISSUE 3

The Board of Examiners in Counseling Needs to Consider What Measures It Needs to Take to Ensure It Provides Handicapped Accessibility to Its Office and Services Under the Americans With Disabilities Act.

Issue Summary

PERD conducted an analysis of the Board's office to determine general handicap accessibility in relation to select Americans with Disabilities Act (ADA) requirements. PERD's review found that some portions of the building where the Board is located, including the building entrance, hallways and fire alarm systems generally met ADA requirements. However, the building elevator and the office entrance may hinder physical access to the Board.

There Are Possible Physical Barriers to Accessing the Board's Office.

PERD conducted a site visit to the Board's office located at 815 Quarrier Street. in Charleston. This visit was to determine if the office and building meet select requirements of the ADA. PERD's review found handicap parking on the city street, the main entrance to the building, and the doorway to a meeting conference room met ADA requirements. However, the elevator leading to the Board's office on the second floor of the building did not meet ADA standards. The accessibility issues for the elevator includes the following: call button height, interior button height, elevator width and length, and braille signage. The ADA requires that elevator buttons be no higher than 54 inches, however, the buttons go from 55 inches to 60 inches. Furthermore, the elevator is supposed to be at least 54 inches deep and 36 inches wide, but the elevator is 47 inches deep and 35 inches wide. If a handicapped individual can use the elevator, the next possible barrier to Board is the doorway to the Board's office. The width of the door to the Board's office is one inch less than necessary to meet the ADA standards. While the Board has access to a building conference room, the doorway to that room is only accessible because the ADA standard for doorway width to a conference room is 32 inches instead of 36 inches as it is for offices. The building's handicap bathrooms generally met ADA requirements. The bathrooms had some accessibility concerns, including non-insulated pipes under sinks, sign location, and hand dryer placement. The bathroom signage was not on the latch-side of the door as required. The hand dryers in both bathrooms were above the 48 inches limit for compliance. In one bathroom the dryer was at 50 inches, while in the other bathroom it was at 53 inches. Furthermore, the door handles for the board office, conference room, and drinking fountain handles were not easily operable with one hand as

PERD's review found the elevator leading to the Board's office on the second floor of the building did not meet ADA standards.

ADA requires because the handles required a tight grip and a twisting of the wrist. It is important to note that while door handles and the drinking fountain handles did not meet the standards, these areas had minimal impact on the overall accessibility of the Board's services.

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 while some portions of the building meet ADA the building elevator and the office entrance may hinder physical access to the Board. The ADA checklist includes accessibility in four priority areas of Approach and Entrance, Access to Goods and Services, Access to Public Toilet Rooms and Access to Other Items such as water fountains and telephones. A space that is generally accessible will provide access to the elements of the checklist that are necessary to provide services. If the location does not meet the requirements of the ADA checklist, they may also offer reasonable accommodations to make services available.

If the location does not meet the requirements of the ADA checklist, they may also offer reasonable accommodations to make services available.

Conclusion

The Board needs to consider what measures it may need to take to ensure it offers adequate public access to its services, including the possibility of relocating its office. Overall, the Board is not generally accessible because the elevator and its office door do not meet the general ADA standards. Additionally, the Board does not have braille signage, handicap-operable doorknobs, or an entrance clearance wide enough to meet the ADA standards. **Therefore, the Legislative Auditor recommends that the Board of Examiners in Counseling consider the measures it needs to take to improve handicap accessibility to its office and services under the Americans with Disabilities Act.**

Recommendation

13. *The Board of Examiners in Counseling should consider what measures it needs to take to improve handicap accessibility to its office and services under the Americans with Disabilities Act.*

ISSUE 4

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

Issue Summary

In order to actively engage with a state agency online, citizens must first be able to access and comprehend the information on government websites. Every website should include some elements, such as a search tool and contact information including physical and email address, telephone number and the names of administrative officials. Other elements such as social media links, graphics, and audio/video features may not be necessary or practical for some state agencies. Table 7 shows the Board integrates 40 percent of the checklist items in its website. This measure indicates that the Board needs to make more improvement in the user-friendliness and transparency of its website.

Table 7 Board of Examiners in Counseling Website Evaluation Score			
Substantial Improvement Needed	More Improvement Needed	Modest Improvement Needed	Little or No Improvement Needed
0-25%	26-50%	51-75%	76-100%
	Board 40%		
Source: The Legislative Auditor’s review of the Board of Examiners in Counseling website as of January 10, 2020			

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

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

website update status. An agency can score a total of 50 points on the checklist, 18 in user-friendliness and 32 in transparency. As illustrated in Table 8, the Board's website scored a total of 20 points. This total comprises 4 points, or 22 percent, for user-friendliness and 16 points, or 50 percent, of the possible points for transparency. This means the website needs more improvements in user-friendliness and transparency. **The Board should consider making website improvements to provide a better online experience for the public.**

Table 8
Board of Examiners in Counseling
Website Evaluation Score

Category	Possible Points	Agency Points	Percentage
User-Friendly	18	4	22%
Transparency	32	16	50%
Total	50	20	40%

Source: PERD review of the Board of Examiners in Counseling website as January 10, 2020.

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

The Board's website is easy to navigate as there is a link to every page on a side bar of the website; however, the website lacks a search tool, a frequently-asked-questions (FAQ) section, and a site map. According to the Flesch-Kincaid Reading Test, the average readability of the text is on a 12th grade reading level, which is considerably higher than the recommended 7th grade level for general readability.

User-Friendly Considerations

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

- **Search Tool** – The website should contain a search box, preferably on every page.
- **Help Link** – There should be a link that allows users to access a FAQ section and agency contact information on a single page.
- **Foreign Language Accessibility** - A link to translate all webpages into languages other than English.
- **Site Functionality**- The website should include buttons to adjust the font size and resizing the text should not distort site graphics or text.

The Board's website is easy to navigate as there is a link to every page on a side bar of the website; however, the website lacks a search tool, a frequently-asked-questions (FAQ) section, and a site map.

- **FAQ Section** – A page that lists the agency’s most frequently asked questions and responses.
- **Feedback Options**– A page where users can voluntarily submit feedback about the website or particular section of the website.

The Board’s Website Needs Additional Transparency Features.

A website that is transparent should promote accountability and provide information for citizens about how well the Board is performing, as well as encouraging public participation. The Board’s website has 50 percent of the core elements that are necessary for a general understanding of the Board’s mission and performance. The Board’s website contains important transparency features such as email contact information, its telephone number, and public records such as statutes, rules, and meeting minutes.

Transparency Considerations

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

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

- **Privacy policy** – A clear explanation of the agency/state’s online privacy policy.
- **Budget**– Budget data: available at the checkbook level, ideally in a searchable database (1).
- **Calendar of Events** – Information on events, meetings, etc. ideally imbedded using a calendar program.
- **FOIA Information** – Information on how to submit a FOIA request, ideally with an online submission form.
- **Performance Measures/Outcome** – A page linked to the homepage explaining the agency’s performance measures and outcomes.
- **E-Publications** – Agency publications that are online and downloadable.
- **Website Updates** – The website should have a website update status on screen and ideally for every page.

Conclusion

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

Recommendation

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

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

January 29, 2021

Cheryl Henry, Executive Director
Board of Examiners in Counseling
815 Quarrier St., Suite 212
Charleston, WV 25301


Dear Director Henry:

This is to transmit a draft copy of the regulatory audit of the Board of Examiners in Counseling pursuant to the Performance Review Act, Chapter 4, Article 10 of the West Virginia Code. This report will be presented during a future interim meeting 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 a virtual exit conference to discuss any concerns you may have with the report. We would like to have the meeting on February 9, 2021. Please notify us to schedule an exact time. In addition, we need your written response by noon on Wednesday, February 17, 2021 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 prior to the meeting 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,


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 Examiners in Counseling 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 §30-31-et al., is to protect the public through its licensing process, and to be the regulatory and disciplinary body for licensed professional counselors and marriage and family therapists throughout the state.

Objectives

The objective of this review was to determine if the Board complied with the general provisions of Chapter 30, Article 1 of the West Virginia Code, the Board's enabling statute §30-31, and other applicable rules and laws such as the Open Governmental Proceedings (WVC §6-9A). An additional objective was to assess the Board's general compliance with the Americans with Disabilities Act checklist on November 20, 2019. Finally, the evaluation includes a review of the Board's website on January 10, 2020 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 2017 through 2019, complaint-resolution process, disciplinary procedures and actions, revenues and expenditures for the period of fiscal years 2016 through 2019, 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. The evaluation also included assessing the Board office's general compliance with the Americans with Disabilities Act on November 20, 2019. This assessment included measuring and documenting public areas in the building including the lobby, conference room where it conducts its open meetings, handicapped restrooms, hallways, drinking fountains, fire alarms, and elevator. Furthermore, the evaluation included a review of open meeting notices for fiscal years 2017 through 2020.

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. PERD staff visited the Board's Charleston office on Quarrier Street and met with its staff and one board member. Testimonial evidence was gathered and confirmed through written statements and in some cases by corroborating evidence. PERD collected and analyzed the Board's complaint files; meeting minutes; annual reports; budget information; legislative and procedural rules; and its procedures for investigating and resolving complaints, collecting fees and, selecting members of the complaint committee, and assessing licensees' continuing education compliance. PERD further obtained and analyzed open meeting notices the Board had filed with the Secretary of State and Ethics Commission Advisory Opinions. Legal opinions from Legislative Services were requested and obtained. Financial data presented in the report came from Our Advanced Solution with Integrated Systems (OASIS). OASIS is the State of West Virginia's Enterprise Resource Planning (ERP) system. It is business management software that allows West Virginia to use a system of integrated applications to manage business functions.

In reviewing the Board's open meeting notices PERD identified that telephone only Board meeting notices did not advise the public of the virtual access credentials it would need to attend a virtual meeting. PERD contrasted the Board's open meeting notices to an Ethics Commission announcement as to how agencies should conduct open meetings in a solely virtual environment. PERD informed the Board in a management letter of the Ethics Commission's advice and recommended compliance with that advice to ensure the public would have full access to Board meetings.

Additionally, PERD's analysis found that the Board had given non-Board members the right to subpoena and other rights in a procedural rule. A legal opinion from Legislative Services stated that regulatory boards could not assign statutorily assigned duties to non-board members. PERD also requested a legal opinion from Legislative Services as to whether state laws and policies protect the health information of individuals pursuing counseling services.

PERD also obtained continuing education requirements and license fee structures from the counseling regulatory board websites in Kentucky, Maryland, Ohio, Pennsylvania, and Virginia. This information was compared to West Virginia's continuing education requirements and license fee structures.

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. We approximated expected revenues by applying license fees to the number of licensees for the period of fiscal years 2017 to 2019. The actual revenues were higher than expected revenues in each of the years. Therefore, our evaluation of expected and actual revenues allowed us to conclude that the risk of fraud on the revenue side was relatively low 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 2017 through 2019 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 91 and 93 percent of total expenditures. Given that the Board met the 90 percent threshold, PERD determined that the Board's risk for fraud was relatively low.

During the review of the Board's complaint files, PERD found that sensitive information from a complaint file had been placed on the Internet which was reported to the Board. To ensure that the Board had taken the proper steps to ensure that this information was removed, PERD utilized the Internet Archive to determine how the Board's previous website was posting complaints. In doing this review, PERD found a second complaint file that contained sensitive information which was also on the internet. Furthermore, in addressing this issue with the Board, PERD immediately contacted the Board in a management letter and advised it to reach out the West Virginia Privacy Office and the Office of Technology to determine the next steps. PERD contacted the Privacy Office and the Office of Technology to follow-up on what steps the Board was advised to take by these two agencies and if the Board complied with them. To corroborate the statements made regarding this matter, PERD also requested the documents associated with the Board's steps to handle the complaint breach. Upon the review of the documentation provided by the Board, the Privacy Office, and the Office of Technology, as well as, the interviews with staff of these agencies, PERD determined that the Board did not follow the steps it was advised in handling the breach of the two complaint files.

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

To assess the Board's general compliance with the American with Disabilities Act (ADA), PERD utilized the ADA checklist to determine the standards for the review of the Board's facility. Furthermore, PERD visited the Board's Charleston office located on Quarrier Street and took measurements of the areas listed in the ADA checklist. These areas include: the entrance of the building, the doorways, elevator, hallways, main office, conference room, and bathrooms. PERD took pictures of these measurements to document the state of the Board's facility for analysis. Once PERD completed this visit, it used the pictures of the Board's facility to weigh against the ADA checklist to determine the Board's general compliance with its requirements.

The Legislative Auditor's Office reviews the statewide single audit and the Division of Highways financial audit annually with regards to any issues related to the wvOASIS financial system. The Legislative Auditor's Office on a quarterly basis requests and reviews any external and internal audits of the wvOASIS financial system. Through its numerous audits, the Legislative Auditor's Office is constantly testing the financial information contained in the wvOASIS financial system. In addition, the Legislative Auditor's Office has sought the professional opinion of the reliability of wvOASIS from the Joint Committee on Government and Finance's Fiscal Officer, who along with her staff uses the wvOASIS system daily. Based upon these actions, along with the audit tests conducted on the audited agency, it is the professional judgement of the Legislative Auditor that the information in the wvOASIS financial system is reasonably reliable for auditing purposes under the 2018 Yellowbook. However, in no manner should this statement be construed as a statement that 100 percent of the information in the wvOASIS financial system is accurate.

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

Appendix C

Management Letter Open Meetings

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

April 21, 2020

Cheryl Henry, Executive Director
West Virginia Board of Examiners in Counseling
815 Quarrier St., Suite 212
Charleston, WV 25301

Dear Director Henry:

This is a management letter sent to inform you of an issue that we have become aware of during the ongoing regulatory review that we feel needs your immediate attention. As PERD was evaluating the Board's general compliance with *W.Va. Code §30-1-et al.*, we became aware that the Board is currently conducting its board meetings through use of "Zoom" and telephone audio capabilities. In a response sent to my staff on April 14, 2020, the Board stated that the board members are sent the access credentials in order to attend these meetings. However, we were informed that the public is not provided this same information so that they may attend if desired. While the COVID-19 pandemic has created unique circumstances, the expectation that boards maintain public access for open meetings remains under the Open Governmental Proceedings Act *W.Va. Code §6-9A-1*. In response to the COVID-19 circumstances, the Ethics Commission has stated the following:

"It is the opinion of Ethics Commission staff that allowing citizens to attend a meeting in person is not required if the governing body determines, based upon guidance issued by the federal government, the state of West Virginia, the Centers for Disease Control and Prevention or other government agencies authorized to make these types of decisions, that it constitutes a public health risk to allow citizens to attend in person. The governing body may instead provide citizens with a call-in number for a telephonic meeting or provide access via web link to a livestream of the meeting. For example, governing bodies may meet via Skype or Webex or may stream a meeting on Facebook or other platforms."

The Board should provide public access to its open meetings immediately and properly provide all pertinent information regarding location, time, and basic access information. Be careful not to provide credentials to allow the public to moderate or originate the online conference. While it is important that the public be able to observe the meetings and to participate if desired, the public should not have the ability to originate board meetings. If you have any questions regarding this issue please contact Jill Mooney, Research Manager or Kayla Wilson, Research Analyst via email.

Sincerely,

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

John Sylvia

Joint Committee on Government and Finance

Appendix D

Management Letter Complaint Files

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

January 10, 2020

Director Cheryl Henry
Board of Examiners in Counseling
815 Quarrier Street, Suite 212
Charleston, WV 25301

Dear Director Henry:

As part of the ongoing regulatory board review of the Board of Examiners in Counseling, the audit team became aware that unauthorized access occurred to complaint file 04-18 on the Board's website. In further researching this issue, the audit team identified complaint file 01-17, which includes personally identifiable information (P.I.I.), has been archived on the Internet Archives website (<https://archive.org>). In accordance with Government Auditing Standards, we are notifying you of our finding so that the Board can take immediate corrective steps which should include having P.I.I. removed from the Internet Archives, notifying affected parties, and notifying the West Virginia Office of Technology of the incidents. The website link to report this issue to the Office of Technology can be found at <https://apps.wv.gov/ot/ir/>. Please note that we did not perform an exhaustive search of your complaint files; therefore, other documents with sensitive information may be archived on this website as well as other websites. The Board should take corrective action to determine if unauthorized access occurred to other complaint files and proceed with the aforementioned corrective actions.

Please note that this letter is addressing sensitive information and its contents should remain confidential. If you have any questions regarding this issue please contact Jill Mooney, Research Manager or Kayla Wilson, Research Analyst at 304-347-4890. Thank you and we appreciate your cooperation throughout the audit process.

Sincerely,

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

John Sylvia
Director

Joint Committee on Government and Finance

Appendix E

Definitions of Business Associate and Covered Entity

Health Insurance Portability and Accountability Act of 1996

45 CFR Part 160

160.103 Definitions.

Except as otherwise provided, the following definitions apply to this subchapter: . . .

Business associate: (1) Except as provided in paragraph (4) of this definition, business associate means, with respect to a covered entity, a person who: (i) On behalf of such covered entity or of an organized health care arrangement (as defined in this section) in which the covered entity participates, but other than in the capacity of a member of the workforce of such covered entity or arrangement, creates, receives, maintains, or transmits protected health information for a function or activity regulated by this subchapter, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, patient safety activities listed at 42 CFR 3.20, billing, benefit management, practice management, and repricing; or (ii) Provides, other than in the capacity of a member of the workforce of such covered entity, legal, actuarial, accounting, consulting, data aggregation (as defined in § 164.501 of this subchapter), management, administrative, accreditation, or financial services to or for such covered entity, or to or for an organized health care arrangement in which the covered entity participates, where the provision of the service involves the disclosure of protected health information from such covered entity or arrangement, or from another business associate of such covered entity or arrangement, to the person. (2) A covered entity may be a business associate of another covered entity. (3) *Business associate* includes: (i) A Health Information Organization, E-prescribing Gateway, or other person that provides data transmission services with respect to protected health information to a covered entity and that requires access on a routine basis to such protected health information. (ii) A person that offers a personal health record to one or more individuals on behalf of a covered entity. (iii) A subcontractor that creates, receives, maintains, or transmits protected health information on behalf of the business associate. (4) *Business associate* does not include: (i) A health care provider, with respect to disclosures by a covered entity to the health care provider concerning the treatment of the individual. (ii) A plan sponsor, with respect to disclosures by a group health plan (or by a health insurance issuer or HMO with respect to a group health plan) to the plan sponsor, to the extent that the requirements of § 164.504(f) of this subchapter apply and are met. (iii) A government agency, with respect to determining eligibility for, or enrollment in, a government health plan that provides public benefits and is administered by another government agency, or collecting protected health information for such purposes, to the extent such activities are authorized by law. (iv) A covered entity participating in an organized health care arrangement that performs a function or activity as described by paragraph (1)(i) of this definition for or on behalf of such organized health care arrangement, or that provides a service as described in paragraph (1)(ii) of this definition to or for such organized health care arrangement by virtue of such activities or services. . . .

Covered entity means: (1) A health plan. (2) A health care clearinghouse. (3) A health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.

Appendix F

Website Criteria Checklist and Points System

Website Criteria Checklist and Points System Board of Examiners in Counseling			
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	4
		Individual Points Possible	Individual Agency Points
Search Tool	The website should contain a search box (1), preferably on every page (1).	2 points	0 points
Help Link	There should be a link that allows users to access a FAQ section (1) and agency contact information (1) on a single page. The link's text does not have to contain the word help, but it should contain language that clearly indicates that the user can find assistance by clicking the link (i.e. "How do I...", "Questions?" or "Need assistance?")	2 points	0 points
Foreign language accessibility	A link to translate all webpages into languages other than English.	1 point	0 points
Content Readability	The website should be written on a 6 th -7 th grade reading level. The Flesch-Kincaid Test is widely used by Federal and State agencies to measure readability.	No points, see narrative	
Site Functionality	The website should use sans serif fonts (1), the website should include buttons to adjust the font size (1), and resizing of text should not distort site graphics or text (1).	3 points	1 point
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 points
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 point
Navigation	Every page should be linked to the agency's homepage (1) and should have a navigation bar at the top of every page (1).	2 points	2 points
FAQ Section	A page that lists the agency's most frequent asked questions and responses.	1 point	0 points
Feedback Options	A page where users can voluntarily submit feedback about the website or particular section of the website.	1 point	0 points
Online survey/poll	A short survey that pops up and requests users to evaluate the website.	1 point	0 points

Website Criteria Checklist and Points System Board of Examiners in Counseling			
Social Media Links	The website should contain buttons that allow users to post an agency's content to social media pages such as Facebook and Twitter.	1 point	0 points
RSS Feeds	RSS stands for "Really Simple Syndication" and allows subscribers to receive regularly updated work (i.e. blog posts, news stories, audio/video, etc.) in a standardized format.	1 point	0 points
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	16
		Individual Points Possible	Individual Agency Points
Email	General website contact.	1 point	1 point
Physical Address	General address of stage agency.	1 point	1 point
Telephone Number	Correct telephone number of state agency.	1 point	1 point
Location of Agency Headquarters	The agency's contact page should include an embedded map that shows the agency's location.	1 point	1 point
Administrative officials	Names (1) and contact information (1) of administrative officials.	2 points	2 points
Administrator(s) biography	A biography explaining the administrator(s) professional qualifications and experience.	1 point	1 point
Privacy policy	A clear explanation of the agency/state's online privacy policy.	1 point	0 points
Complaint form	A specific page that contains a form to file a complaint (1), preferably an online form (1).	2 points	2 points
Budget	Budget data is available (1) at the checkbook level (1), ideally in a searchable database (1).	3 points	0 points
FOIA information	Information on how to submit a FOIA request (1), ideally with an online submission form (1).	2 points	0 points
Calendar of events	Information on events, meetings, etc. (1) ideally imbedded using a calendar program (1).	2 points	1 point
Mission statement	The agency's mission statement should be located on the homepage.	1 point	1 point

Website Criteria Checklist and Points System Board of Examiners in Counseling			
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	1 point
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/licensees • Audits • Violations/disciplinary actions • Meeting Minutes • Grants 	2 points	2 points
e-Publications	Agency publications should be online (1) and downloadable (1).	2 points	0 points
Agency Organizational Chart	A narrative describing the agency organization (1), preferably in a pictorial representation such as a hierarchy/organizational chart (1).	2 points	1 point
Graphic capabilities	Allows users to access relevant graphics such as maps, diagrams, etc.	1 point	1 point
Audio/video features	Allows users to access and download relevant audio and video content.	1 point	0 points
Performance measures/outcomes	A page linked to the homepage explaining the agencies performance measures and outcomes.	1 point	0 points
Website updates	The website should have a website update status on screen (1) and ideally for every page (1).	2 points	0 points
Job Postings/links to Personnel Division website	The agency should have a section on homepage for open job postings (1) and a link to the application page Personnel Division (1).	2 points	0 points

Appendix G

Agency Response



State of West Virginia

Board of Examiners in Counseling

815 Quarrier Street, Suite 212
Charleston, West Virginia 25301
(800) 520-3852
counselingboard@msn.com
www.wvbec.org

Wednesday, February 17, 2021

John Sylvia, Director
West Virginia Legislature
Performance Evaluation and Research Division
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610

Re: Regulatory Audit of the Board of Examiners in Counseling

Dear Mr. Sylvia,

The Board of Examiners in Counseling would like to respectfully answer to the noncompliance issues discovered during the PERD Audit.

On September 3, 2019, I, Cheryl Henry, was appointed the new Executive Director of the Board of Examiners in Counseling. There were several deficiencies noted upon the assessment of the procedures and most important, the condition of the technology infrastructure. The Board staff's email and website were unsecured. The age of the computer equipment did not allow for electronic filing, so hardcopy filing was the method of storage. Communication with the WV Office of Technology (WVOT) began on September 6, 2019 to mitigate the transfer of the Board's email addresses to the Executive Domain. Due to the pandemic, and other pertinent projects, the Board was finally connected to the Executive Domain on December 1, 2020, fifteen (15) months after the initial request. In the interim, the Board updated the computer equipment, created a designated file room, and began work on streamlining the processes and procedures to allow the Board to better serve the public as charged.

ISSUE 1: The Board of Examiners in Counseling Complies with Most of the General Provisions of Chapter 30 of the W. Va. Code

The Board Did Not Submit an Annual Report to the Governor and Legislature Describing Transactions for Fiscal Year 2019.

- *The Board of Examiners in Counseling received verification that the 2019 Annual Report had been received on December 17, 2019.*

The Board Had One Member That Did Not Attend At Least One Orientation Session During Each Term of Office.

- *To date, all Board members have attended an orientation session conducted by the West Virginia State Auditor. Moving forward, the Board will ensure that each member attend an orientation in their first term or beginning term of reappointment.*

The Board Did Not Send a Status Report to the Party Filing the Complaint by Certified Mail with a Signed Return Receipt Within Six Months of the Complaint in Two Instances.

- *The Board is currently in the onboarding phase with Thentia, a regulatory database platform that will provide the ability to track complaints and the investigative process in a more efficient and concise way.*

The Board Did Not Retain a Complete Register of All Applicants with Appropriate Information Specified in Code, Including the Date of the Application, Whether the License Was Granted or Denied, and Any Suspensions and/or Revocations.

- *The Board has always retained all the above stated information in its current database. The current database storage is separated into various files thus resulting in noncongruent reporting of data. Each file captures this information, but due to the way the data is saved, does not make for easy reporting. The Board will be able to revise the way that it reports and publishes applicant information to meet the standards specified in code with the execution of an updated database system. The Board is currently in the onboarding phase with Thentia, a regulatory database platform, that will allow for better reporting and publications of public registers.*

The Board's Licensure Fees are Higher Than All Surrounding States.

- *The fees set forth by the Board are applicable for the services provided. The costs of licensing fees in the state of West Virginia are reflective of the number of licenses the Board issues at the present time. As the need for the profession grows and the*

licensure of counselors increases, the Board may be able to revisit the fee structure in the future. If the fees were lowered, the Board would have to ensure that a reduced fee structure would not impede the Board's ability to provide the services needed to protect the public.

The Board Inconsistently Requires Complaint Notarization and Provides the Complainant the Licensee Complaint Response.

- *The Board has revised the Complaint Form to remove the notary requirement.*
- *The Board will now ensure that all complainants are given a copy of the response provided by the licensee.*

The Board Rules are Not Complaint with W. Va. Code and Caselaw.

- *The Board will amend the rules to include the 2019 amendment to W. Va. Code §30-1-24 and will submit the revised rules for the 2022 session.*

The Board's Rules Allow for the Possibility That a Committee of the Board Could Determine Whether an Applicant is Licensed.

- *The Credentialing Committee does not determine the licensure of an applicant. The true role of the Credentialing Committee is to review all applications that are submitted to the Board to ensure all criteria has been met for licensure. When applicable, the committee provides the assistance equivalent to transcript evaluation. The individuals that comprise the Credentialing Committee are professors that teach in the graduate counseling programs for both Marshall University and West Virginia University. They are versed on what courses are needed to satisfy the educational requirements for licensure. The full Board makes the final decision for licensure. Moving forward, the Board will clarify the duties of the Credentialing Committee in a more concise manner.*

A Board Committee Exercises Authority Conferred to the Board.

- *The Investigative Committees established by the Board consists of two Board members that work in tandem to review complaint cases and offer recommendations if further or more in-depth investigation is needed. The Board recently selected six (6) experienced LPCs that will serve as investigators. Once formally trained, these individuals will be able to review the complaint cases received by the Board thus eliminating the need for the Investigative Committees.*

A Board Member is Serving on an Association of the Profession Which Could Conflict with the Interests of the Board.

- *A perceived conflict could arise in which the Professional Association and the Board would be at odds over a specific law, administrative rule change, policy, or other*

action. If such an instance were to occur, the concern present would be the dual board member might abandon their responsibility to protect the public's best interests in favor of promoting either their personal or the profession's interest. While it is possible a scenario like this could ensue, the likelihood of that occurring, especially in a way that would impact board decisions, is exceptionally remote for these reasons. Board members who are Licensed Professional Counselors (LPCs) and Licensed Marriage and Family Therapists (LMFTs) are seasoned professionals who are experienced in prescribing to clear Standards of Conduct as enumerated in the American Counseling Association (ACA) and American Association of Marriage and Family Therapists (AAMFT) Codes of Ethics. LPCs and LMFTs have significant experience applying those standards in clinical and business practices through peer and professional consultation and practical experience. Their professional identity and reputations are tied applications of these Ethical Codes. Additionally, a significant amount of ethics training is focused on successfully identifying and mitigating relationships that may contain conflicts of interest. The Board's configuration and voting processes are needed to enact or reject administrative rules and policies. The Board is comprised of three (3) LPCs, two (2) Counselor Educators, one (1) LMFT and one (1) lay person. The dual board member would need to recruit at least three (3) other highly ethically trained decisions makers to abandon their responsibility to protect the public to enact their agenda. The odds of that occurring are infinitesimally low. Another barrier is the presence of the Executive Director and a representative from the Attorney General's office at every meeting. Even though these two positions do not vote on actions, they are witnesses to the issues and decision-making processes. The dual board member would have to enlist the entire board in colluding on these actions, this would be counter to the members' personal and professional integrity. Lastly, because LPCs and LMFTs are well trained in identifying and resolving potential conflicts of interest, when assembled as a group, simple recusal from discussion and abstinence from voting eliminate potential conflict regarding a questionable issue. This is currently a common practice of the Board when applicable. For the reasons stated, there may not be a need to eliminate board members of Professional Associations from sitting on the Board of Examiners in Counseling.

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

- *The Board will inquire about gaining access the State Treasurer's Lockbox System. This will aid in the ability to ensure there is segregation of duties.*

ISSUE 2: The Board's Inadequate Cybersecurity and Internal Control Put the State at Risk by Exposing Case Counseling Notes

The Board Exposed Case Notes on Its Non-secured Website and Did Not Report the Exposure to the Office of Technology

- *The previous Executive Director of the Board, when notified the information could be found on the web, removed the documents, and did not report the incident to the WV Office of Technology (WVOT) due to lack of knowledge of the reporting requirements.*
- *The current Executive Director (ED) informed WVOT and the State Privacy Office of a breach that was reported during the PERD Audit. WVOT contacted the website where the documents were found and had the documents removed. With this action, the ED thought that a thorough search was performed by WVOT and all documents were removed from the site. The Board did not respond to the letter dated January 10, 2020, due to misunderstanding. The ED thought that the initial search and removal of documents and the work that was being done with the State Privacy Office had satisfied the request. The State Privacy Office instructed the Board to contact the individual whose information was found on the web via letter. The Board then complied.*

The Legislative Auditor is Concerned with the Board's Lack of Cyber Security and Information System Internal Controls.

- *On December 1, 2021, the Board was added to the Executive Domain and was issued "wv.gov" email addresses. Because of this, the Board can now send encrypted emails that contain complaint file information as well as any other official content securely. The Board is currently in the onboarding phase with Thentia, a regulatory database platform, that will help to avoid risking data breaches. The Board is also working with WVOT to find the best path to forward in the procurement of a ".gov" website. This process is still ongoing.*

ISSUE 3: The Board of Examiners in Counseling Needs to Consider What Measures It Needs to Take to Ensure It Provides Handicapped Accessibility to Its Office and Services Under the Americans With Disabilities Act.

There Are Possible Physical Barriers to Accessing the Board's Office.

- *The Board rarely receives foot traffic at the physical location. If someone with a disability needed to access the office, the Board staff would be able to provide the assistance needed to allow entry. The staff would meet the individual and escort them into the lobby, assist in the operation of the elevator if needed, and would be able to host the individual/s in the conference room to allow for adequate spacing.*

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

**The Board's Website Scores Relatively Low in User-Friendliness and Transparency
The Board's Website is Navigable but Needs Additional User-Friendly Features**

- *The Board is currently working to revamp the website to ensure user-friendliness. This is being done in tandem with the implementation of the new regulatory database system.*

Sincerely,

A handwritten signature in blue ink that reads "Cheryl J. Henry". The signature is written in a cursive, flowing style.

Cheryl J. Henry, Executive Director



WEST VIRGINIA LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

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

telephone: 1-304-347-4890 | www.legis.state.wv.us/Joint/PERD/perd.cfm | fax: 1-304-347-4939